

DOCKET NO. 17-8724

IN THE SUPREME COURT OF THE UNITED STATES

ERNEST WHITFIELD,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF
CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO
RESPONDENT'S BRIEF IN OPPOSITION

State v. Whitfield, Case Numbers 95-1588, 95-1951
Transcript of Jury Instructions from Penalty Phase of Trial
Sarasota County, Twelfth Judicial Circuit
September 28, 1995..... A1-A5

1 merely because of what is contained in the written notes.

2 You should, therefore, not allow the opinion or
3 position of the juror who is relying on written notes to be
4 given greater weight, greater weight solely because of his
5 or her notes.

6 Now after you have completed your deliberations,
7 I've given each of you an envelope. I want you to place
8 your notes in the envelope and I ask the foreperson, I guess
9 it's the forewoman, Miss -- okay, I'm going to ask you,
10 ma'am, to bring those notes out with you in the sealed
11 envelopes and these notes will be personally destroyed by me
12 unread, I promise you that, but I want to collect them and
13 make sure they're destroyed. Okay.

14 Now the substantive instructions, you each have a
15 copy of what I'm about to read with you -- read to you.

16 Ladies and gentlemen of the jury, it is now your
17 duty to advise the court as to what punishment should be
18 imposed upon the defendant for his crime of Murder in the
19 First Degree. As you have been told, the final decision as
20 to what punishment shall be imposed is the responsibility of
21 the judge; however, it is your duty to -- however, it is
22 your duty to follow the law that will now be given you by
23 the court and render to the court an advisory sentence based
24 upon your determination as to whether sufficient aggravating
25 circumstances exist to justify the imposition of the death

1 penalty and whether sufficient mitigating circumstances
2 exist to outweigh any aggravating circumstances found to
3 exist.

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

8 And again I want to caution you that your verdict
9 will be given great weight by this Court.

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

13 One. The defendant has been previously convicted
14 of a felony involving the use or threat of violence to some
15 person;

16 The crimes of aggravated battery, throwing a
17 deadly missile and sexual battery are felonies involving the
18 use or threat of violence to another person;

19 Two. The crime for which the defendant is to be
20 sentenced was committed while he was engaged in the
21 commission of the crime of burglary while armed or with
22 assault or battery.

23 Three. 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 "Atrocious" means outrageously wicked and vile. "Cruel"
2 means designed to inflict a high degree of pain with utter
3 indifference to, or even enjoyment of, the suffering of
4 others. The kind of crime intended to be included as
5 heinous, atrocious, or cruel is one accompanied by
6 additional acts that show that the crime was conscienceless
7 or pitiless and was unnecessarily tortuous to the victim.

8 If you find the aggravating circumstances do not
9 justify the death penalty, then your advisory sentence
10 should be one of life imprisonment without the possibility
11 of parole.

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

18 The crime for which the defendant is to be
19 sentenced was committed while he was under the influence of
20 extreme mental or emotional disturbance;

21 Two. The defendant acted under extreme duress or
22 under the substantial domination of another person;

23 Three. The capacity of the defendant to
24 appreciate the criminality of his conduct or to conform his
25 conduct to the requirements of law was substantially

1 impaired;

2 Four. Any other aspect of the defendant's
3 character, background or record, and any circumstance of the
4 offense -- any other circumstance of the offense.

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

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

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

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

23 In these proceedings, it is not necessary that the
24 advisory sentence of the jury be unanimous.

25 The fact that the determination of whether you

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

9 If a majority of the jury determine that Ernest
10 Whitfield should be sentenced to death, your advisory
11 sentence will be:

12 A majority of the jury, by a vote of, and you will
13 insert the numerical vote, advise and recommend to the court
14 that it impose the death penalty upon Ernest Whitfield.

15 On the other hand, if by six or more votes the
16 jury determines that Ernest Whitfield should not be
17 sentenced to death, your advisory sentence will be:

18 The jury advises and recommends to the court that
19 it impose a sentence of life imprisonment without the
20 possibility of parole upon Ernest Whitfield.

21 You will now retire to consider your
22 recommendation. When you have reached an advisory sentence
23 in conformity with these instructions, that form of
24 recommendation should be signed by your foreperson and
25 returned to the court.