

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

-vs-

JAMES MAMMONE, III,

Appellant.

:

: Case No. 10-0576

: Appeal taken from Stark County  
Court of Common Pleas

: Case No. 2009-CR-0859

: **This is a death penalty case**

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**JAMES MAMMONE'S MOTION TO CORRECT OR MODIFY THE RECORD  
(Expedited Ruling Requested)**

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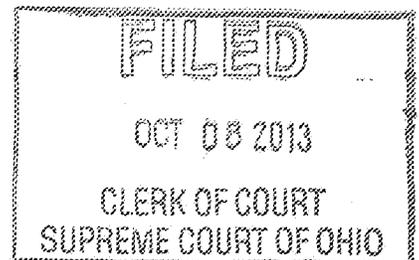
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Counsel For Appellee

Counsel For Appellant



IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :  
Appellee, : Case No. 10-0576  
-vs- : Appeal taken from Stark County  
JAMES MAMMONE, III, : Court of Common Pleas  
: Case No. 2009-CR-0859  
Appellant. : **This is a death penalty case.**

---

**JAMES MAMMONE'S MOTION TO CORRECT OR MODIFY THE RECORD  
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**I. Background.**

On December 22, 2010, Mammone was found guilty of three counts of aggravated murder and other charges resulting in a jury recommendation of death. On January 22, 2010, the trial court adopted the recommendation of the jury, and imposed three separate death sentences. The Court filed its sentencing entry on February 16, 2010.

The sentencing entry does not specify the aggravated murder theory for which Mammone is being sentenced. The sentencing entry in Mammone's case utilizes "and/or" language in the two counts of aggravated murder as to James Mammone, IV, and Macy Mammone. Specifically, the sentencing entry provides:

...Aggravated Murder, 2 Cts. [R.C. 2903.01(A) **and/or** (C) (Death)  
(With Two Death Specifications) [R.C. 2929.04 (A) (5) and 2929.04 (A)  
(9).....

(See 2/16/10 Entry, Exhibit A) (Emphasis added).

In short, the different theories of aggravated murder advanced by the state as to two of the victims (James IV and Macy), are never resolved.<sup>1</sup> The trial court's sentencing entry is improper as it does not state whether the jury found that James Mammone is guilty of aggravated murder because he acted with prior calculation and design (R.C. 2903.01 (A)) or James Mammone is guilty of aggravated murder because he killed two victims under the age of thirteen (R.C. 2903.01 (C)).

The trial transcript does not provide any clarification. The jury simply reported that they found two counts of aggravated murder as to James Mammone, IV, and Macy Mammone and that they found both death specifications as to each of the counts of aggravated murder. (Tr. Vol. VIII, pp. 140-141). Likewise, the sentencing transcript explains the death specifications but does not set forth which subsection, R.C. 2903.01(A) or R.C. 2903.01(C), for a valid conviction. (Sentencing Tr. Vol. III, pp. 565-567).

The verdict forms provide no clarification either. Again, the same "and/or" language is employed and the jurors do not state what theory of aggravated murder they found the state proved beyond a reasonable doubt. Appellee's brief also does not provide any answers on this point. On page two of Appellee's Brief it simply states that, "At the conclusion of four days of trial, the jury found Mammone guilty as charged in the indictment." (Appellee's Brief, p. 2).

The interrogatories to the jurors provide some insight as to their findings. However, that insight does not resolve the trial court's failure to specify for purposes of sentencing Mammone. Specifically, the interrogatories asked the jurors if they found prior calculation and design and if they found that two of the victims were under the age of thirteen. (Exhibit B). The jurors answered "yes" to both interrogatories. (Exhibit B). The problem, however, remains that there

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<sup>1</sup> This issue does not exist with Margaret Eakin. While charged under different theories (R.C. 2903.01(A) "and/or" R.C. 2903.01(B)), Mammone is found guilty under R.C. 2903.01(B).

is no clarity in the sentencing entry as the basis for a final conviction. This usage of and/or in this way has created ambiguity. *See State v. Noling*, 98 Ohio St. 3d 44, 781 N.E.2d 88 (2002). (“The form of the charge and the specifications, combining “aggravated robbery and/or aggravated burglary, was unnecessary and perilous.”). This “and/or” ambiguity in Mammone’s sentencing entry must be corrected as a court speaks through its entries. *State ex rel. Worcester v. Donnellon*, 49 Ohio St. 3d 117, 551 N.E.2d 183 (1990) (It is axiomatic that a court speaks through its entries.).

## **II. Correction or modification of the record.**

The Supreme Court Rules of Practice address circumstances like Mammone’s where there is uncertainty or a lack of clarity in the record. Specifically, S. Ct. Prac. 11.03(E) provides that where anything material to either party is “omitted from the record by error or accident or misstated in the record” (either before or after the record is transmitted) the Court, sua sponte, by stipulation, or upon motion, may direct that the omission or misstatement be corrected, and if necessary a supplemental record may be certified and transmitted. Further, the rule provides “[a]ll other questions as to the form and content of the record shall be presented to the Supreme Court.” S. Ct. Prac. 11.03(E). Thus, pursuant to S. Ct. Prac. 11.03(E) counsel is alerting this Court to the ambiguity that exists in the record in Mammone’s case. Because a court speaks through its entries it is imperative that the trial court’s entry be clear and correct. This is especially true when that sentencing entry imposes the death penalty.

## **III. The trial court’s judgment entry in this case does not specify a proper “conviction”.**

The Double Jeopardy Clause of the United States Constitution prohibits multiple punishments for the same offense. *Monge v. California*, 524 U.S. 721, 727-28 (1988). *See also*, Ohio Constitution Art. 1, Sec. 10. The Ohio Legislature adopted the multiple-count statute that

states allied offenses of similar import must be merged at sentencing. R.C. 2941.25(A). *See also State v. Palmer*, 80 Ohio St. 3d 543, 572, 687 N.E.2d 685, 709 (1997). A “conviction” includes both the guilt determination and the penalty imposed. *See State v. Poindexter*, 36 Ohio St. 3d 1, 5, 520 N.E.2d 568, 572 (1988).

Here, Mammone was never notified by the trial court whether his final “conviction” is premised upon whether he acted with prior calculation and design (R.C. 2903.01(A)) or whether he was convicted because two of the victims were under the age of thirteen (R.C. 2903.01 (C)). Neither the reading of the verdict at the end of the trial phase, the trial court’s statements at sentencing, nor the trial court’s judgment entries informed Mammone which guilty verdict is the basis of his conviction. Mammone’s sentencing entry states that his conviction for a single act is premised upon two theories of guilt. This directly violates the general rule that a defendant may be charged with multiple counts based on the same conduct but ultimately convicted of only one. R.C. 2941.25(A). Since both theories involve the same victim and are of similar import—they merge. *State v. Lawson*, 64 Ohio St. 3d 336, 351, 595 N.E.2d 902, 913 (1992). This error is not cured by the fact the court ultimately imposed one death penalty sentence per victim because there was never any explicit merger as to guilt. *See State v. Dunlap*, 73 Ohio St. 3d 308, 652 N.E.2d 988 (1995) (Court of Appeals **explicitly merged** the two murder counts and approved only one death sentence so error determined harmless.) (Emphasis added). The trial court must explicitly merge the aggravated murder theories and approve one single death sentence for each victim. *State v. Huertas*, 51 Ohio St. 3d 22, 28, 553 N.E.2d 1058, 1066 (1990). Thus, Mammone’s conviction and sentencing on two counts/theories of aggravated murder for a single victim violated R.C. 2941.25 and the Double Jeopardy Clauses of the Ohio and United States Constitutions.

**IV. Conclusion.**

The same alternate theories as to the aggravated murder of James Mammone, IV, and Macy Mammone contained in the indictment are contained in Mammone's sentencing entry. The current language in the sentencing entry as to these victims is ambiguous and confusing. An order from this Court for modification and correction of the record is necessary. Pursuant to S.Ct. 11.03(E), Mammone requests that this Court remand his case back to the trial court for a proper sentencing entry. In the alternative, counsel requests that the parties be permitted to address this issue in supplemental briefing. A defendant cannot be convicted twice for a single offense. *Huertas*, 51 Ohio St. 3d at 28, 553 N.E.2d at 1066 ("...prosecution has conceded that appellant cannot be convicted twice for a single offense. Accordingly, we hold that, on remand, appellant should only be given a single life sentence for the aggravated murder offense."). The sentencing entry in its current form, containing "and/or" language as to two victims, cannot stand.

Respectfully submitted,

Office of the  
Ohio Public Defender



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Robert K. Lowe – 0072264  
Assistant State Public Defender  
Counsel of Record

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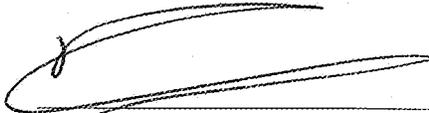
and

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Counsel for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **JAMES MAMMONE'S MOTION TO CORRECT OR MODIFY THE RECORD** was forwarded by first-class, postage prepaid, U.S. Mail to Kathleen Tatarsky and Renee Watson, Assistant Prosecuting Attorneys, Stark County, 110 Central Plaza South, Suite 510, Canton, Ohio 44702, on this 8th day of October, 2013.



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Robert K. Lowe – 0072264  
Assistant State Public Defender

Counsel for Appellant

1/27/10 meg 1&8  
file/Johnson/Lowry/JDF

H

CLERK OF COURT  
STARK COUNTY, OHIO

2010 FEB 16 AM 10:46

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

STATE OF OHIO,  
Plaintiff,

CASE NO. 2009CR0859

JUDGE JOHN G. HAAS

vs.

JUDGMENT ENTRY

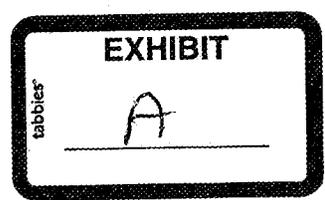
**JAMES MAMMONE, III,**

FOUND GUILTY BY JURY

Defendant.

FOUND BY JURY

This day, January 5, 2010, this cause having been regularly assigned for trial, came on for trial before the jury, being duly impaneled and sworn on January 11, 2010 upon the Indictment for the crimes of Aggravated Murder, 1 Ct. [R.C. 2903.01(B)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(7)] and (Firearm Specification) [R.C. 2941.145]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or (A)(2)] (F1) (With Firearm Specification) [R.C. 2941.145]; Aggravated Murder, 2 Cts. [R.C.2903.01(A) and/or (C)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(9)]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)] (F1) (With



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Firearm Specification)[R.C. 2941.145]; Violating a Protection Order, 1 Ct. [R.C. 2919.27(A)(1)](F3) and Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)][R.C. 2909.03(A)(1)](F5). as charged in counts one through seven of the Indictment, to which the defendant had pled not guilty at the arraignment.

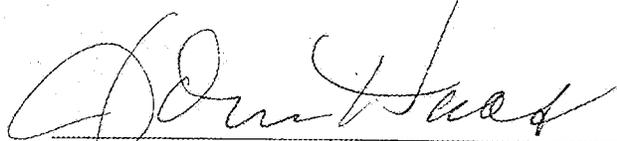
The jury, having been duly charged as to the applicable law of the State of Ohio, and after due deliberation on January 14, 2010, agreed upon their verdict, whereupon they were conducted in open court in the presence of the defendant and his attorney, and the verdict, signed by all members of the jury, was read to the defendant. It was the unanimous verdict of the jury that the defendant is guilty to the crimes of Aggravated Murder, 1 Ct. [R.C. 2903.01(B)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(7)] and (Firearm Specification) [R.C. 2941.145]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or (A)(2)](F1) (With Firearm Specification) [R.C. 2941.145]; Aggravated Murder, 2 Cts. [R.C. 2903.01(A) and/or (C)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(9)]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)](F1) (With Firearm Specification) [R.C. 2941.145]; Violating a Protection Order, 1 Ct. [R.C.

2919.27(A)(1)](F3) and Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)][R.C. 2909.03(A)(1)](F5) as charged in counts one through seven of the Indictment. Thereupon, the court moved that sentencing on the charges of Aggravated Murder, 1 Ct. [R.C. 2903.01(B)](Death)(With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(7)] and (Firearm Specification) [R.C. 2941.145]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or (A)(2)](F1)(With Firearm Specification) [R.C. 2941.145]; Aggravated Murder, 2 Cts. [R.C.2903.01(A) and/or (C)](Death)(With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(9)]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)](F1)(With Firearm Specification) [R.C. 2941.145]; Violating a Protection Order, 1 Ct. [R.C. 2919.27(A)(1)](F3) and Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)][R.C. 2909.03(A)(1)](F5) as charged in counts one through seven of the Indictment be deferred.

The Court further ordered the sentencing phase to begin on January 19, 2010 on the charges of Aggravated Murder, 1 Ct. [R.C. 2903.01(B)](Death)(With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(7)] Aggravated Murder, 2 Cts. [R.C.2903.01(A) and/or (C)](Death)(With Two Death Specifications) [R.C.

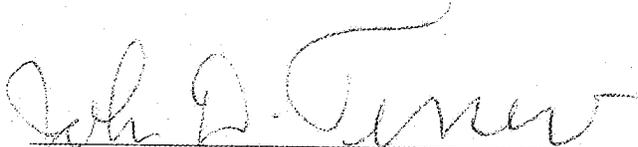
2929.04(A)(5) and 2929.04(A)(9)] as charged in counts three and four of the Indictment.

IT IS SO ORDERED.



HON. JOHN G. HAAS, JUDGE

APPROVED BY:



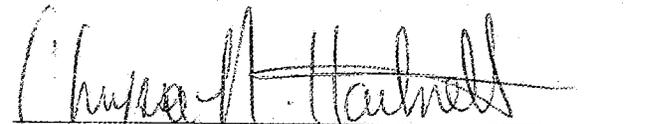
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PROSECUTING ATTORNEY



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DENNIS E. BARR, #0020126  
CHIEF, CRIMINAL DIVISION  
ASSISTANT PROSECUTING ATTORNEY



---

CHRISSE N. HARTNETT, #0065106  
ASST. CHIEF, CRIMINAL DIVISION  
ASSISTANT PROSECUTING ATTORNEY

IN THE COURT OF COMMON PLEAS

W. S. NEIBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:01

STATE OF OHIO,

)

CASE NO. 2009CR0859

PLAINTIFF

)

JUDGE HAAS

VS.

)

JAMES MAMMONE, III,

)

CRIMINAL VERDICT - COUNT ONE

DEFENDANT

)

AGGRAVATED MURDER (Margaret Eakin)

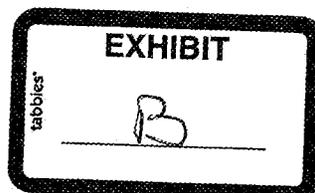
We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Aggravated Murder of Margaret Eakin in violation of Revised Code Section 2903.01(B) as charged in Count One of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. Jara</u>        | <u>Henry Maddox</u>   |
| <u>Jane K. Calhoun</u>     | <u>Neil J. ...</u>    |
| <u>Stephen Pance</u>       | <u>Martha Swihart</u> |
| <u>Deborah S. Hoffmann</u> | <u>[Signature]</u>    |
| <u>Maisha ...</u>          | <u>Sally Mirkley</u>  |
| <u>Wendy McLeod</u>        | <u>Theresa Yeager</u> |

Note: If you have found the defendant "Guilty" of Aggravated Murder, as charged in Count One, proceed to pages 2, 3 and 4 and decide Specifications One, Two and Three to Count One.

If you have found the defendant "Not Guilty" of Aggravated Murder as charged in Count One, proceed to page 5.



SCANNED

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IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

STATE'S ATTORNEY  
CLERK OF COURTS  
STARK COUNTY OHIO

2010 JAN 15 AM 9:01

STATE OF OHIO, ) CASE NO. 2009CR0859  
PLAINTIFF ) JUDGE HAAS  
VS. )  
JAMES MAMMONE, III, ) CRIMINAL VERDICT - COUNT ONE  
DEFENDANT ) SPECIFICATION ONE TO AGGRAVATED MURDER  
(Margaret Eakin)

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Murder of Margaret Eakin as set forth in Count One of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense at bar being part of a course of conduct involving the purposeful killing of two or more persons.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                           |                       |
|---------------------------|-----------------------|
| <u>JH S. Jason</u>        | <u>Windy McClure</u>  |
| <u>Greg Cochran</u>       | <u>Jimmy Merckel</u>  |
| <u>Steph Henne</u>        | <u>Ann S. ...</u>     |
| <u>Deborah S. Hoffman</u> | <u>Martha Swihart</u> |
| <u>Monica ...</u>         | <u>Sally ...</u>      |
| <u>Shirley Genger</u>     | <u>Sally ...</u>      |

Note: If you have found the defendant "Guilty" of Aggravated Murder, as charged in Count One, proceed to page 3 and decide Specification Two to Count One.

CLIFF S. HEINEBULL  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:01

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859  |
| PLAINTIFF           | ) | JUDGE HAAS   |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT ONE</u>                        |
| DEFENDANT           | ) | SPECIFICATION TWO TO AGGRAVATED MURDER<br>(Margaret Eakin) |

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of aggravated murder of Margaret Eakin as set forth in Count One of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of committing said offense while he was committing Aggravated Burglary, as charged in Count Two of the indictment, and the said James Mammone is guilty (enter "guilty" or "not guilty") of being the principal offender in the commission of Aggravated Murder of Margaret Eakin.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. Gasu</u>        | <u>Jury Madala</u>    |
| <u>Mark Calhoun</u>        | <u>Rob Sen</u>        |
| <u>Steph Panose</u>        | <u>Martha Swihart</u> |
| <u>Deborah S. Hoffmann</u> | <u>[Signature]</u>    |
| <u>[Signature]</u>         | <u>Sally Mickley</u>  |
| <u>Way McClure</u>         | <u>Theresa Yeager</u> |

Note: If you have found the defendant "Guilty" of Aggravated Murder, as charged in Count One, proceed to page 4 and decide Specification Three to Count One.

WYATT HEINBULL  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:01

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859  |
| PLAINTIFF           | ) | JUDGE HAAS   |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <b><u>CRIMINAL VERDICT - COUNT ONE</u></b>                           |
| DEFENDANT           | ) | <b>SPECIFICATION THREE TO AGGRAVATED MURDER<br/>(Margaret Eakin)</b> |

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Murder of Margaret Eakin as set forth in Count One of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of having a firearm on or about his person or under his control while committing the offense of Aggravated Murder and that he displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense of the Aggravated Murder of Margaret Eakin.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. [Signature]</u> | <u>[Signature]</u>    |
| <u>[Signature]</u>         | <u>[Signature]</u>    |
| <u>[Signature]</u>         | <u>Martha Swihart</u> |
| <u>Deborah S. Hoffmann</u> | <u>[Signature]</u>    |
| <u>[Signature]</u>         | <u>Sally Mickley</u>  |
| <u>Way McClure</u>         | <u>[Signature]</u>    |

Note: Proceed to page 5 and decide Count Two.

WALTER S. WEINBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:01

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                    |
| PLAINTIFF           | ) | JUDGE HAAS                             |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT TWO</u>    |
| DEFENDANT           | ) | AGGRAVATED BURGLARY-315 Poplar Ave. NW |

We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Aggravated Burglary in violation of Revised Code Section 2911.11(A)(1) and/or (A)(2) as charged in Count Two of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. Yeon</u>        | <u>Jimmy Mandel</u>   |
| <u>Gregory Cochran</u>     | <u>W. J. ...</u>      |
| <u>Steph Lance</u>         | <u>Martha Swihart</u> |
| <u>Reborah S. Hoffmann</u> | <u>Eda ...</u>        |
| <u>Mark ...</u>            | <u>Sally Miskley</u>  |
| <u>Way McCum</u>           | <u>Theresa Yeager</u> |

Note: If you have found the defendant guilty of Aggravated Burglary, as charged in Count Two, proceed to page 6 and decide the Specification to Count Two.

If you have found the defendant "Not Guilty" of Aggravated Burglary, as charged in Count Two, proceed to page 7.

THOMAS HENNING  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO, ) CASE NO. 2009CR0859  
PLAINTIFF ) JUDGE HAAS  
VS. )  
JAMES MAMMONE, III, ) CRIMINAL VERDICT - COUNT TWO  
DEFENDANT ) SPECIFICATION TO AGGRAVATED BURGLARY

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Burglary as set forth in Count Two of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of having a firearm on or about his person or under his control while committing the offense of Aggravated Burglary and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense of Aggravated Burglary.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>TH</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>J. S. Haas</u>          | <u>Greg Mackler</u>   |
| <u>Eric K. Galbraith</u>   | <u>Wm. Slus</u>       |
| <u>Steph J. Pance</u>      | <u>Martha Lichart</u> |
| <u>Deborah S. Hoffmann</u> | <u>[Signature]</u>    |
| <u>Mark Arnold</u>         | <u>Sally Mickley</u>  |
| <u>Way McClure</u>         | <u>Theresa Yeager</u> |

Note: Proceed to page 7 and decide Count Three.



CLAY S. HENBOLL  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                                      |
| PLAINTIFF           | ) | JUDGE HAAS   |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT THREE</u>                    |
| DEFENDANT           | ) | SPECIFICATION ONE TO AGGRAVATED MURDER<br>(Macy Mammone) |

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Murder as of Macy Mammone set forth in Count Three of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense at bar being part of a course of conduct involving the purposeful killing of two or more persons.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                    |                    |
|--------------------|--------------------|
| <u>[Signature]</u> | <u>[Signature]</u> |

**Note: If you have found the defendant "Guilty" of Aggravated Murder, as charged in Count Three, proceed to page 9 and decide Specification Two to Count Three.**

JOHN S. REINHOLD  
CLERK OF COURTS  
STARK COUNTY OHIO

2010 JAN 15 AM 9:02

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

STATE OF OHIO,  
PLAINTIFF

) CASE NO. 2009CR0859  
) JUDGE HAAS

VS.

JAMES MAMMONE, III,  
DEFENDANT

) CRIMINAL VERDICT - COUNT THREE  
) SPECIFICATION TWO TO AGGRAVATED MURDER  
(Macy Mammone)

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Murder of Macy Mammone as set forth in Count Three of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of purposefully causing the death of Macy Mammone, who was under thirteen years of age at the time of the commission of the offense, and the said James Mammone is guilty (enter "guilty" or "not guilty") of being the principal offender in the commission of the offense of the Aggravated Murder of Macy Mammone.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. Reinhold</u>    | <u>Suey M... ..</u>   |
| <u>Oliver R. Cochran</u>   | <u>Mr. J... ..</u>    |
| <u>Steph... ..</u>         | <u>Martha Swihart</u> |
| <u>Reborah S. Hoffmann</u> | <u>John... ..</u>     |
| <u>Madison... ..</u>       | <u>Sally M... ..</u>  |
| <u>Way McClure</u>         | <u>Theresa... ..</u>  |

Note: Proceed to page 10.

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

CLAY S. HENBULL  
CLERK OF COURTS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO, )  
PLAINTIFF )  
VS. )  
JAMES MAMMONE, III, )  
DEFENDANT )

CASE NO. 2009CR0859  
JUDGE HAAS  
CRIMINAL VERDICT - COUNT FOUR  
AGGRAVATED MURDER (James Mammone, IV)

We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Aggravated Murder of James Mammone, IV in violation of Revised Code Section 2903.01(A) and/or (C) as charged in Count Four of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                           |                        |
|---------------------------|------------------------|
| <u>John S. Jones</u>      | <u>Jury Member</u>     |
| <u>John R. Calhoun</u>    | <u>John S. Jones</u>   |
| <u>Steph Ponce</u>        | <u>Martha Leichart</u> |
| <u>Deborah S. Hoffman</u> | <u>[Signature]</u>     |
| <u>Paula [Signature]</u>  | <u>Sally Mickley</u>   |
| <u>Wes McCord</u>         | <u>Theresa Yeager</u>  |

**Note:** If you have found the defendant "Guilty" of Aggravated Murder, as charged in Count Four, proceed to pages 11 and 12 and decide Specifications One and Two to Count Four.

If you have found the defendant "Not Guilty" of Aggravated Murder as charged in Count Four, proceed to page 13.



JOHN S. HENBULL  
CLERK OF COURTS  
STARK COUNTY OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO,  
PLAINTIFF

) CASE NO. 2009CR0859  
) JUDGE HAAS

VS.

JAMES MAMMONE, III,  
DEFENDANT

) CRIMINAL VERDICT - COUNT FOUR  
) SPECIFICATION TWO TO AGGRAVATED MURDER  
(James Mammone, IV)

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Murder of James Mammone, IV as set forth in Count Four of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of purposefully causing the death of James Mammone, IV, who was under thirteen years of age at the time of the commission of the offense, and the said James Mammone, III is guilty (enter "guilty" or "not guilty") of being the principal offender in the commission of the Aggravated Murder of James Mammone, IV.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>John S. Haas</u>        | <u>James Mammone</u>  |
| <u>James R. Calhoun</u>    | <u>Bill Jones</u>     |
| <u>Stephen Kanan</u>       | <u>Martha Luchart</u> |
| <u>Reborah S. Hoffmann</u> | <u>Debra</u>          |
| <u>Markus</u>              | <u>Sally Nickley</u>  |
| <u>Way McIner</u>          | <u>Sharon Yeager</u>  |

Note: Proceed to page 13.

THOMAS H. REINHOLD  
CLERK OF COURTS  
STARK COUNTY OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                              |
| PLAINTIFF           | ) | JUDGE HAAS                                       |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <b>CRIMINAL VERDICT - COUNT FIVE</b>             |
| DEFENDANT           | ) | <b>AGGRAVATED BURGLARY--414 Aultmont Ave. NW</b> |

We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Aggravated Burglary in violation of Revised Code Section 2911.11(A)(2) as charged in Count Five of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                    |                    |
|--------------------|--------------------|
| <u>[Signature]</u> | <u>[Signature]</u> |

**Note:** If you have found the defendant guilty of Aggravated Burglary, as charged in Count Five, proceed to page 14 and decide the Specification to Count Five.

If you have found the defendant "Not Guilty" of Aggravated Burglary, as charged in Count Five, proceed to page 15.

CLYDE R. REINHOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |   |
|---------------------|---|---|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                         |
| PLAINTIFF           | ) | <b>JUDGE HAAS</b>                           |
| VS.                 | ) |   |
| JAMES MAMMONE, III, | ) | <b><u>CRIMINAL VERDICT - COUNT FIVE</u></b> |
| DEFENDANT           | ) | <b>SPECIFICATION TO AGGRAVATED BURGLARY</b> |

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Aggravated Burglary as set forth in Count Five of the indictment, do further find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of having a firearm on or about his person or under his control while committing the offense of Aggravated Burglary and that he displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense of Aggravated Burglary.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                           |                        |
|---------------------------|------------------------|
| <u>John S. Gasa</u>       | <u>Janey Mandel</u>    |
| <u>Don R. Galhorn</u>     | <u>Mrs. Sliw</u>       |
| <u>Steph. Hance</u>       | <u>Martha Seichert</u> |
| <u>Robert S. Hoffmann</u> | <u>[Signature]</u>     |
| <u>Mark Mance</u>         | <u>Sally Nickley</u>   |
| <u>Wendy McCord</u>       | <u>Theresa Yeager</u>  |

Note: Proceed to page 15.

IN THE COURT OF COMMON PLEAS

NANCY S. HEMBOLD  
CLERK OF COURTS  
STARK COUNTY OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |                                     |
|---------------------|---|-------------------------------------|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                 |
| PLAINTIFF           | ) | JUDGE HAAS                          |
| VS.                 | ) |                                     |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT SIX</u> |
| DEFENDANT           | ) | <u>VIOLATING A PROTECTION ORDER</u> |

We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Violating a protection Order, in violation of Revised Code Section 2919.27(A)(1) as charged in Count Six of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                       |
|----------------------------|-----------------------|
| <u>Jill S. Jan</u>         | <u>Jenny Maddox</u>   |
| <u>Jan K. Galton</u>       | <u>AW 300</u>         |
| <u>Steph Hance</u>         | <u>Martha Swihart</u> |
| <u>Deborah S. Hoffmann</u> | <u>Dea</u>            |
| <u>Michelle Hance</u>      | <u>Sally Nickley</u>  |
| <u>Wyn McClain</u>         | <u>Theresa Yeager</u> |

Note: Proceed to page 16.

IN THE COURT OF COMMON PLEAS

W. W. SHERBOLL  
CLERK OF COURTS  
STARK COUNTY, OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |                                     |
|---------------------|---|-------------------------------------|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                 |
| PLAINTIFF           | ) | JUDGE HAAS                          |
| VS.                 | ) |                                     |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT SIX</u> |
| DEFENDANT           | ) | ADDITIONAL FINDING                  |

**If you have found the defendant guilty of Violating a Protection Order as charged in Count Six, please determine the following:**

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty as charged in Count Six of the indictment do further find that said offense \* was committed while the defendant was committing Aggravated Burglary as charged in Count Five of the indictment.

(\*Insert in ink: "was" or "was not")

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                           |                      |
|---------------------------|----------------------|
| <u>John S. Jesic</u>      | <u>Larry Mackin</u>  |
| <u>Gene K. Johnson</u>    | <u>W. J. ...</u>     |
| <u>Steph ...</u>          | <u>Martha ...</u>    |
| <u>Deborah S. Hoffman</u> | <u>...</u>           |
| <u>Mark ...</u>           | <u>Sally ...</u>     |
| <u>Way McCarroll</u>      | <u>Sharon Yeager</u> |

**Note: Proceed to page 17.**

CLIFF S. WEINBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO,

)

CASE NO. 2009CR0859

PLAINTIFF

)

JUDGE HAAS

VS.

)

JAMES MAMMONE, III,

)

CRIMINAL VERDICT - COUNT SEVEN

DEFENDANT

)

ATTEMPT TO COMMIT AN OFFENSE (ARSON)

We, the jury in this case, being duly impaneled and sworn, do find the defendant, James Mammone, III, guilty (enter "guilty" or "not guilty") of the offense of Attempt to Commit an Offense (Arson) in violation of Revised Code Section 2923.02(A) as charged in Count Seven of the indictment.

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>TH</sup> day of January, 2010.

|                    |                    |
|--------------------|--------------------|
| <u>[Signature]</u> | <u>[Signature]</u> |

Note: Proceed to page 18.

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CLERK OF COURTS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |                                       |
|---------------------|---|---------------------------------------|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                   |
| PLAINTIFF           | ) | JUDGE HAAS                            |
| VS.                 | ) |                                       |
| JAMES MAMMONE, III, | ) | <u>CRIMINAL VERDICT - COUNT SEVEN</u> |
| DEFENDANT           | ) | ADDITIONAL FINDING                    |

If you have found the defendant guilty of Attempt to Commit an Offense of Arson as charged in Count Seven, please determine the following:

We, the jury in this case, being duly impaneled and sworn, having found the defendant, James Mammone, III, guilty of Attempt to Commit an Offense of Arson as charged in Count Seven of the indictment, do further find that the value of the property or the amount of physical harm \* was \$500.00 or more.

(\*Insert in ink: "was" or "was not")

Each of us Jurors concurring in said verdict signs his/her name hereto this 14<sup>th</sup> day of January, 2010.

|                            |                          |
|----------------------------|--------------------------|
| <u>John S. Jones</u>       | <u>Jimmy Mackell</u>     |
| <u>Ken R. Gilliam</u>      | <u>Mike S. Ford</u>      |
| <u>Steph. Hancock</u>      | <u>Martha L. Swihart</u> |
| <u>Deborah S. Hoffmann</u> | <u>Debra</u>             |
| <u>Mark Brannon</u>        | <u>Sally Mickley</u>     |
| <u>Way McClain</u>         | <u>Theresa Younger</u>   |

IN THE COURT OF COMMON PLEAS

JOYCE S. BEISSWILL  
CLERK OF COURTS  
STARK COUNTY, OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO,

)

CASE NO. 2009CR0859

PLAINTIFF

)

JUDGE HAAS

VS.

)

JAMES MAMMONE, III,

)

JURY INTERROGATORY ONE TO COUNT ONE

DEFENDANT

)

If you have found the defendant "Guilty" of Aggravated Burglary, 315 Poplar Avenue NW, as charged in Count Two of the indictment – did you unanimously find, beyond a reasonable doubt, that the defendant recklessly inflicted physical harm on Margaret Eakin?

Sign your name below and indicate yes or no next to your name.

|                                |                           |
|--------------------------------|---------------------------|
| <u>J. S. Jones</u> YES         | <u>Judy Mearns</u> yes    |
| <u>Eric E. Nelson</u> Yes      | <u>Alan Star</u> Yes      |
| <u>Steph H. ...</u> Yes        | <u>Martha Swihart</u> yes |
| <u>Deborah S. Hoffmann</u> yes | <u>Don ...</u> yes        |
| <u>Phyllis ...</u> yes         | <u>Sally Muckley</u> yes  |
| <u>W. J. McNeil</u> yes        | <u>Theresa Yeager</u> yes |

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

ANDY S. HEINBUEHL  
CLERK OF COURTS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

STATE OF OHIO, )  
PLAINTIFF )  
VS. )  
JAMES MAMMONE, III, )  
DEFENDANT )

CASE NO. 2009CR0859  
JUDGE HAAS  
JURY INTERROGATORY TWO TO COUNT ONE

If you have found the defendant "Guilty" of Aggravated Burglary, 315 Poplar Avenue NW, as charged in Count Two of the indictment – did you unanimously find, beyond a reasonable doubt, that the defendant had a deadly weapon on or about his person or under his control during the commission of the offense?

Sign your name below and indicate yes or no next to your name.

|                                |                           |
|--------------------------------|---------------------------|
| <i>Al S. Jones</i> YES         | <i>Immy Markster</i> YES  |
| <i>Eric Callahan</i> YES       | <i>Phil Stein</i> YES     |
| <i>Steph Rance</i> YES         | <i>Martha Swihart</i> YES |
| <i>Deborah S. Hoffmann</i> YES | <i>[Signature]</i> YES    |
| <i>Martha [Signature]</i> YES  | <i>Sally Hurlley</i> YES  |
| <i>Wing Mc Cormick</i> YES     | <i>Shirley Young</i> YES  |

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CLERK OF COURTS  
STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |  |
|---------------------|---|--|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                          |
| PLAINTIFF           | ) | JUDGE HAAS                                   |
| VS.                 | ) |  |
| JAMES MAMMONE, III, | ) | <u>JURY INTERROGATORY ONE TO COUNT THREE</u> |
| DEFENDANT           | ) |  |

If you have found the defendant "Guilty" of the Aggravated Murder, as charged in Count Three of the indictment – did you unanimously find, beyond a reasonable doubt, that the defendant purposely caused the death of Macy Mammone with prior calculation and design?

Sign your name below and indicate yes or no next to your name.

|                               |                            |
|-------------------------------|----------------------------|
| <i>John S. Gannon</i> Yes     | <i>Jimmy Mackel...</i> Yes |
| <i>Jack Wilson</i> Yes        | <i>Paul S. ...</i> Yes     |
| <i>Steph Janice</i> Yes       | <i>Martha Swihart</i> yes  |
| <i>Deborah S. Hoffman</i> yes | <i>...</i> yes             |
| <i>Maureen ...</i> yes        | <i>Sally ...</i> yes       |
| <i>Way McCornell</i> yes      | <i>Theresa George</i> yes  |

2010 JAN 15 AM 9:02

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

STATE OF OHIO, ) CASE NO. 2009CR0859  
PLAINTIFF ) JUDGE HAAS  
VS. )  
JAMES MAMMONE, III, ) JURY INTERROGATORY TWO TO COUNT THREE  
DEFENDANT )

If you have found the defendant "Guilty" of the Aggravated Murder, as charged in Count Three of the indictment -- did you unanimously find, beyond a reasonable doubt, that Macy Mammone was under the age of thirteen at the time of the commission of the offense?

Sign your name below and indicate yes or no next to your name.

|                               |                           |
|-------------------------------|---------------------------|
| <i>Alt S. Guss</i> YES        | <i>Irving Madelon</i> yes |
| <i>Jack Galton</i> yes        | <i>Alvin Skw</i> YES      |
| <i>Stephanie</i> yes          | <i>Martha Swihart</i> yes |
| <i>Deborah S. Hoffman</i> yes | <i>Don</i> yes            |
| <i>Mauden Almon</i> yes       | <i>Sally Meckley</i> yes  |
| <i>Wry McConat</i> yes        | <i>Theresa Goggin</i> yes |

IN THE COURT OF COMMON PLEAS

JOHN S. HEINBOLD  
CLERK OF COURTS  
STARK COUNTY, OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |   |
|---------------------|---|---|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                         |
| PLAINTIFF           | ) | JUDGE HAAS                                  |
| VS.                 | ) |   |
| JAMES MAMMONE, III, | ) | <u>JURY INTERROGATORY ONE TO COUNT FOUR</u> |
| DEFENDANT           | ) |   |

If you have found the defendant "Guilty" of the Aggravated Murder, as charged in Count Four of the indictment -- did you unanimously find, beyond a reasonable doubt, that the defendant purposely caused the death of James Mammone, IV with prior calculation and design?

Sign your name below and indicate yes or no next to your name.

|                               |                            |
|-------------------------------|----------------------------|
| <i>John S. Haas</i> YES       | <i>Larry Maddala</i> YES   |
| <i>Jim R. Callahan</i> YES    | <i>Mike S. Low</i> YES     |
| <i>Steph Hannon</i> YES       | <i>Martha Swihart</i> YES  |
| <i>Deborah S. Hoffman</i> YES | <i>[Signature]</i> YES     |
| <i>Markus Adams</i> YES       | <i>Sally Middleton</i> YES |
| <i>Wes McCauley</i> YES       | <i>Shouse George</i> YES   |

IN THE COURT OF COMMON PLEAS

ANGY S. HEIFELD  
CLERK OF COURTS  
STARK COUNTY, OHIO

STARK COUNTY, OHIO

2010 JAN 15 AM 9:02

|                     |   |   |
|---------------------|---|---|
| STATE OF OHIO,      | ) | CASE NO. 2009CR0859                         |
| PLAINTIFF           | ) | JUDGE HAAS                                  |
| VS.                 | ) |   |
| JAMES MAMMONE, III, | ) | <u>JURY INTERROGATORY TWO TO COUNT FOUR</u> |
| DEFENDANT           | ) |   |

If you have found the defendant "Guilty" of the Aggravated Murder, as charged in Count Four of the indictment – did you unanimously find, beyond a reasonable doubt, that James Mammone, IV was under the age of thirteen at the time of the commission of the offense?

Sign your name below and indicate yes or no next to your name.

|                              |                           |
|------------------------------|---------------------------|
| <i>Jill S. Green</i> YES     | <i>Jenny Washburn</i> yes |
| <i>Jan P. Caldwell</i> Yes   | <i>MW Stew</i> Yes        |
| <i>Steph Pa</i> yes          | <i>Martha Swihart</i> yes |
| <i>Deborah S. Hopman</i> yes | <i>Don</i> yes            |
| <i>Markus Mammone</i> yes    | <i>Sally Mickley</i> yes  |
| <i>Wing McLaughlin</i> yes   | <i>Theresa Yager</i> yes  |