

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Case No. 2012-1212
-vs- : Appeal taken from Franklin County
 : Court of Common Pleas
CARON E. MONTGOMERY, : Case No. 10CR-12-7125
Appellant. : **This is a death penalty case**

APPENDIX TO MERIT BRIEF OF APPELLANT CARON MONTGOMERY

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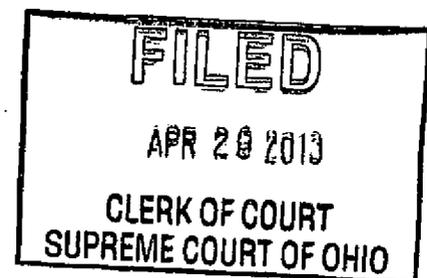
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In The Supreme Court of Ohio

FILED
JUL 20 2012
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State of Ohio,

Appellee,

-vs-

Caron E. Montgomery,

Appellant.

Case No.:

12-1212

This Is A Capital Case

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

Appellant Montgomery's Notice Of Appeal

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FRANKLIN CO. OHIO
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In The Supreme Court of Ohio

State of Ohio, :
Appellee, :
-vs- : Case No.:
Caron E. Montgomery, :
Appellant. : **This Is A Capital Case**

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

Appellant Montgomery's Notice Of Appeal

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, 2012.¹ 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.

¹ 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,

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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, 14th Floor, Columbus, Ohio 43215, on this 20th day of July, 2012.



Kathryn L. Sandford - 0063985
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COMMON PLEAS COURT
FRANKLIN CO., OHIO

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CLERK OF COURTS

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

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.

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SUPREME COURT OF OHIO

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.¹ 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 Croon noted during his testimony that the autopsy report of Tia Hendricks (Ex. 6B) revealed defensive wounds on Tia

¹ The Defendant objected, through counsel, to the "pictora 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 severed², 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 room³, 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!"⁴ In addition, the admitted DNA evidence strongly corroborated the Defendant as the offender.⁵ And, of course, the Defendant admitted the offenses in his pleas of guilty.

The aggravated murder of Tablia 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:

² 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); Tablia: lacerations of the left common carotid artery, left internal jugular vein and right common carotid artery (Ex. 5D). All autopsies were performed by Dr. Au, M.D., forensic pathologist.

³ 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).

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

⁵ 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.⁶
- 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.

⁶ 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 8th page, top of page, lines 2 and 3; and in Wilson 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.⁷ 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.⁸ He "lies when caught, even red handed."⁹ He continued to lose points for "disrespect, agitation, infringement, fighting

⁷ 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."

⁸ 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.

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

and being uncooperative.”¹⁰ 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.

¹⁰ 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 mitigation¹¹ in the evidence, that amount of mitigation was not great.

Weighting 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.

¹¹ 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.

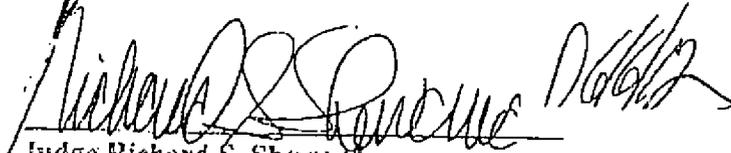
This Decision notes, hopefully adequately, how much the Panel considered the evidence presented and the gravity with which it took its responsibility. The particular judges on this case have had a great deal of experience involving death penalty cases, and the decision reached herein was made neither 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

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

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COMMON PLEAS COURT
FRANKLIN CO., OHIO
2012 MAY 24 PM 4:15
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State of Ohio,

Plaintiff,

v.

Caron E. Montgomery,

Defendant.

Case No. 10CR-12-7125

Judges Reece (Presiding),
Sheward and Sheeran

JUDGMENT ENTRY

On May 7, 2012, the State of Ohio was represented by Assistant Prosecuting Attorneys Jennifer Rausch and Doug Stead and the Defendant was represented by Attorneys J. Scott Weisman and Isabella Dixon. The Defendant after being advised of his rights pursuant to Crim. R. 11 entered a plea of guilty to the following offenses:

Count One of the Indictment, to wit: **MURDER**, in violation of R.C. 2903.02, an unclassified felony; as to Count One, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Murder as charged in Count One of the Indictment.

Count Two of the Indictment, to wit: **AGGRAVATED MURDER**, in violation of R.C. 2903.01, an unclassified felony with Specifications as noted below; as to Count Two, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Aggravated Murder as charged in Count Two of the Indictment and did further find Caron E. Montgomery guilty beyond a reasonable doubt of purposely, and with prior calculation and design, causing the death of Tahlia Hendricks and did further find beyond a reasonable doubt that, as charged in Specification One, the offense was committed for the purpose of escaping detection, apprehension, trial or punishment for

another offense committed by the offender, to wit: Murder, as charged in Count One, and did find beyond a reasonable doubt that the offense was part of a course of conduct involving the purposeful killing of two or more persons by the offender as charged in Specification Two, and did find beyond a reasonable doubt that the Defendant purposely caused the death of another, who was under Thirteen (13) years of age at the time of the commission of the offense, and that the offender was the principal offender in the commission of the offense as charged in Specification Three.

Count Three of the Indictment, to wit: **AGGRAVATED MURDER**, in violation of R.C. 2903.01, an unclassified felony with Specifications as noted below; as to Count Three, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Aggravated Murder as charged in Count Three of the Indictment and did find Caron E. Montgomery guilty beyond a reasonable doubt of purposely causing the death of Tahlia Hendricks, who was under thirteen (13) years of age, and did find beyond a reasonable doubt that, as charged in Specification One, the offense was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the offender, to wit: Murder, as charged in Count One, and did find beyond a reasonable doubt that the offense at bar was part of a course of conduct involving the purposeful killing of two or more persons as charged in Specification Two and did find beyond a reasonable doubt that the Defendant purposely caused the death of another who was under Thirteen (13) years of age at the time of the commission of the offense, and the offender was the principal offender in the commission of the offense, as charged in Specification Three.

Count Four of the Indictment, to wit: **AGGRAVATED MURDER**, in violation of R.C. 2903.01, an unclassified felony with Specifications as noted below; as to Count Four, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Aggravated Murder as charged in Count Four of the Indictment and did further find Caron E. Montgomery guilty beyond a reasonable doubt of purposely, and with prior calculation and design, causing the death of Tyron Hendricks, and did find that beyond a reasonable doubt that the offense at bar was part of a course of conduct involving the purposeful killing of two or more persons by the offender, as charged in Specification One, and did find beyond a reasonable doubt that the Defendant purposely caused the death of another, who was under Thirteen (13) years of age at the time of the commission of the offense, and that the offender was the principal offender in the commission of the offense, as charged in Specification Two.

Count Five of the Indictment, to wit: **AGGRAVATED MURDER**, in violation of R.C. 2903.01, an unclassified felony with Specifications as noted below; as to Count Five, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Aggravated Murder as charged in Count Five of the Indictment and did find Caron E. Montgomery guilty beyond a reasonable doubt of purposely causing the death of Tyron Hendricks and did find beyond a reasonable doubt that the offense was part of a course of conduct involving the purposeful killing of two or more persons by the offender, as charged in Specification One, and did find beyond a reasonable doubt that the Defendant purposely caused the death of another, who was under Thirteen (13) years of age at the time of the commission of the offense, and that the offender was the principal offender in the commission of the offense, as charged in Specification Two.

Count Six of the Indictment, to wit: **DOMESTIC VIOLENCE**, in violation of R.C. 2919.25, a Felony of the Fourth Degree; as to Count Six, the three-judge panel found Caron E. Montgomery guilty beyond a reasonable doubt of Domestic Violence, a Felony of the Fourth Degree, as charged in Count Six of the Indictment.

On May 14, 2012, the Panel then proceeded to hear arguments and testimony in regard to the mitigating factors and the aggravating circumstances.

On May 15, 2012 the Panel returned unanimous verdicts finding beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating factors.

As a result of these findings the Panel imposed the sentence of death.

On May 22, 2012, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorneys Doug Stead and Jennifer Rausch and the Defendant was represented by J. Scott Weisman and Isabella Dixon.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally, affording him an opportunity to make a statement on his own behalf. The Defendant declined to make a statement prior to sentencing.

For purposes of sentencing Count Two merges with Count Three, Count Four merges with Count Five and Count Six merges with Count One.

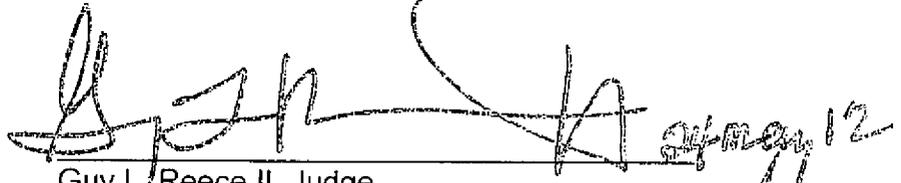
On Count One, the Defendant Caron E. Montgomery is sentenced to a term of Fifteen (15) years to Life in the Ohio Department of Rehabilitation and Corrections for the offense of Murder.

On Count Three, the Defendant Caron E. Montgomery is sentenced to Death for the offense of Aggravated Murder with Specifications.

On Count Five, the Defendant Caron E. Montgomery is sentenced to Death for the offense of Aggravated Murder with Specifications.

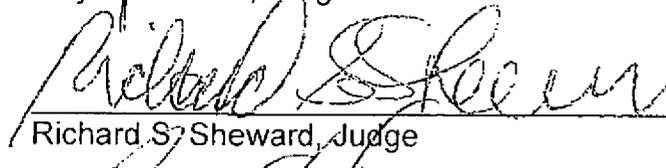
The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, hereby render judgment for the following fine and/or financial sanctions: No fine or court costs imposed.

The Court finds, and counsel stipulated, that the Defendant has Five Hundred Forty-Four (544) days of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.



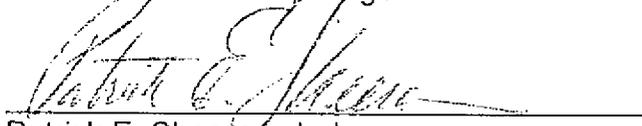
A large, stylized handwritten signature in black ink, appearing to read 'Guy L. Reece II', written over a horizontal line.

Guy L. Reece II, Judge



A handwritten signature in black ink, appearing to read 'Richard S. Sheward', written over a horizontal line.

Richard S. Sheward, Judge



A handwritten signature in black ink, appearing to read 'Patrick E. Sheeran', written over a horizontal line.

Patrick E. Sheeran, Judge

ARTICLE I, SECTION 1, OHIO CONSTITUTION

§ 1 RIGHT TO FREEDOM AND PROTECTION OF PROPERTY.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

SECTION 2, ARTICLE I, OHIO CONSTITUTION

§ 2 RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT, AND REPEAL SPECIAL PRIVILEGES.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

SECTION 5, ARTICLE I, OHIO CONSTITUTION

§ 5 TRIAL BY JURY; REFORM IN CIVIL JURY SYSTEM.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

SECTION 9, ARTICLE I, OHIO CONSTITUTION

§ 9 BAILABLE OFFENSES; OF BAIL, FINE, AND PUNISHMENT.

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great and a person who is charged with a felony where the proof is evident or the presumption great and who poses a potential serious physical danger to a victim of the offense, to a witness to the offense, or to any other person or to the community. Excessive bail shall not be required; excessive fines shall not be imposed; and cruel and unusual punishments shall not be inflicted.

SECTION 10, ARTICLE I, OHIO CONSTITUTION

§ 10 TRIAL OF ACCUSED PERSONS AND THEIR RIGHTS; DEPOSITIONS BY STATE AND COMMENT ON FAILURE TO TESTIFY IN CRIMINAL CASES.

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

SECTION 16, ARTICLE I, OHIO CONSTITUTION

§ 16 REDRESS IN COURTS.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

SECTION 20, ARTICLE I, OHIO CONSTITUTION

§ 20 POWERS RESERVED TO THE PEOPLE.

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

SECTION 39, ARTICLE II, OHIO CONSTITUTION

§ 39 REGULATING EXPERT TESTIMONY IN CRIMINAL TRIALS.

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

AMENDMENT V, UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI, UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VIII, UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV, UNITED STATES CONSTITUTION

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE II, UNITED STATES CONSTITUTION

Section 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representatives from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--
"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3.

He shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4.

The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE VI, UNITED STATES CONSTITUTION

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

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*** Annotations current through November 9, 2012 ***

TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2901. GENERAL PROVISIONS
IN GENERAL

Go to the Ohio Code Archive Directory

ORC Ann. 2901.05 (2013)

§ 2901.05. Burden and degree of proof; presumption concerning self-defense or defense of another; jury instructions concerning reasonable doubt.

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) (1) Subject to division (B)(2) of this section, a person is presumed to have acted in self defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(2) (a) The presumption set forth in division (B)(1) of this section does not apply if the person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The presumption set forth in division (B)(1) of this section does not apply if the person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.

(3) The presumption set forth in division (B)(1) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (D) of this section.

(D) As used in this section:

(1) An "affirmative defense" is either of the following:

(a) A defense expressly designated as affirmative;

(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.

(2) "Dwelling" means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes, but is not limited to, an attached porch, and a building or conveyance with a roof over it includes, but is not limited to, a tent.

(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

(E) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
HOMICIDE

Go to the Ohio Code Archive Directory

ORC Ann. 2903.01 (2013)

§ 2903.01. Aggravated murder

(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape.

(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:

- (1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.
- (2) It is the offender's specific purpose to kill a law enforcement officer.

(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in *section 2929.02 of the Revised Code*.

(G) As used in this section:

- (1) "Detention" has the same meaning as in *section 2921.01 of the Revised Code*.

(2) "Law enforcement officer" has the same meaning as in *section 2911.01 of the Revised Code*.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2903. HOMICIDE AND ASSAULT
HOMICIDE

Go to the Ohio Code Archive Directory

ORC Ann. 2903.02 (2013)

§ 2903.02. Murder

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of *section 2903.03 or 2903.04 of the Revised Code*.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in *section 2929.02 of the Revised Code*.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2919. OFFENSES AGAINST THE FAMILY
DOMESTIC VIOLENCE

Go to the Ohio Code Archive Directory

ORC Ann. 2919.25 (2013)

§ 2919.25. Domestic violence

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D) (1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.

(2) Except as otherwise provided in divisions (D)(3) to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of *section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code* if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division

(D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony of the third degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D)(3) or (4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony of the fifth degree, and the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the third degree.

(6) If division (D)(3), (4), or (5) of this section requires the court that sentences an offender for a violation of division (A) or (B) of this section to impose a mandatory prison term on the offender pursuant to this division, the court shall impose the mandatory prison term as follows:

(a) If the violation of division (A) or (B) of this section is a felony of the fourth or fifth degree, except as otherwise provided in division (D)(6)(b) or (c) of this section, the court shall impose a mandatory prison term on the offender of at least six months.

(b) If the violation of division (A) or (B) of this section is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of twelve months.

(c) If the violation of division (A) or (B) of this section is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of at least twelve months.

(d) If the violation of division (A) or (B) of this section is a felony of the third degree, except as otherwise provided in division (D)(6)(e) of this section and notwithstanding the range of prison terms prescribed in *section 2929.14 of the Revised Code* for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of six months or one of the prison terms prescribed in *section 2929.14 of the Revised Code* for felonies of the third degree.

(e) If the violation of division (A) or (B) of this section is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of prison terms prescribed in *section 2929.14 of the Revised Code* for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of one year or one of the prison terms prescribed in *section 2929.14 of the Revised Code* for felonies of the third degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially similar to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section and *sections 2919.251 and 2919.26 of the Revised Code*:

(1) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the offender:

(i) A spouse, a person living as a spouse, or a former spouse of the offender;

(ii) A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

(3) "Pregnant woman's unborn" has the same meaning as "such other person's unborn," as set forth in *section 2903.09 of the Revised Code*, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

(4) "Termination of the pregnant woman's pregnancy" has the same meaning as "unlawful termination of another's pregnancy," as set forth in *section 2903.09 of the Revised Code*, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR MURDER

Go to the Ohio Code Archive Directory

ORC Ann. 2929.02 (2013)

§ 2929.02. Penalties for aggravated murder or murder

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of *section 2903.01 of the Revised Code* shall suffer death or be imprisoned for life, as determined pursuant to *sections 2929.022 [2929.02.2], 2929.03, and 2929.04 of the Revised Code*, except that no person who raises the matter of age pursuant to *section 2929.023 [2929.02.3] of the Revised Code* and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B) (1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code* shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code*, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of *section 2971.03 of the Revised Code*.

(3) If a person is convicted of or pleads guilty to murder in violation of *section 2903.02 of the Revised Code* and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D) (1) In addition to any other sanctions imposed for a violation of *section 2903.01 or 2903.02 of the Revised Code*, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of *section 4510.02 of the Revised Code*.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in *section 4501.01 of the Revised Code*.

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ORC Ann. 2929.021 (2013)

§ 2929.021. Notice to supreme court of indictment charging aggravated murder; plea

(A) If an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, the clerk of the court in which the indictment is filed, within fifteen days after the day on which it is filed, shall file a notice with the supreme court indicating that the indictment was filed. The notice shall be in the form prescribed by the clerk of the supreme court and shall contain, for each charge of aggravated murder with a specification, at least the following information pertaining to the charge:

- (1) The name of the person charged in the indictment or count in the indictment with aggravated murder with a specification;
- (2) The docket number or numbers of the case or cases arising out of the charge, if available;
- (3) The court in which the case or cases will be heard;
- (4) The date on which the indictment was filed.

(B) If the indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code* and if the defendant pleads guilty or no contest to any offense in the case or if the indictment or any count in the indictment is dismissed, the clerk of the court in which the plea is entered or the indictment or count is dismissed shall file a notice with the supreme court indicating what action was taken in the case. The notice shall be filed within fifteen days after the plea is entered or the indictment or count is dismissed, shall be in the form prescribed by the clerk of the supreme court, and shall contain at least the following information:

- (1) The name of the person who entered the guilty or no contest plea or who is named in the indictment or count that is dismissed;

- (2) The docket numbers of the cases in which the guilty or no contest plea is entered or in which the indictment or count is dismissed;
- (3) The sentence imposed on the offender in each case.

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ORC Ann. 2929.022 (2013)

§ 2929.022. Determination of aggravating circumstances of prior conviction

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code*, the defendant may elect to have the panel of three judges, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of *section 2929.03 of the Revised Code*.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code*, and on any other specifications of an aggravating circumstance listed in division (A) of *section 2929.04 of the Revised Code* in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code* determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to *section 2929.023 [2929.02.3] of the Revised Code* and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the*

Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence according to division (E) of *section 2929.03 of the Revised Code*.

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code* is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code* is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of *section 2929.04 of the Revised Code*, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of *section 2929.03* and *section 2929.04 of the Revised Code*. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of *section 2929.04 of the Revised Code* is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of *section 2929.04 of the Revised Code*, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B)(2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than thirteen years of age and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

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ORC Ann. 2929.023 (2013)

§ 2929.023. Defendant may raise matter of age

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of his age at the time of the alleged commission of the offense and may present evidence at trial that he was not eighteen years of age or older at the time of the alleged commission of the offense. The burdens of raising the matter of age, and of going forward with the evidence relating to the matter of age, are upon the defendant. After a defendant has raised the matter of age at trial, the prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

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ORC Ann. 2929.024 (2013)

§ 2929.024. Investigation services and experts for indigent

If the court determines that the defendant is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of a defendant charged with aggravated murder at trial or at the sentencing hearing, the court shall authorize the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made as provided in this section.

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ORC Ann. 2929.03 (2013)

§ 2929.03. Imposing sentence for aggravated murder

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

(a) Life imprisonment without parole;

(b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C) (1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

(i) Life imprisonment without parole;

(ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(2) (a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code* and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section.

(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D) (1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to *section 2929.023 [2929.02.3] of the Revised Code* and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to *section 2947.06 of the Revised Code*. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that

is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code*, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code* and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an

indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of *section 2971.03 of the Revised Code*, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to *section 2971.03 of the Revised Code*. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(iv) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (D)(3)(a)(i) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(E) If the offender raised the matter of age at trial pursuant to *section 2929.023 [2929.02.3] of the Revised Code*, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of *section 2929.04 of the Revised Code*, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(c) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(d) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (E)(2)(a) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of *section 2971.03 of the Revised Code* to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to *section 2971.03 of the Revised Code*.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code*, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of *section 2929.04 of the Revised Code* it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(G) (1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

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ORC Ann. 2929.04 (2013)

§ 2929.04. Criteria for imposing death or imprisonment for a capital offense

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to *section 2941.14 of the Revised Code* and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in *section 2921.01 of the Revised Code*, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in *section 2911.01 of the Revised Code*, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to *section 2929.023 [2929.02.3] of the Revised Code* or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) 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;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, 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;

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

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of *section 2929.03 of the Revised Code* by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
PENALTIES FOR MURDER

Go to the Ohio Code Archive Directory

ORC Ann. 2929.05 (2013)

§ 2929.05. Appellate review of death sentence

(A) Whenever sentence of death is imposed pursuant to *sections 2929.03 and 2929.04 of the Revised Code*, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the

clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to *section 2929.022 or 2929.03 of the Revised Code*, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen years of age at the time of the commission of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.

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TITLE 29. CRIMES -- PROCEDURE
CHAPTER 2929. PENALTIES AND SENTENCING
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Go to the Ohio Code Archive Directory

ORC Ann. 2929.06 (2013)

§ 2929.06. Resentencing after sentence of death or life imprisonment without parole is set aside, nullified, or vacated

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by *section 2929.05 of the Revised Code*, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in *sections 2929.03 and 2929.04 of the Revised Code* is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of *section 2929.05 of the Revised Code*, or is set aside, nullified, or vacated because a court has determined that the offender is mentally retarded under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of *section 2929.03 of the Revised Code*, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section, the court shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of *section 2929.03* or under *section 2909.24 of the Revised Code* at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division

regarding the resentencing of an offender shall affect the operation of *section 2971.03 of the Revised Code*.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of *section 2929.03 of the Revised Code* in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of *section 2929.03 of the Revised Code*, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of *section 2971.03 of the Revised Code* and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of *section 2929.03* or under *section 2909.24 of the Revised Code* at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to *section 2929.021* or *2929.03 of the Revised Code* is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in *sections 2929.03* and *2929.04 of the Revised Code* is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside,

nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

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Ohio Rules Of Criminal Procedure

Ohio Crim. R 11 (2013)

Review Court Orders which may amend this Rule.

Rule 11. Pleas, rights upon plea

(A) Pleas.

A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) Effect of guilty or no contest pleas.

With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under *Crim.R. 32*.

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to *Crim.R. 44* by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses.

In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to *Crim.R. 44* by appointed counsel, waives this right.

(E) Misdemeanor cases involving petty offenses.

In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first informing the defendant of the effect of the pleas of guilty, no contest, and not guilty.

The counsel provisions of *Crim.R. 44(B)* and (C) apply to division (E) of this rule.

(F) Negotiated plea in felony cases.

When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) Refusal of court to accept plea.

If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity.

The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

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Ohio Rules Of Evidence
Article IV. Relevancy and its limits

Ohio Evid. R. 401 (2013)

Review Court Orders which may amend this Rule.

Rule 401. Definition of "relevant evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

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Ohio Rules Of Evidence
Article IV. Relevancy and its limits

Ohio Evid. R. 403 (2013)

Review Court Orders which may amend this Rule.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or undue delay

(A) Exclusion mandatory.

Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

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Ohio Rules Of Evidence
Article VIII. Hearsay

Ohio Evid. R. 801 (2013)

Review Court Orders which may amend this Rule.

Rule 801. Definitions

The following definitions apply under this article:

(A) Statement.

A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(B) Declarant.

A "declarant" is a person who makes a statement.

(C) Hearsay.

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(D) Statements which are not hearsay.

A statement is not hearsay if:

(1) Prior statement by witness.

The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with declarant's testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent.

The statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or (b) a statement of which the party has manifested an adoption or belief in its truth, or (c) a statement by a person authorized by the party to make a statement concerning the subject, or (d) a statement by the

party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

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Rules Of Superintendence For The Courts Of Ohio

Ohio Sup. R. 20 (2013)

Review Court Orders which may amend this Rule.

Rule 20. Appointment of counsel for indigent defendants in capital cases

I. Scope of rules.

(A) Rules 20 through 20.05 of the Rules of Superintendence for the Courts of Ohio shall apply in cases where an indigent defendant has been charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*. These rules shall apply in cases where a juvenile defendant is indicted for a capital offense, but because of the juvenile's age, cannot be sentenced to death.

(B) The provisions for the appointment of counsel set forth in *Sup.R. 20* through *20.05* apply only in cases where the defendant is indigent and counsel is not privately retained by or for the defendant.

(C) If the defendant is entitled to the appointment of counsel, the court shall appoint two attorneys certified pursuant to *Sup.R. 20* through *20.05*. If the defendant engages one privately retained attorney, the court shall not appoint a second attorney pursuant to this rule.

(D) The provisions of *Sup.R. 20* through *20.05* apply in addition to the reporting requirements created by *section 2929.021 of the Revised Code*.

II. Appointment of counsel for indigent defendants in capital cases.

(A) Trial counsel.

At least two attorneys shall be appointed by the court to represent an indigent defendant charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in *R.C. 2929.04(A)*. At least one of the appointed counsel shall maintain a law office in Ohio and have experience in Ohio criminal trial practice. The counsel appointed shall be designated "lead counsel" and "co-counsel" and must meet the qualifications set forth in *Sup.R. 20.01*.

(B) Appellate counsel.

At least two attorneys shall be appointed by the court to appeal cases where the trial court has imposed the death penalty on an indigent defendant. At least one of the appointed counsel shall maintain a law office in Ohio. Appointed counsel shall meet the qualifications for appellate counsel set forth in *Sup.R. 20.01*.

(C) Exceptional circumstances.

If an attorney does not satisfy the requirements of divisions (A) or (B) of this section, the attorney may be certified as lead counsel, co-counsel, or appellate counsel if it can be demonstrated to the satisfaction of the Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases that competent representation will be provided to the defendant. In so determining, the committee may consider all of the factors in *Sup.R. 20.01* and any other relevant considerations:

III. Procedures for court appointments of counsel.**(A) Appointing counsel.**

Only counsel who have been certified by the committee shall be appointed to represent indigent defendants charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in division (A) of *section 2929.04 of the Revised Code*. Each court may adopt local rules establishing qualifications in addition to and not in conflict with those established by *Sup.R. 20.01*. Appointments of counsel for these cases should be distributed as widely as possible among the certified attorneys in the jurisdiction of the appointing court.

(B) Workload of appointed counsel.

(1) In appointing counsel, the court shall consider the nature and volume of the workload of the prospective counsel to ensure that counsel, if appointed, could direct sufficient attention to the defense of the case and provide competent representation to the defendant.

(2) Attorneys accepting appointments shall provide each client with competent representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads that, by reason of their excessive size, interfere with the rendering of competent representation or lead to the breach of professional obligations.

(C) Notice to the committee.

(1) Within two weeks of appointment, the appointing court shall notify the committee secretary of the appointment on a form prescribed by the committee. The notice shall include all of the following:

- (a) The court and the judge assigned to the case;
- (b) The case name and number;
- (c) A copy of the indictment;
- (d) The names, business addresses, telephone numbers, and certification of all attorneys appointed;
- (e) Any other information considered relevant by the committee or appointing court.

(2) Within two weeks of disposition, the trial court shall notify the committee secretary of the disposition of the case on a form prescribed by the committee. The notice shall include all of the following:

- (a) The outcome of the case;
- (b) The title and section of the Revised Code of any crimes to which the defendant pleaded or was found guilty;
- (c) The date of dismissal, acquittal, or that sentence was imposed;
- (d) The sentence, if any;

- (e) A copy of the judgment entry reflecting the above;
- (f) If the death penalty was imposed, the name of counsel appointed to represent the defendant on appeal;
- (g) Any other information considered relevant by the Committee or trial court.

(D) Support services.

The appointing court shall provide appointed counsel, as required by Ohio law or the federal Constitution, federal statutes, and professional standards, with the investigator, mitigation specialists, mental health professional, and other forensic experts and other support services reasonably necessary or appropriate for counsel to prepare for and present an adequate defense at every stage of the proceedings including, but not limited to, determinations relevant to competency to stand trial, a not guilty by reason of insanity plea, cross-examination of expert witnesses called by the prosecution, disposition following conviction, and preparation for and presentation of mitigating evidence in the sentencing phase of the trial. Lead counsel bears overall responsibility for the performance of the defense team and shall allocate, direct, and supervise the work in accordance with *Sup.R. 20* through *20.04* and professional standards. In addition, all counsel bear a responsibility to comply with *Sup.R. 20* through *20.04* and professional standards.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPENDIX OF APPELLANT CARON MONTGOMERY was forwarded by first-class, postage prepaid U.S. Mail to Steven L. Taylor, Chief Counsel, Appellate Division, Franklin County Prosecutor's Office, 373 South High Street, 13th Floor, Columbus, Ohio 43215, on the 29th day of April, 2013.



Kathryn L. Sandford - 0063985
Supervisor, Death Penalty Division
Counsel of Record

COUNSEL FOR APPELLANT