

Case No.: 18-7643

October 2018, Term

IN THE SUPREME COURT OF THE UNITED STATE

BILLY LEON KEARSE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

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BILLY LEON KEARSE

APPELLANT

VS

STATE OF FLORIDA

APPELLEE

APPEAL NO. 90,310

LT. CASE NO. 91-136-CF

VOLUME 29 OF 31 VOLUMES

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1 (Whereupon, a lunch recess was had and
2 the proceedings continued as follows:)

3 THE COURT: We don't have the
4 Defendant.

5 (Jury panel enters the courtroom.)

6 THE COURT: Ladies and Gentlemen of
7 the Jury, it is now your duty to advise the
8 Court as to what punishment should be
9 imposed upon this Defendant for his crime
10 of first degree murder. As you've been
11 told, final decision as to what punishment
12 shall be imposed is the responsibility of
13 the judge. However, it is your duty to
14 follow the law that will now be given to
15 you by me and render to the Court an
16 advisory sentence based upon your
17 determination as to whether sufficient
18 aggravating circumstances exist to justify
19 the imposition of the death penalty and
20 whether sufficient mitigating circumstances
21 exist to outweigh any aggravating
22 circumstances found to exist.

23 Your advisory sentence should be based
24 upon the evidence that has been presented
25 to you in these proceedings. The

1 aggravating circumstances that you may
2 consider are limited to any of the
3 following that are established by the
4 evidence.

5 First, the crime for which the
6 Defendant is to be sentenced was committed
7 while he was engaged in the commission or
8 flight after committing or attempting to
9 commit a crime of robbery. Robbery is the
10 taking of property from another by force,
11 violence, assault or putting in fear with
12 the intent to temporarily or permanently
13 deprive the victim to the right of the
14 property or any benefit from it.

15 And the second aggravating
16 circumstance which you may consider is that
17 the crime for which the Defendant is to be
18 sentenced was committed for the purpose of
19 avoiding or preventing a lawful arrest or
20 effecting an escape from custody.

21 The third is that the crime for which
22 the Defendant is to be sentenced was
23 committed to disrupt or hinder the lawful
24 exercise of any governmental function or
25 the enforcement of laws.

1 And fourth, the victim of the crime
2 for which the Defendant is to be sentenced
3 was a law enforcement officer engaged in
4 the performance of the officer's official
5 duties. Now the State may not rely upon a
6 single aspect of the offense to establish
7 more than a single aggravating
8 circumstance. Therefore, if you find that
9 two or more of the aggravating
10 circumstances are supported by a single
11 aspect of the offense, you may consider
12 that as supporting a single aggravating
13 circumstance only. The aggravating factors
14 of committing a murder to avoid arrest or
15 to hinder the enforcement of laws and the
16 aggravating factor of murdering a law
17 enforcement officer relate to the same
18 aspect of the offense and must be
19 considered as being a single aggravating
20 circumstance.

21 If you find that the aggravating
22 circumstances do not justify the death
23 penalty, your advisory sentence should be
24 one of life imprisonment without
25 eligibility for release. Should you find

1 sufficient aggravating circumstances to
2 exist, it will then be your duty to
3 determine whether mitigating circumstances
4 exist that outweigh the aggravating
5 circumstances.

6 Among the mitigating circumstances you
7 may consider if established by the evidence
8 are, one, the crime for which the Defendant
9 is to be sentenced was committed while he
10 was under the influence of extreme mental
11 or emotional disturbance. Two, the
12 capacity of the Defendant to conform his
13 conduct to the requirements of law was
14 substantially impaired. Three, the age of
15 the Defendant at the time of the crime.
16 And four, any other aspect of the
17 Defendant's character or record in any
18 other circumstance of the offense. Each
19 aggravating circumstance must be
20 established beyond a reasonable doubt
21 before it may be considered by you in
22 arriving at your decision.

23 Whenever the words "reasonable
24 doubt" are used, you must consider the
25 following: A reasonable doubt is not a

1 possible doubt, a speculative, imaginary or
2 forced doubt. Such a doubt must not
3 influence you to reject a proposed
4 aggravating circumstance if you have an
5 abiding conviction that the proposed
6 aggravating circumstance exists. On the
7 other hand, if after carefully considering,
8 comparing, and weighing all the evidence
9 there is not an abiding conviction that a
10 proposed aggravating circumstance has been
11 established, or if having a conviction it
12 is one which is not stable but one which
13 wavers and vacillates, then the proposed
14 aggravating circumstance has not been
15 proved beyond a reasonable doubt and you
16 must reject the proposed aggravating
17 circumstance because the doubt is
18 reasonable.

19 It is to the evidence introduced upon
20 this trial and to it alone that you are to
21 look for that proof. A reasonable doubt
22 may arrive from the evidence, from conflict
23 in the evidence, or from the lack of
24 evidence. If you have a reasonable doubt,
25 you should reject the proposed aggravating

1 circumstance. If you have no reasonable
2 doubt, you should find that the proposed
3 aggravating circumstance has been proven.

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

12 A mitigating circumstance need not be
13 proved beyond a reasonable doubt by the
14 Defendant. If you are reasonably convinced
15 that a mitigating circumstance exists, you
16 may consider it as established. It is up
17 to you to decide what evidence is
18 reliable. You should use your common sense
19 in deciding which is the best evidence and
20 which evidence should not be relied upon in
21 considering your advisory verdict. You may
22 find some of the evidence not reliable or
23 less reliable than other evidence. You
24 should consider how the witnesses acted as
25 well as what they said.

1 Some things you should consider are:
2 Did the witness seem to have an opportunity
3 to see and to know the things about which
4 the witness testified? Did the witness
5 seem to have an accurate memory? Was the
6 witness honest and straightforward in
7 answering the attorneys' questions? Four,
8 did the witness have some interest in how
9 the case should be decided? Five, does the
10 witness' testimony agree with the other
11 testimony and the other evidence in the
12 case? And six, did the witness at some
13 other time make a statement that is
14 inconsistent with the testimony that he or
15 she gave in court? You may rely upon your
16 own conclusion about the witness.

17 A jury may believe or disbelieve all
18 or any part of the evidence or the
19 testimony of any witness. Expert witnesses
20 are like other witnesses with one
21 exception. The law permits an expert
22 witness to give his or her opinion.
23 However, an expert's opinion is only
24 reliable when given on a subject about
25 which you believe him or her to be an

1 expert. Like other witnesses, you may
2 believe or disbelieve all or any part of an
3 expert's testimony.

4 The Defendant in this case has become
5 a witness and you should apply the same
6 rules to the consideration of his testimony
7 that you apply to the testimony of the
8 other witnesses. The sentence that you
9 recommend to the Court must be based upon
10 the facts as you find them from the
11 evidence and the law. You should weigh the
12 aggravating circumstances against the
13 mitigating circumstances and your advisory
14 sentence must be based on these
15 considerations.

16 In these proceedings, it is not
17 necessary that the advisory sentence of the
18 Jury be unanimous.

19 Now you have heard evidence that
20 concerns the uniqueness of Danny Parrish as
21 an individual human being and the resultant
22 loss to the community's members by the
23 victim's death. Family members are unique
24 to each other by reason of the relationship
25 and role each has in the family. A loss to

1 the family is a loss to both the community
2 of the family and to the larger community
3 outside the family. While such evidence is
4 not to be considered as establishing either
5 an aggravating or mitigating circumstance,
6 you may still consider it as evidence in
7 the case.

8 Now, the fact that the determination
9 of whether you recommend a sentence of
10 death or a sentence of life imprisonment in
11 this case can be reached by a single ballot
12 should not influence you to act hastily or
13 without due regard to the gravity of these
14 proceedings. Before you ballot, you should
15 carefully weigh, sift, and consider the
16 evidence and all of it realizing that human
17 life is at stake and bring to bear your
18 best judgment in reaching your advisory
19 sentence.

20 Now if a majority of the Jury
21 determine that Billy Leon Kearse should be
22 sentenced to death, your advisory sentence
23 will be a majority of the Jury by a vote of
24 blank, advise and recommend to the Court
25 that it impose the death penalty upon Billy

1 Leon Kearsse.

2 On the other hand, if by six or more
3 votes the Jury determines that Billy Leon
4 Kearsse should not be sentenced to death
5 your advisory sentence will be, the Jury
6 advises and recommends to the Court that it
7 impose a sentence of life imprisonment upon
8 Billy Leon Kearsse without eligibility for
9 release.

10 In just a moment you will retire to
11 consider your recommendation. The first
12 thing you should do is to elect a
13 foreperson. The foreperson presides over
14 your deliberations like a chairperson of a
15 meeting. It is the chairperson's job to
16 sign and date the form when you complete
17 your deliberations. Either a man or a
18 woman may be foreperson of a Jury. When
19 you have reached an advisory sentence in
20 conformity with these instructions, that
21 form of recommendation should be signed by
22 your foreperson and returned to the Court.
23 And we have it prepared for you and will
24 send in two forms of advisory sentence.

25 The exhibits that have been admitted

1 into evidence may be sent in with you.
2 However, the charts that were used by
3 attorneys in closing arguments are not
4 evidence and may not be sent to you.

5 Now, Mr. Buttermore, we appreciate you
6 serving here all this two weeks as an
7 alternate juror and your job was just as
8 important as that of the other Jurors in
9 the event one of the other of them had some
10 mishap of some kind, so we appreciate your
11 service. We thank you very much. I will
12 excuse you at this time and you do not have
13 to come back.

14 The remaining Jurors will retire to
15 consider their verdict.

16 (The Jury retired to the Jury room at
17 2:15 o'clock p.m.)

18 THE COURT: All right. We'll be in
19 recess until the return of the Jury.

20 (Whereupon, a recess was had and the
21 proceedings continued as follows at 4:30
22 o'clock p.m.)

23 THE COURT: All right. Bring the Jury
24 out, please.

25 (Jury panel enters the courtroom.)