

DOCKET NO. 20-5492

IN THE SUPREME COURT OF THE UNITED STATES

RAY LAMAR JOHNSTON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S APPENDIX A

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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR
HILLSBOROUGH COUNTY**

CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

vs.

Case No. 97-13379

RAY LAMAR JOHNSTON

Division "C"

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This cause came on to be heard before the
Honorable Diana M. Allen, Circuit Judge, at the
Hillsborough County Courthouse Annex, Tampa, Florida, on
June 17, 1999, as follows:

APPEARANCES:

Jay Pruner and Karen Stanley, Assistant State
Attorneys, 800 E. Kennedy Boulevard, Tampa, Florida,
33602, in behalf of the State;

Kenneth Littman, Joseph Registrato, and Girard
Hooper, Assistant Public Defenders, 801 East Twiggs
Street, Tampa, Florida, 33602, in behalf of the
defendant.

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1 brain is, he's nothing more than a human being.

2 You have his life in your hands from this
3 moment on and I beg of you, I beg of you from
4 every ounce of strength I have to find mercy in
5 your heart and let him live out his life in
6 Florida State Prison. Thank you.

7 THE COURT: Members of the jury, it is now
8 your duty to advise the court as to what
9 punishment should be imposed upon the defendant
10 for his crime of Murder in the First Degree.

11 As you have been told, the final decision
12 as to what punishment shall be imposed is the
13 responsibility of the judge. However, it is
14 your duty to follow the law that will now be
15 given you by the court and render to the court
16 an advisory sentence based upon your
17 determination as to whether sufficient
18 aggravating circumstances exist to justify the
19 imposition of the death penalty and whether
20 sufficient mitigating circumstances exist to
21 outweigh any aggravating circumstances found to
22 exist.

23 Your advisory sentence is entitled by law
24 and will be given great weight by this court in
25 determining the sentence to impose in this case.

1 It is only under rare circumstances that this
2 court could impose a sentence other than what
3 you recommend.

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

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

13 1. The defendant has been previously
14 convicted of another capital offense or of a
15 felony involving the use of violence to some
16 person.

17 The crimes of rape, armed kidnapping,
18 burglary of a conveyance with assault and
19 robbery are felonies involving the use of
20 violence to another person.

21 2. The crime for which the defendant is
22 to be sentenced was committed while he was
23 engaged in the crimes of sexual battery,
24 robbery, burglary of a conveyance and
25 kidnapping.

1 3. The crime for which the defendant is
2 to be sentenced was committed for the purpose of
3 avoiding or preventing a lawful arrest.

4 4. The crime for which the defendant is
5 to be sentenced was committed for financial
6 gain.

7 5. The crime for which the defendant is
8 to be sentenced was especially heinous,
9 atrocious or cruel.

10 "Heinous" means extremely wicked or
11 shockingly evil.

12 "Atrocious" means outrageously wicked and
13 vile.

14 "Cruel" means designed to inflict a high
15 degree of pain with utter indifference to or
16 even enjoyment of the suffering of others.

17 The kind of crime intended to be included
18 as heinous, atrocious or cruel is one
19 accompanied by an additional act that shows that
20 the crime was consciousless or pitiless and was
21 unnecessarily torturous to the victim.

22 The State may not rely upon a single
23 aspect of the offense to establish more than one
24 aggravating circumstance. Therefore, if you
25 find that two or more of the aggravating

1 circumstances are proven beyond a reasonable
2 doubt by a single aspect of the offense, you are
3 to consider that as supporting only one
4 aggravating circumstance.

5 If you find the aggravating circumstances
6 do not justify the death penalty, your advisory
7 sentence should be one of life imprisonment
8 without possibility of parole.

9 Should you find sufficient aggravating
10 circumstances do exist, it will then be your
11 duty to determine whether mitigating
12 circumstances exist that outweigh the
13 aggravating circumstances. Among the mitigating
14 circumstances you may consider, if established
15 by the evidence, are:

16 1. The capacity of the defendant to
17 appreciate the criminality of his conduct or to
18 conform his conduct to the requirement of law
19 was substantially impaired.

20 2. Any of the following circumstances
21 that would mitigate against the imposition of
22 the death penalty:

23 A. Any aspect of the defendant's
24 character, record or background.

25 B. Any other circumstance of the offense.

1 Each aggravating circumstance must be
2 established beyond a reasonable doubt before it
3 may be considered by you in arriving at your
4 decision.

5 A reasonable doubt, as you previously have
6 been told, is not a mere possible doubt, a
7 speculative, imaginary or forced doubt. Such a
8 doubt must not influence you to disregard an
9 aggravating circumstance if you have an abiding
10 conviction that it exists.

11 On the other hand, if, after carefully
12 considering, comparing and weighing all the
13 evidence you do not have an abiding conviction
14 that the aggravating circumstance exists or that
15 having a conviction it is one which is not
16 stable but one which wavers and vacillates, then
17 the aggravating circumstance has not been proved
18 beyond a reasonable doubt and you should
19 disregard it because the doubt is reasonable.

20 A reasonable doubt as to the existence of
21 an aggravating circumstance may arise from the
22 evidence, conflict in the evidence or the lack
23 of evidence. If you have a reasonable doubt as
24 to the existence of an aggravating circumstance,
25 you should find that it does not exist.

1 However, if you have no reasonable doubt, you
2 should find that the aggravating circumstance
3 does exist and give it whatever weight you feel
4 it should receive.

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

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

17 The sentence that you recommend to the
18 court must be based upon the facts as you find
19 them from the evidence and the law. You should
20 weigh the aggravating circumstances against the
21 mitigating circumstances and your advisory
22 sentence must be based on these considerations.
23 The fact that your recommendation is advisory
24 does not relieve you of your solemn
25 responsibility for the court is required to and

1 will give great weight and serious consideration
2 to your recommendation in imposing sentence.

3 In these proceedings, it is not necessary
4 that the advisory sentence of the jury be
5 unanimous. You have heard evidence about the
6 impact of this homicide on the family, friends
7 and community of Leanne Coryell. This evidence
8 may be considered by you to determine the
9 victim's uniqueness as an individual human being
10 and the resultant loss by the community members
11 by the victim's death. However, the law does
12 not allow you to weigh this evidence as an
13 aggravating circumstance.

14 Your recommendation to the court must be
15 based only on the aggravating circumstances and
16 the mitigating circumstances about which I have
17 instructed you. The fact that the determination
18 of whether you recommend a sentence of death or
19 sentence to life imprisonment in this case can
20 be reached by a single ballot should not
21 influence you to act hastily or without due
22 regard to the gravity of these proceedings.

23 Before you ballot, you should carefully
24 weigh, sift and consider the evidence and all of
25 it, realizing that a human life is at stake and

1 bring to bear your best judgment in reaching
2 your advisory sentence.

3 If a majority of the jury determine that
4 Ray Lamar Johnston should be sentenced to death,
5 your advisory sentence will be a majority of the
6 jury by a vote of blank to blank advise and
7 recommend to the court that it impose the death
8 penalty upon Ray Lamar Johnston.

9 On the other hand, if by six or more votes
10 the jury determines that Ray Lamar Johnston
11 should not be sentenced to death, your advisory
12 sentence will be the jury advises and recommends
13 to the court that it impose a sentence of life
14 imprisonment upon Ray Lamar Johnston without the
15 possibly of parole.

16 You will now retire to consider your
17 recommendation. When you have reached an
18 advisory sentence in conformity with these
19 instructions, that form of recommendation should
20 be signed by your foreperson and returned to the
21 court. The first thing you must do is select a
22 new foreperson.

23 And you will have two advisory sentence
24 forms, one of each as I have read to you.
25 You'll take those with you into the jury room

1 along with the new instructions that I have just
2 read to you, the previous instructions that were
3 read to you and all items of tangible evidence
4 that have been introduced in this case.

5 Mr. Sansoni, if you would remain in your
6 seat. You are the alternate and will not be
7 deliberating. The rest of the jurors may go
8 with the bailiff.

9 THE BAILIFF: Ladies and gentlemen.

10 [The jury exits at 5:24 p.m. to deliberate
11 their advisory sentence.]

12 THE COURT: Mr. Sansoni, at this time, you
13 are released from your jury service. I want to
14 thank you for that service and I also want to
15 assure you that although you may be disappointed
16 that you may not have participated in the
17 deliberations in this case, your job as an
18 alternate is very important, particularly in a
19 case like this where we have the two
20 proceedings. And many times something does
21 happen to one or more of the other jurors. As
22 you have seen, something did happen to one of
23 our other jurors and if we did not have an
24 alternate, we would be unable to proceed with
25 the case. So we do appreciate your service.

1 You're released. We're going to be in
2 recess pending the advisory sentence. You're
3 welcome to wait about the courtroom. You're
4 welcome to speak to anyone you like about your
5 participation, but you are also welcome not to
6 speak to anyone. That is up to you. And thank
7 you very much.

8 THE BAILIFF: Step this way, sir.

9 THE COURT: Counsel, any objection to the
10 reading of the instructions?

11 MR. PRUNER: No, ma'am.

12 MR. REGISTRATO: No objection.

13 THE COURT: We'll be in recess pending an
14 advisory sentence.

15 THE BAILIFF: Court is in recess awaiting
16 verdict.

17 [Court stood in recess from 5:24 p.m. to
18 7:20 p.m. awaiting the jury's advisory
19 sentence.]

20 THE BAILIFF: Remain seated. Court is
21 back in session.

22 THE COURT: Counsel for the State is
23 present. Counsel for the Defense is present.
24 Mr. Johnston is present at counsel table.

25 We've heard nothing from the jury and

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CERTIFICATE OF OFFICIAL COURT REPORTER

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, LINDA S. COLLIER, CSR, RPR, CP, CM, Official Court Reporter, Criminal Justice Division, Thirteenth Judicial Circuit of the State of Florida,

DO HEREBY CERTIFY that I was authorized to, and did, report the proceedings and evidence in this hereinbefore-styled cause, as stated in the caption attached, and that the preceding transcript attached hereto is a true, accurate and correct computerized transcription of my report of the proceedings had at said session.

I FURTHER CERTIFY that I am not employed by or related to the parties to this matter nor interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand in Tampa, Hillsborough County, Florida, this 20th day of April, 2000.



Linda S. Collier, RPR, CP, CM,
Official Thirteenth Circuit Court Reporter
Criminal Justice Division

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