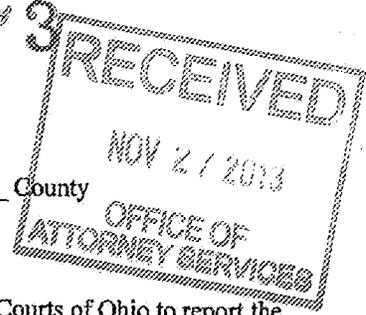


14-0273

THE SUPREME COURT OF OHIO

In the Common Pleas Court of Erie County

Disposition of a Capital Case by the Trial Court



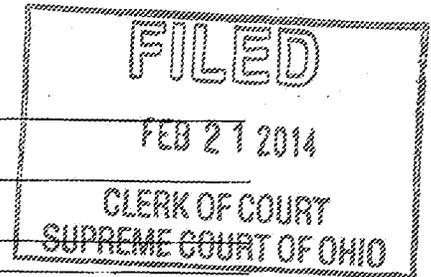
This form is used pursuant to Rule 20 of the Rules of Superintendence for the Courts of Ohio to report the disposition of a capital case. Complete and submit this form within two weeks of disposition to: Tammy White, Supreme Court of Ohio, 65 S. Front Street, Columbus, OH 43215-3431.

STATE OF OHIO v. Curtis L. Clinton Case No. 2012 CR 0383

Lead Trial Counsel: Robert Dixon Trial Co-Counsel David Doughten

Outcome of the Proceedings in this Court:

- Found not guilty
Plead guilty
Plead guilty to lesser offense:
Found guilty of aggravated murder & specification by jury
Found guilty of lesser offense by jury:
Found guilty of aggravated murder & specification by three judge panel
Found guilty of lesser offense by three judge panel:
Other:



Was this defendant sentenced to Death? Yes (if yes, complete next section for appointment of counsel) No (if no, please indicate sentence below)

Sentenced to: Life Years Without parole With parole

Complete the following section ONLY if the defendant was sentenced to death. Attach a copy of the sentencing entry.

This court has appointed the following two Rule 20 certified appellate counsel to represent the defendant on appeal:

Name: Robert Keith Lowe
Atty. Reg. No. 0072264
Address: 250 E. Broad St. 14th Fl. Columbus OH 43215
Telephone: 614-466-5394

Name: Kim Rigby
Atty. Reg. No. 0078245
Address: 250 E. Broad St. 14th Fl. Columbus OH 43215
Telephone: 614-466-5394

Judge: Tygh M. Tone

Date of Appointment: 11/27/13

ATTORNEY CERTIFICATION

We hereby accept appointment as appellate counsel in this case. We affirm that we are currently certified under Sup.R. 20 to accept appointment as appellate counsel, and certify that this appointment will not create a total workload so excessive that it interferes with or prevents the rendering of quality representation in accordance with constitutional and professional standards.

[Signature] 11/27/13
Appellate Counsel Date

[Signature] 11/27/13
Appellate Counsel Date

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

STATE OF OHIO

:

:

CASE NO. 2012-CR-383

-vs-

:

SENTENCING OPINION

CURTIS L. CLINTON

:

DEFENDANT

:

This opinion is rendered pursuant to Ohio Revised Code Section 2929.03(F).

On September 19, 2012, the Erie County Grand Jury returned an indictment charging the Defendant with five counts of Aggravated Murder, three counts of Rape, one count of Aggravated Burglary, and multiple specifications, including multiple capital specifications.

After having appointing Rule 20 certified counsel, Robert A. Dixon and David L. Doughten, the Defendant entered pleas of not guilty at his arraignment held on September 27, 2012.

After multiple pretrial conferences, motion hearings, suppression hearing, jury excuse hearings, and individual voir dire, the case proceeded to trial beginning October 28, 2013.

On November 4, 2013, the jury returned verdicts finding the Defendant, Curtis L. Clinton, guilty of all counts of the indictment as well as all specifications, which included

capital specifications as well as non-capital specifications (the repeat violent offender specification was not presented to the jury and will be addressed later in this opinion.)

Therefore, the Defendant was found guilty of the following:

Count I: Rape of Elizabeth Sebetto, a felony of the first degree in violation of R.C. Section 2907.02(A)(2).

Count II: Rape of Elizabeth Sebetto, a felony of the first degree in violation of 2907.02(A)(2).

Count III: Aggravated Murder of Heather Jackson, an unclassified felony in violation of R.C. Section 2903.01(B) as well as the following specifications as to Count III:

- (a) Two felony Murder Specifications (Rape/Aggravated Burglary) in violation of R.C. Section 2929.04(A)(7);
- (b) Multiple Murder Specification in violation of R.C. Section 2929.04(A)(5);
- (c) Sexual Motivation Specification in violation of R.C. Section 2941.147.

Count IV: Aggravated Murder of Celina Jackson (DOB: 3-10-09), an unclassified felony in violation of R.C. Section 2903.01(B) as well as the following specifications:

- (a) Felony Murder Specification in violation of R.C. Section 2929.04(A)(7);
- (b) Multiple Murder Specification in violation of R.C. Section 2929.04(A)(5);
- (c) Under Age 13 Specification in violation of R.C. Section 2929.04(A)(9);
- (d) Sexual Motivation Specification in violation of R.C. Section 2941.147.

Count V: Aggravated Murder of Celina Jackson, an unclassified felony in violation of R.C. Section 2903.01(C) as well as the following specifications:

- (a) Two Felony Murder Specifications (Rape/Aggravated Burglary) in violation of R.C. Section 2929.04(A)(7);
- (b) Multiple Murder Specification in violation of R.C. Section 2929.04(A)(5);
- (c) Under Age 13 Specification in violation of R.C. Section 2929.04(A)(9);
- (d) Sexual Motivation Specification in violation of R.C. Section 2941.147.

Count VI: Rape of Celina Jackson, a felony of the first degree in violation of R.C. Section 2907.02(A)(1) as well as the following specification as to Count VI:

- (a) The victim was under the age of 10 at the time the rape was committed.

Count VII: Aggravated Murder of Wayne Jackson Jr. (DOB: 1-4-11), an unclassified felony in violation of R.C. Section 2903.01(B) as well as the following specifications:

- (a) Two Felony Murder Specifications (Rape/Aggravated Burglary) in violation of R.C. Section 2929.04(A)(7);
- (b) Multiple Murder Specification in violation of R.C. Section 2929.04(A)(5);
- (c) Under Age 13 Specification in violation of R.C. Section 2929.04(A)(9);
- (d) Sexual Motivation Specification in violation of R.C. Section 2941.147

Count VIII: Aggravated Murder of Wayne Jackson Jr., an unclassified felony in violation of R.C. Section 2903.01(C) as well as the following specifications as to Count VIII:

- (a) Two Felony Murder Specifications in violation of R.C. 2929.04(A)(7)
(Rape/Aggravated Burglary);
- (b) Multiple Murder Specification in violation of R.C. 2929.04(A)(5);
- (c) Under Age 13 Specification in violation of R.C. 2929.04(A)(9);
- (d) Sexual Motivation Specification in violation of R.C. 2941.147

Count IX: Aggravated Burglary (723 John Street – home of Heather Jackson), a felony of the first degree in violation of R.C. Section 2911.11(A)(1).

Applying the law of merger, the State elected to proceed to the sentencing phase of the trial with Count 3: The purposeful killing of Heather Jackson while in commission of Aggravated Burglary; Count 5: The purposeful killing of Celina Jackson who was under thirteen (13) years of age at the time of the commission of the offense; and Count 8: The purposeful killing of Wayne Jackson Jr., who was under thirteen (13) years of age at the time of the commission of the offense.

Prior to the sentencing phase, the Court specifically considered the requirement of merger of the specifications and/or circumstances. [See State v. Jenkins (1984), 15 Ohio St. 3d 164; State v. Robb (2000), 88 Ohio St. 3d 59]

Based upon those considerations, the Court instructed the jury at the sentencing phase that the aggravated circumstances they were to consider were: As to Count 3, the Aggravated Murder of Heather Jackson, (1) that the offense was part of a course of conduct involving the purposeful killing or attempt to kill two or more persons by the Defendant [2929.04(A)(9)]; and/or (2) that the offense was committed while the Defendant was committing, attempting to commit or fleeing immediately after committing, attempting to commit the offense of rape and the Defendant was the

principal offender in the commission of the Aggravated Murder [2929.04(A)(7)]. As to Count 5, the Aggravated Murder of Celina Jackson, (1) that the offense was part of a course of conduct involving the purposeful killing, or attempt to kill, two or more persons by the Defendant [2929.04(A)(5)]; (2) that the offense was committed while the Defendant was committing, attempting to commit, or fleeing immediately after committing, attempting to commit the offense of rape, and the Defendant was the principal offender in the commission of the Aggravated Murder [(2929.04(A)(7)]; and/or (3) the Defendant, in commission of the offense, 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 Defendant was the principal offender in the commission of the offenses [2929.04(A)(5)]. As to Count 8, the Aggravated Murder of Wayne Jackson Jr., (1) that the offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the Defendant [2929.04(A)(5)]; (2) that the offense was committed while the Defendant was committing, attempting to commit, or fleeing immediately after committing, attempting to commit the offense of rape, and the Defendant was the principal offender in the commission of the Aggravated Murder [2929.04(A)(7)]; and/or (3) that the Defendant, in the commission of the offense, purposefully caused the death of another who was under thirteen (13) years of age at the time of the commission of the offense, and the Defendant was the principal offender in the commission of the offense [2929.04(A)(9)].

The jury was instructed that the penalty for each separate count must be determined separately and that only the aggravated circumstances, separately, relating to a given count may be considered and weighed against any and all mitigating factors.

The jury was further instructed that the sentence for each of Counts 3, 5, and 8 must be decided separately and independently of all other counts and circumstances and to only consider the aggravating circumstances which the Court outlined during the sentencing phase instructions. The jury was further instructed that the aggravated circumstances which they were to consider did not include the aggravated murder charges.

Prior to the start of the sentencing phase, the Court reviewed with the Defendant and his counsel that the Defendant was advised of his right to a presentence investigation and report prepared by the Court, his right to a mental/psychological exam, and his right to make a sworn or unsworn statement. Defense counsel has advised this Court that they have met with their client extensively on these issues, that they have worked with their own investigators, psychologists and mitigation experts, and although the Defendant was advised through this Court and his counsel that great leeway would be given in the presentation of any and all mitigating factors, the Defendant made a knowing, intelligent and voluntary waiver of the presentation of mitigating factors to the jury. Counsel for the Defendant stood ready, willing and able to present said mitigation testimony and exhibits to the jury, but that right was waived and said evidence was proffered to the Court outside the hearing of the jury and made part of the record, under seal.

On November 12, 2013, the sentencing phase of the trial began and ended. The State first moved for the admission of certain exhibits from the trial phase, which was granted. The defense waived presentation of mitigating evidence based on the Defendant's wishes; however, the Defendant did take the stand to make a lengthy unsworn statement, after which both sides rested and proceeded to closing arguments.

On November 12, 2013, the jury in the above captioned matter, upon due deliberation, returned to open Court with their unanimous finding that the penalty of death was the appropriate sentence for each separate Aggravated Murder conviction contained in Counts 3, 5 and 8. The matter was then set for sentencing this 14th day of November, 2013.

At this sentencing hearing, the Defendant, Curtis L. Clinton, has been afforded all of his rights pursuant to Criminal Rule 32. Counsel for the Defendant were allowed to speak in mitigation prior to this Court rendering its sentence. The Defendant was allowed to exercise his right of allocution. The Court has considered the statement made by the Defendant at allocution.

Pursuant to R.C. Section 2929.04(A), imposition of the death penalty for a conviction of Aggravated Murder is precluded unless one or more of the listed specifications is specified in the indictment or count in the indictment pursuant to 2941.14 of the Ohio Revised Code, and proven beyond a reasonable doubt.

The following aggravated circumstances were listed properly in the indictment as specifications, were proven beyond a reasonable doubt, and subsequently the Defendant has been found guilty by a jury of committing the following aggravating circumstances, as to Count 3: 2929.04(A)(5) that the offense at bar was part of a course of conduct involving the purposeful killing of two or more persons and 2929.04(A)(7) the offense was committed while the offender was committing rape and was the principal offender in the commission of aggravated murder; Count 5: 2929.04(A)(5) that the offense at bar was part of a course of conduct involving the purposeful killing of two or more persons and 2929.04(A)(7) the offense was committed while the offender was

committing rape and was the principal offender in the commission of the aggravated murder, and 2929.04(A)(9) that the victim was under thirteen years of age at the time of the offense and the Defendant was the principal offender. Count 8: 2929.04(A)(5) that the offense at bar was a course of conduct involving the purposeful killing of two or more persons, 2929.04(A)(7) the offense was committed while the offender was committing rape and was the principal offender in the commission of aggravated murder, and 2929.04(A)(9) that the victim was under thirteen years of age at the time of the offense and the Defendant was the principal offender.

The Court has considered separately and only the aggravating circumstances as to each individual and specific charge of aggravated murder of which the Defendant has been found guilty.

For purposes of sentencing, the Court has reviewed all of the evidence, including the unsworn statement of the Defendant in search of mitigating factors. The Court has further spent a significant amount of time reviewing its notes to be sure to consider any and all mitigating factors it might find.

As to the Aggravated Murder convictions, the Court has separately and specifically considered each of the four sentencing options allowable in this case:

- (a) Life imprisonment with parole eligibility after serving twenty-five full years;
- (b) Life imprisonment with parole eligibility after serving thirty full years;
- (c) Life imprisonment without the possibility of parole; and ,
- (d) Death.

The Court has considered the fact that, if given a life sentence, Curtis Clinton would not be eligible for parole or release until the stated time is served day-for-day.

The Court did not in any way consider any cumulative effect of the Defendant having been convicted of multiple counts of aggravated murder or having been convicted of multiple capital specifications. Each count was considered separately and each aggravating circumstance connected to that count, and that count only, was considered separately and independently of all other counts and circumstances.

For the purposes of the Court's consideration of mitigation and sentencing, victim impact statements were not considered in any way against the Defendant.

The Court has considered any and all mitigating factors that it could find from the thorough and exhaustive review of the record in this case. The Court further considered that any mitigating factors standing alone would be sufficient to support a life sentence and that the cumulative effect of the mitigating factors could also support a sentence of life imprisonment. The Court did not limit its consideration to specific mitigating factors, but also considered any other mitigating factors that weighed in favor of a sentence other than death. In so doing, the Court finds, as the jury found, that the aggravating circumstances outweigh the mitigating factors.

The Court is required to state the reasons why the aggravating circumstances the offender has been found guilty of committing are sufficient to outweigh the mitigating factors. Quite simply put, the aggravating circumstances of brutally killing an entire family, including a mother and her two little children by strangulation, the little boy by his own blanket while raping the little daughter, grossly outweighs any mitigating factor the Court could point to in this case.

In consideration of all that has been articulated by this Court, the Court cannot see any reason to set aside the recommendation by the jury for the sentence of death, by way of mitigating evidence, legal authority or otherwise.

Therefore the Court concurs with the jury's sentence and:

As to Count 3 – hereby sentences Curtis L. Clinton to death for the Aggravated Murder of Heather Jackson in violation of 2903.01(B), 2929.04(A)(5) and 2929.04(A)(7).

As to Count 5 – hereby sentences Curtis L. Clinton to death for the Aggravated Murder of Celina Jackson in violation of 2903.01(C), 2929.04(A)(5), 2929.04(A)(7) and 2929.04(A)(9).

As to Count 8 – hereby sentences Curtis L. Clinton to death for the Aggravated Murder of Wayne Jackson Jr., in violation of 2903.01(C), 2929.04(A)(5), 2929.04(A)(7) and 2929.04(A)(9).

The sentences in Counts 3, 5 and 8 are to run consecutively as there are three separate victims in this series of crimes.

On behalf of the victims, family members addressed the Court, after which the Court continued with the sentencing as to all non-capital counts:

As to Count 6, the Rape of Celina Jackson in violation of 2907.02(A)(1)(b), the victim being under 10 years of age, the Court imposes a life sentence without the possibility of parole.

As to Counts 1 and 2, the Rapes of Elizabeth Sebetto in violation of 2907.02(A)(2), the Court finding that these two counts are not allied offenses of similar import, that they have separate anima and do not merge for the purpose of sentencing, the Court imposes a 10 year sentence on each count.

As to Count 9, the Aggravated Burglary in violation of 2911.11(A)(1), the Court imposes a 10 year sentence.

As stated, Counts 3, 5 and 8 are to run consecutively. The sentences imposed in Counts 1 and 2 shall run concurrent. The sentences in Counts 6 and 9 shall run concurrent. The sentences imposed in Counts 3, 5 and 8 shall be served consecutively to the sentences imposed in Counts 1 and 2. The sentences imposed in Counts 1, 2, 3, 5 and 8 shall run concurrent with the sentences imposed in Counts 6 and 9 for a total of three Death sentences, one term of Life without parole eligibility in addition to 10 years.

The Court finds that consecutive sentences are necessary to protect the public and not disproportionate to the seriousness of the Defendant's conduct and the danger the Defendant poses to the public.

The Court will not make the requisite guilty finding on the repeat violent offender specification and therefore declines to sentence on that specification.

The Court further dismisses the sexual motivation specification.

Notification of Appellant's rights have previously been given and the Court appoints Rule 20 certified counsel from the State Public Defender's office.

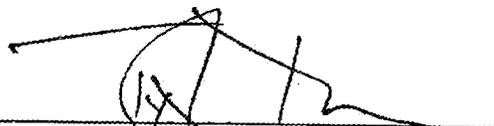
The Court further orders that the Erie County Clerk of Courts shall forthwith deliver a copy of the entire case file to the Ohio Supreme Court pursuant to law.

Further, the Defendant is ordered to submit to any DNA sample requests as requested by any law enforcement agency; and ordered to pay the Court costs.

The Defendant is hereby remanded back into the custody of the Erie County Sheriff to be committed to the Ohio Department of Rehabilitation and Correction pursuant to the above sentence, forthwith, for immediate transport to the Chillicothe

Correctional Institution at Chillicothe, Ohio, and that he be safely kept until such day as the Department of Rehabilitation and Correction designates a new Correctional Facility for purposes of administration of the lethal injection. At such time, Defendant shall be transported to the new Correctional Facility and shall be safely kept, within an enclosure, inside the walls of said Correctional Facility, prepared for lethal injection, according to law. Defendant, Curtis L. Clinton, shall be administered a lethal injection by the Warden of said Correctional Facility; that the Warden or his duly authorized deputy, shall administer a lethal injection until Defendant, Curtis L. Clinton, is DEAD.

November 26, 2013
DATE



JUDGE RYGH M. TONE

cc: Supreme Court of Ohio
Kevin Baxter
Mary Ann Baryliski
Paul Scarsella
David Doughten
Robert Dixon