

NO. 18-7428
IN THE SUPREME COURT OF THE UNITED STATES

HARRY JONES,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S APPENDIX

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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO. 91-1932-AF

STATE OF FLORIDA,

vs.

HARRY JONES,

Defendant.

FILED
3/12/93
CLERK OF COURT
LEON COUNTY, FLORIDA

PROCEEDINGS:

Trial (Jury Selection & Master
Index
Honorable William L. Gary
Circuit Judge

BEFORE:

DATE:

November 9 - 13, 1992

TIME:

Commencing at:
Approximately 9:00 a.m.

LOCATION:

Leon County Courthouse
Tallahassee, Florida

REPORTED BY:

LORETTA P. JACKSON, RPR
Official Court Reporter
Second Judicial Circuit
Leon County Courthouse
Tallahassee, Florida 32301

1 APPEARANCES:

2 For the State of Florida:

3 NEILL WADE
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5 Leon County Courthouse
6 Tallahassee, Florida 32301

7 For the Defendant:

8 GREGORY J. CUMMINGS
9 Attorney at Law
10 304 N. Meridian Street, Suite 3
11 Tallahassee, Florida 32317-3631

12 * * *

1 Now, each side has a certain number of peremptory
2 challenges. By which I mean each side can challenge
3 any prospective juror and ask that you be excused
4 without giving a reason therefor. If you are
5 challenged by either side, please do not feel offended
6 nor feel that your honesty or integrity is being
7 questioned. I can assure you it is not.

8 Now the trial of this case will occur in two
9 distinct phases and will last approximately one week,
10 during which time the jury will be sequestered. One
11 phase of the trial is addressed solely to the
12 determination of whether the State has proven beyond
13 and to the exclusion of every reasonable doubt the
14 guilt of the accused.

15 Should the accused be found guilty of a capital
16 felony described in the indictment, a second phase
17 addressed to what type of penalty the jury will
18 recommend to the Court will be commenced. Although
19 the verdict of the penalty jury is advisory in nature
20 and not binding upon the Court, the jury recommendation
21 is given great weight and deference when the Court
22 determines what punishment is appropriate. Because
23 your verdict could lead to the imposition of the death
24 penalty, your attitude toward the death penalty is a
25 proper subject of inquiry by the Court and the

1 stole a fire truck, went down your street and sprayed
2 all the houses. Possible?

3 JUROR MATTHEWS: Yes, sir.

4 MR. WADE: Okay. The value of circumstantial
5 evidence depends on its -- how compelling, how
6 conclusive it is. Is there anyone here who feels like
7 they could never convict a defendant for murder unless
8 there was some witness who could say "I saw him do it?"
9 Does everybody understand the realities of human life?

10 In any first degree murder case, there are two
11 separate jobs that you are agreeing to take on when you
12 take that oath, two separate decisions, and they are
13 separate decisions that you are agreeing that you
14 undertake to make. The first decision in the guilt
15 phase of the trial is simply whether or not this
16 Defendant, Harry Jones, based on the evidence you have,
17 whether or not he did what he is charged with. Is he
18 guilty? Okay. Decision one. You have to make that
19 decision without regard to any consideration of what
20 the possible penalty may be. In other words, when
21 you're determining whether or not this man did what he's
22 charged with, you have to set aside any concern over
23 whether or not you're going to be called upon to make a
24 recommendation. Can each and every one of you do that?
25 Can you assure us all that you can separate those two

1 jobs and do what your oath requires you to do?

2 In the second phase following a finding of guilt
3 in the first degree murder case, the jury hears
4 additional evidence, additional instructions on the
5 law and even additional argument of counsel. Everybody
6 with me so far? That's a whole different proceeding in
7 effect.

8 In the first phase you hear only evidence that
9 goes to guilt or innocence. You hear only law that
10 goes to guilt or innocence. Only argument that
11 addresses the issue of whether or not the man did what
12 he's charged with.

13 In a second phase where we're asking you just for
14 a recommendation, it's a different proceeding with
15 different rules, different evidence, different legal
16 instructions. The jury is going to be asked to make a
17 recommendation for sentence to the Court. That
18 recommendation is not binding but is given great
19 weight and consideration by the Court in deciding
20 what sentence should be imposed. Does that make sense
21 to you? Anybody troubled by anything I've said up to
22 this point?

23 As I've indicated, to aid you in that second
24 decision, the Court would instruct you on both the
25 aggravating and the possible mitigating circumstances

1 Court indicated, there are two jobs that you're called
2 upon to do, that you swear you will do, and you are
3 required to do those two jobs independently of the
4 other. Does that make sense to everybody thus far?

5 When you decide whether or not Harry Jones is
6 guilty of first degree murder, that's all you decide
7 and that's it. That's the only question. Is this man
8 guilty or not? And you don't think about what you may
9 want to recommend later. Two reasons. One, that's
10 not supposed to have anything to do with your decision
11 on guilt or innocence. And, two, as a practical
12 matter, you do not have the necessary evidence and
13 law and argument to make that decision at that point.
14 Because they are two entirely separate proceedings.
15 Can everybody abide by that and when you're called upon
16 to decide whether or not Harry Jones is guilty of first
17 degree murder make that decision standing on its own?
18 Can everybody do that?

19 The second decision, with additional evidence,
20 additional argument, specifically about the aggravating
21 and mitigating circumstances that may apply to the case.
22 You use that and you use the argument of Counsel and
23 you make a separate decision. You reach a conclusion
24 by a majority vote of the jury. Not a unanimous
25 verdict. It is a majority vote verdict. The jury is

1 asked to make a recommendation for sentencing to the
2 Court and that recommendation is not binding but is
3 given great weight and deference by the Court.

4 Ms. Sheffield, do you have any religious or
5 personal beliefs against the death penalty?

6 JUROR SHEFFIELD: No, sir.

7 MR. WADE: Do you have any opinions or feelings
8 that you think might interfere with your sitting as a
9 juror in the case?

10 JUROR SHEFFIELD: (Shaking head)

11 MR. WADE: Could you vote to recommend the death
12 penalty if you were convinced by the evidence and the
13 instructions the Judge gives you?

14 JUROR SHEFFIELD: No, sir.

15 MR. WADE: Could you ever under any circumstances
16 vote to recommend death?

17 JUROR SHEFFIELD: (Nodding head)

18 MR. WADE: Okay. Perhaps you didn't understand
19 the question. If the Judge gave you some instructions
20 on the law that said, all right, here is where murder
21 is aggravated and here is where first degree murder is
22 mitigated, and then gave you the elements and from
23 that evidence you said, well, the aggravating
24 circumstances outweigh the mitigating circumstances.
25 If you decided all that, would you be able to vote to

1 IN THE CIRCUIT COURT OF THE
2 SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

3 CASE NO. 91-1932-AF

4 STATE OF FLORIDA,

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7 Defendant.
8 _____ /

12 PROCEEDINGS:

Trial

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Circuit Judge

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12 * * *

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23 * * *

24

25

1 (Whereupon, the following is a continuation from
2 Volume V, proceedings held November 13, 1992.)

3 THE COURT: Are we ready to proceed?

4 MR. CUMMINGS: We're ready to proceed at this
5 time. I was waiting for a special instruction on
6 heinous, atrocious and cruel and I thought it would be
7 here shortly. It still isn't here.

8 THE COURT: That is something we can address a
9 little bit later. Let's bring them on.

10 (Thereupon, the jury returned to the courtroom and the
11 following proceedings were had.)

12 THE COURT: Members of the jury, you have found
13 the Defendant guilty of murder in the first degree.
14 The punishment for this crime is either death or life
15 imprisonment without the possibility of parole for
16 25 years. Final decision as to what punishment shall
17 be imposed rests solely with the Judge of this Court.
18 However, the law requires that you, the jury, render to
19 the Court an advisory sentence as to what punishment
20 should be imposed upon the Defendant.

21 The State and the Defendant may now present
22 evidence relative to the nature of the crime and the
23 character of the Defendant. You are instructed that
24 this evidence, when considered with the evidence you
25 have already heard, is presented in order -- let me

1 read that over again. You are instructed that this
2 evidence, when considered with the evidence you have
3 already heard, is presented in order that you might
4 determine, first, whether sufficient aggravating
5 circumstances exist that would justify the imposition
6 of the death penalty, and, second, whether there are
7 mitigating circumstances sufficient to outweigh the
8 aggravating circumstances, if any. At the conclusion
9 of the taking of the evidence and after argument of
10 Counsel, you will be instructed on the factors in
11 aggravation and mitigation that you may consider.

12 Your advisory sentence as to what sentence should
13 be imposed on this Defendant is entitled by law and
14 will be given great weight by this Court in
15 determining what sentence to impose in this case. It
16 is only under rare circumstances that this Court could
17 impose a sentence other than what you recommend.

18 Are you ready to proceed, Mr. Wade?

19 MR. WADE: Yes, sir.

20 Your Honor, at this time, in addition to relying
21 upon the evidence previously adduced during the guilt
22 phase of the trial, the State would tender four exhibits
23 to the Court for publication to the jury. The first is
24 Exhibit 20 for identification. That is a certified
25 copy from the Circuit Court of Dade County, Florida

1 MR. WADE: They're acceptable, Judge.

2 THE COURT: All right. Any other matters we need
3 to go over before the jury is brought in and you make
4 your final arguments to them?

5 MR. WADE: No, sir.

6 THE COURT: Bring them in.

7 (Thereupon, the jury returned to the courtroom and the
8 following proceedings were had.)

9 THE COURT: Members of the jury, the State and the
10 Defense will now present their final arguments as to
11 this phase of the trial. Are you ready to proceed,
12 Mr. Wade?

13 MR. WADE: Yes, sir.

14 Again, thank you all for the attention that you
15 have given us and given these proceedings. As the
16 Court indicated, we're here for you to make your
17 sentencing recommendation, your advisory sentence.
18 You have received both the evidence at trial and you
19 have received the evidence presented to you within the
20 last hour or so. After the lawyers argue to you,
21 you're going to receive some additional instructions on
22 the law, instructions on what factors, what circumstances
23 the law considers to aggravate the crimes committed in
24 this case. You're also going to receive instructions
25 on kinds of mitigating circumstances that you may find

1 to apply in this case. Please listen carefully to and
2 follow those instructions and bear in mind our own
3 common understanding of what those terms mean.

4 Aggravating circumstances. Those circumstances
5 that make what happened here more serious. Mitigating
6 circumstances are the things that tend to make the
7 crime, the event, its conduct less serious.

8 I cannot emphasize too strongly how important it
9 is to follow this Court's instructions on the law. In
10 this decision today, you represent more than your own
11 personal interest. You are all, each one of you here
12 as a representative of the community, the community we
13 all live in. That's why you're sworn individually,
14 to follow the laws that we have adopted as a society
15 and as the Court previously indicated to you and told
16 you, no one of us has the right to violate the rules
17 that we all share. You have evidence before you as to
18 five separate aggravating circumstances and I'm going
19 to address each one of those.

20 The Court will instruct you on the definitions of
21 each of those aggravating circumstances. What I'm
22 going to talk about now is the evidence that applies to
23 each one of them. Five separate aggravating
24 circumstances are present in this case.

25 One, the Defendant has been previously convicted

1 Three things demonstrate that Harry Jones
2 premeditatedly planned and carried out this murder in a
3 cold and calculated fashion. One, as we discussed
4 earlier, if he's not killed, he identifies him and you
5 now known from his history what would have happened to
6 Harry Jones upon being identified in yet another
7 robbery case.

8 Two, if all that was intended was robbery, there
9 was simply no need to decoy George Young, Jr. to a
10 desolate, isolated location like this, to effect that
11 robbery. There simply wasn't any need to do it. The
12 only explanation for going that far, that distance,
13 that desolate, is because you do not want the body
14 found for some period of time.

15 Third, the very act itself shows you that it was
16 deliberate and premediated. You have to hold that
17 victim, George Young, in place. You have to hold his
18 head in the water and make him die. You have to be
19 thinking about that. You have to have reflected on
20 that. You have to deliberate and intend and plan.

21 Weighing against the aggravating circumstances
22 in this case are the mitigating factors, weighing any
23 mitigating factors that you may determine to be present.
24 And it is your determination both as to the aggravators
25 and mitigators.

1 Now there's a different burden. The State has
2 the burden of proving the aggravators beyond a
3 reasonable doubt. The mitigators that you think are
4 sufficiently established are sufficiently established.
5 It's a lesser burden on mitigation. If you find
6 something in the testimony or evidence argued to you
7 that you think makes this crime, makes this conduct
8 less serious, less heinous, then you consider that
9 factor in mitigation.

10 I anticipate that the Defense will argue that the
11 capacity of the Defendant to appreciate the criminality
12 of his conduct or to conform his conduct to the
13 requirements of the law was impaired. That's one of the
14 mitigators. I suppose you could argue that anyone
15 who's already been convicted of six violent felonies
16 over that time span has in fact been unable to conform
17 his conduct to the requirements of the law. But that's
18 not what this mitigator is designed for. It is
19 designed to protect those defendants who suffer from
20 defects in ability to reason, to understand what the
21 law requires and to follow the requirements of law.
22 There isn't any evidence of retardation or intellectual
23 deficit. There isn't any evidence that this Defendant
24 did not understand exactly what he was doing when he
25 murdered George Young, the wrongfulness of it. There

1 determination you made today. The Court will further
2 read to you that before you make your decision you
3 should carefully weigh, sift and consider the evidence
4 and all of it, realizing that human life is at stake,
5 and bringing to bear your best judgment in reaching
6 your advisory sentence.

7 One life has been lost. The Court is going to
8 tell you, human life is at stake. There's one more
9 at stake. Make a determination and weigh the factors
10 and tell the Court, Judge, we recommend that life is
11 appropriate in this case. Life without parole for 25
12 years. Harry will be in his 50's. By then, a man in
13 his middle ages, maybe by then he can become a
14 productive person in society. There is still a chance.
15 There's always a chance and I ask you to give Harry
16 Jones that chance. Thank you.

17 THE COURT: Members of the jury, it is now your
18 duty to advise the Court as to what punishment should
19 be imposed upon the Defendant for his crime of murder
20 in the first degree. As you have been told, the final
21 decision as to what punishment shall be imposed is the
22 responsibility of the Judge. However, it is your duty
23 to follow the law that will now be given you by the
24 Court and render to the Court an advisory sentence
25 based upon your determination as to whether sufficient

1 aggravating circumstances exist to justify the imposition
2 of the death penalty and whether such sufficient
3 mitigating circumstances exist to outweigh any
4 aggravating circumstances found to exist.

5 Your advisory sentence should be based upon the
6 evidence that you have heard while trying the guilt or
7 innocence of the Defendant and evidence that has been
8 presented to you in these proceedings.

9 The aggravating circumstances that you may
10 consider are limited to any of the following that are
11 established by the evidence:

12 1. The Defendant has been previously convicted of
13 a felony involving the use or threat of violence to
14 some person. The crimes of attempted robbery, robbery,
15 robbery with a firearm and kidnapping are felonies
16 involving the use or threat of violence to another
17 person.

18 2. The crime for which the Defendant is to be
19 sentenced was committed while he was engaged in the
20 commission of the crime of robbery.

21 3. The crime for which the Defendant is to be
22 sentenced was committed for financial gain.

23 4. The crime for which the Defendant is to be
24 sentenced was especially heinous, atrocious or cruel.
25 "Heinous" means extremely wicked or shockingly evil.

1 Defendant to appreciate the criminality of his conduct
2 or to conform his conduct to the requirements of law
3 was substantially impaired. And any other aspect of
4 the Defendant's character, background or record, and
5 any other circumstances of the offense.

6 Each aggravating circumstance must be established
7 beyond a reasonable doubt before it may be considered
8 by you in arriving at your decision.

9 If one or more aggravating circumstances are
10 established, you should consider all the evidence
11 tending to establish one or more mitigating
12 circumstances and give that evidence such weight as you
13 feel it should receive in reaching your conclusion as
14 to the sentence that should be imposed.

15 A mitigating circumstance need not be proved
16 beyond a reasonable doubt by the Defendant. If you
17 are reasonably convinced that a mitigating circumstance
18 exists, you may consider it as established.

19 The sentence that you recommend to the Court must
20 be based upon the facts as you find them from the
21 evidence and the law. You should weigh the aggravating
22 circumstances against the mitigating circumstances and
23 your advisory sentence must be based on these
24 considerations.

25 In these proceedings it is not necessary that the

1 advisory sentence of the jury be unanimous.

2 The fact that the determination of whether you
3 recommend a sentence of death or a sentence of life
4 imprisonment in this case can be reached by a single
5 ballot should not -- the fact that it can should not
6 influence you to act hastily or without due regard to
7 the gravity of these proceedings. Before you ballot
8 you should carefully weigh, sift and consider the
9 evidence and all of it, realizing that a human life is
10 at stake, and bring to bear your best judgment in
11 reaching your advisory sentence.

12 If a majority of the jury determine that Harry
13 Jones should be sentenced to death, your advisory
14 sentence will be:

15 A majority of the jury, by a vote of -- and there
16 will be a blank to fill in -- advise and recommend to
17 the Court that it impose the death penalty upon Harry
18 Jones.

19 On the other hand, if by six or more votes the
20 jury determines that Mr. Jones should not be sentenced
21 to death, your advisory sentence will be:

22 The jury advises and recommends to the Court that
23 it impose a sentence of life imprisonment upon Mr. Jones,
24 without possibility of parole for 25 years.

25 You will now retire to consider your recommendation.