

Case No.: 18-5402

October 2017, Term

IN THE SUPREME COURT OF THE UNITED STATE

THOMAS DEWEY POPE,

Petitioner,
vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

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APPENDIX A

1 rather have the death sentence than the twenty-
2 five years in prison.

3 THE COURT: Alright. I still think you
4 ought to speak on his behalf as your obligation.
5 You made your wishes known. I can understand
6 that. Thank you. Bring the jury in.

7 (Thereupon the jury entered the courtroom).

8 THE BAILIFF: Excuse me, Your Honor. The
9 Foreman handed this to me.

10 THE COURT: We will concede with your
11 wishes, Mr. Whitten. Certain pieces of paper
12 that the jury used that are in the wastepaper
13 basket will be destroyed.

14 Alright. Ladies and Gentlemen of the jury,
15 you have found the Defendant guilty of murder
16 in the first degree as charged in Counts I
17 through III of the indictment. The punishment
18 of this crime is either death or life imprison-
19 ment without the possibility of parole for twenty-
20 five years. The final decision as to what
21 punishment shall be imposed rests solely with
22 the Judge of this Court. However, the law
23 requires that you, the jury, render to the Court
24 an advisory sentence as to what punishment you
25 think should be imposed upon the Defendant.

1 The State and the Defendant may now present
2 evidence relative to the nature of the crime
3 and the character of the Defendant.

4 You are instructed that this evidence,
5 when considered with the evidence you have
6 already heard presented in order that you might
7 determine first, whether sufficient aggravating
8 circumstances exist that would justify the
9 imposition of the death penalty; and, second,
10 whether there are mitigating circumstances, if
11 any.

12 At the conclusion of the taking of the
13 evidence, and after arguments of counsel, and
14 both will be very brief, you will be instructed
15 on the factors in aggravation and mitigation
16 that you may consider. Mr. Garfield?

17 MR. GARFIELD: We have no evidence to
18 present, Your Honor.

19 THE COURT: Mr. Eber?

20 MR. EBER: Your Honor, I would like to
21 call Mrs. Maggie Pope to the stand.

22 THE COURT: Alright.

23 (Thereupon Mrs. Maggie Pope was called as
24 a witness to testify on behalf of the Defendant, being
25 first duly sworn, was examined and testified as follows).

Thank you.

THE COURT: Ladies and gentlemen of the jury, it is now your duty to advise the Defendant as to what punishment may be imposed on him of his crimes, murder in the first degree, three Counts.

If you remember, when you first came to me, it seems like a very long time ago, but it was only a week ago, last Monday, when I told you that we would give you some awesome responsibilities, probably a decision you will never, ever, be asked to perform again, or certainly not a harder one. It has been for you, I'm sure, an extremely trying and poignant time.

At any rate, you did your duties as you saw fit. I ask you to do your duty as you see fit once more.

As you have been told, the final decision as to what punishment shall be imposed is the responsibility of the Judge. I, alone, have that responsibility. Remember that. However, it is your duty to follow the law that now will be given you by the Court and rendered to the Court as an advisory opinion, based upon your determinations as to whether sufficient aggravated

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

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

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

14 (1) The crime for which Thomas Dewey
15 Pope is to be sentenced was committed while
16 he was under sentence of imprisonment.

17 (2) The Defendant has previously been
18 convicted for another capital offense of a
19 felony involving the use of threat or violence
20 to some person.

21 (3) The Defendant, in committing the
22 crime for which he is to be sentenced, knowingly
23 created a great risk of death to many persons.

24 (4) The crime for which the Defendant
25 is to be sentenced was committed while he was

engaged in the commission of the crime of robbery, sexual battery, arson, burglary, kidnapping, aircraft piracy, or the unlawful throwing or placing or discharging of a destructive device or bombing.

(5) The crime for which the Defendant is to be sentenced to be committed for the purpose of avoiding or preventing a lawful arrest of effecting an escape from custody.

(6) The crime for which the Defendant is to be sentenced was committed for financial gain.

(7) The crime for which the Defendant is to be sentenced was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(8) The crime for which the Defendant is to be sentenced was especially wicked, evil, atrocious and cruel.

(9) The crime for which the Defendant is to be sentenced was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

If you find the aggravating circumstances
do not justify the death penalty, your advisory

1 sentence should be one of life imprisonment
2 without the possibility of parole for twenty-
3 five calendar years. Should you find sufficient
4 aggravating circumstances to exist, it will
5 be then your duty to determine whether mitigating
6 circumstances exist that outweigh the aggravating
7 circumstances.

8 Among the mitigating circumstances you
9 may consider, if established by the evidence,
10 are:

11 (1) Thomas Dewey Pope has no significant
12 prior criminal history of criminal activity.

13 (2) The crime for which the Defendant
14 is to be sentenced was committed while he was
15 under the influence of extreme mental or emotio-
16 nal disturbance.

17 (3) The victim was a participant in a
18 Defendant's conduct or consented to the act.

19 (4) The Defendant was an accomplice in
20 the offense for which he is to be sentenced;
21 but the offense was committed by another, and
22 the Defendant's participation was relatively
23 minor.

24 (5) The Defendant acted under extreme
25 duress or under the substantial domination of

1 another person.

2 (6) The capacity of the Defendant to
3 appreciate the criminality of his conduct, or
4 to conform his conduct to the requirements of
5 law was substantially impaired.

6 (7) The age of the Defendant at the
7 time of the crime.

8 (8) Any other aspect of the Defendant's
9 character or record, and any other circumstance
10 of the offense.

11 Each aggravating circumstance, ladies
12 and gentlemen, must be established beyond a
13 reasonable doubt before you arrive at a
14 decision. If one or more aggravating circum-
15 stances are established, you should consider
16 all of the evidence tending to establish one
17 or more mitigating circumstances and give that
18 evidence such weight as you feel as it should
19 receive, in reaching your conclusion as to
20 the sentence that should be imposed.

21 A mitigating circumstance need not be
22 proved beyond a reasonable doubt by the Defen-
23 dant. If you are reasonably convinced that a
24 mitigating circumstance exists, you may consider
25 it as established. The sentence you give to

1 the Court must be based on the facts as you
2 found them from the evidence and the law.

3 You weigh the aggravating circumstances
4 against the mitigating circumstances, and your
5 advisory sentence must be based on those
6 considerations.

7 In these proceedings, it is not necessary
8 that the advisory sentence of the jury be
9 unanimous. Your decision may be made by a
10 majority of the jury.

11 The fact that a determination of the
12 majority of you recommend a sentence of death
13 or a sentence of life imprisonment in this case
14 can be reached by a single ballot, should not
15 influence you to act hastily or without due
16 regard to the gravity of these proceedings.

17 Before you ballot, ladies and gentlemen,
18 please carefully weigh, sift and consider the
19 evidence, all of it, realizing that limb and life
20 is at stake and bring to bear your best judgment
21 in reaching this advisory sentence.

22 If a majority of the jury determined
23 that Thomas Dewey Pope should be sentenced to
24 death, your advisory sentence will be a majority
25 of the jury by a vote of -- and that place will

1 be back and the Foreman will put the number of
2 that vote for that sentence, if it is more than
3 a majority -- advise and recommend to the Court
4 that it recommend a death penalty as to Thomas
5 Dewey Pope.

6 If, on the other hand, if by six or more
7 votes, the jury determines that Thomas Dewey
8 Pope should not be sentenced to death, your
9 advisement will be the jury recommends to the
10 Court Thomas Dewey Pope will serve without
11 possibility of parole for twenty-five years.

12 You will be given six verdicts, ladies
13 and gentlemen, two for each Count, one imposing
14 the death penalty and one imposing life imprison-
15 ment. You may consider each separately. You
16 should consider each Count separately. Please
17 now retire to consider your recommendation.
18 When seven or more of you are in agreement as to
19 what sentence should be recommended to the Court,
20 that form of recommendation should be signed by
21 your Foreman, and returned to the Clerk.

22 Ladies and gentlemen, you may now retire
23 to deliberate your advisory sentence.

24 (Thereupon the jury left the courtroom
25 to deliberate).