

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE)
)
 v.) **IK01-11-0066**
)
GARY W. PLOOF,)
 Defendant)
 ID No. 0111003002)
)

FINDINGS AFTER PENALTY HEARING

Penalty Hearing Concluded: June 18, 2003
Decided: August 22, 2003

APPEARANCES

Robert J. O'Neill, Esq., and Marie O'Connor Graham, Esq., Deputy Attorneys General, for the State of Delaware.

Sandra W. Dean, Esq., and Sheryl Rush-Milstead, Esq., Dover, Delaware, for the defendant.

RIDGELY, President Judge

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

I. BACKGROUND

On June 16, 2003, Defendant Gary W. Ploof was convicted by a jury of the offenses of Murder in the First Degree, 11 *Del. C.* § 636, and Possession of a Firearm During Commission of a Felony, 11 *Del. C.* § 1447A. Pursuant to 11 *Del. C.* § 4209(c) the Court directed the parties to give notice of the aggravating and mitigating circumstances they would present at a penalty hearing on the punishment to be imposed for Murder in the First Degree.

On June 16, 2003, the State gave notice of its intent to rely on two statutory aggravating circumstances, being 11 *Del. C.* § 4209(e)(1)(o) and (u) which are that “the murder was committed for pecuniary gain” and that “the murder was premeditated and the result of substantial planning.” The State also gave notice of its intent to rely on the following non-statutory aggravating factors:

1. The murder was without provocation.
2. The victim was defenseless.
3. The defendant’s disciplinary records in prison since his arrest.
4. The defendant’s military records, specifically disciplinary actions.
5. The defendant’s prior criminal history.
6. The defendant’s prior arrest for Assault Third Degree in 1998 for incident involving ex-girlfriend.
7. Future dangerousness.
8. Intimidation of a witness.

The State then amended its notice on June 17, 2003 to add the following:

9. Victim impact evidence.
10. Failure to accept responsibility.

The defense gave notice of the following mitigating circumstances on June 17,

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

2003:

1. The nature and extent of Defendant's life history from childhood to adulthood.
2. The relationship Defendant had with his family members.
3. The potential positive impact of Defendant upon his family members.
4. Defendant's history of gainful employment and usefulness as a productive member of society.
5. The potential positive impact of Defendant upon the prison population.
6. Defendant's adjustment to prison life since his incarceration.
7. Defendant lacks a substantial prior criminal record.
8. Defendant lacks any criminal record involving violence.
9. Defendant lacks any prior record of felony convictions.
10. Defendant is capable of following rules and regulations and would do well in a structured environment.
11. Defendant lacks a future propensity for violence or future dangerousness.
12. Defendant's family and loved ones, including his siblings, children and friends would be seriously impacted if Defendant were executed.

Prior to the commencement of the penalty hearing the Court granted a defense application to preclude argument on lack of remorse because it was an improper comment on his trial rights.¹

Pursuant to 11 *Del. C.* § 4209(b), a penalty hearing commenced before an advisory jury on June 18, 2003. The evidence was concluded on June 19, 2003 with closing arguments that day including Ploof himself giving allocution. The jury was instructed on the law and given a Penalty Phase Interrogatory Form. Deliberations

¹ Transcript of Penalty Hearing, Vol. A., Page 50.

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

extended into the evening with the verdict being taken at 8:38 p.m. The jury unanimously found that the evidence shows beyond a reasonable doubt that the murder was committed for pecuniary gain. By a vote of 11 to 1, a majority of the jury found that the evidence shows beyond a reasonable doubt that the murder was premeditated and the result of substantial planning. By a unanimous vote, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, the jury found by a preponderance of the evidence, that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

Because the jury has unanimously found beyond a reasonable doubt the existence of a statutory aggravating circumstance, specifically that the murder was committed for pecuniary gain, Ploof is eligible for the death penalty or a sentence of life imprisonment without eligibility for release. This is the Court's decision pursuant to 11 *Del. C.* § 4109(d) on the sentence to be imposed upon Gary W. Ploof for the crime of Murder in the First Degree.

II. THE NATURE AND CIRCUMSTANCES OF THE CRIME

In 2001 Defendant Gary W. Ploof was a Staff Sergeant (E-5) in the U.S. Air Force stationed at Dover Air Force Base. He was married to Heidi Ploof and had been since 1999. Beginning in 2001 he commenced an affair with Adrienne Hendricks with whom he worked part-time at a towing service.

In August of 2001 the U.S. Air Force began briefings of its personnel at Dover

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

Air Force Base that effective November 1, 2001 life insurance in the amount of \$100,000 would be in effect on the spouses of members of the military. This life insurance was scheduled to be in effect unless a member of the military took affirmative action to disenroll.

Although Ploof told his supervisor of his intent to disenroll, he had no such intention and he took no action to disenroll. In statements to others he said his money problems would soon be over. Meanwhile, Ploof told his mistress that his wife, Heidi Ploof, was packing boxes because she was moving out. Ploof told Adrienne to plan to move in on November 5, 2001.

In fact, Heidi had no plan to move out at all. All of the planning for a change at their marital residence was being done by Ploof. It included careful planning for the murder of his wife after the effective date of the new insurance policy on her life. His plan was to lure her to meet him in Dover on November 3, 2001 where he would kill her with his .357 magnum revolver by shooting her in the head. His intent was to leave her body for discovery in her parked car at the Wal-Mart store. He hoped that the murder would be unsolved and he developed a scheme to mislead the police so it would be unsolved.

Ploof carried out his plan and left Heidi dead from a single gunshot wound to the head in the Wal-Mart parking lot. Security videotape of the lot shows him walking away from the vehicle she was in with a cold and dispassionate determination. Ploof then worked to construct an alibi by making phone calls pretending distress over his wife not coming home from work. He called his friend

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

about her whereabouts prompting his friend to go search for her in the darkness on the country roads from her work place. And he even called his wife's own cell phone knowing she was dead and could not answer it. Ploof further acted to cover his crime by hiding the murder weapon on his property, by asking friends to keep another pistol and a gun case so they would not be found by the police, and by falsely telling the police his mistress was just a friend, that he owned no pistols, and that he had no knowledge of any life insurance on his wife. All of the evidence shows not only an intentional killing of his own wife, but a killing that was based on a cold and calculated plan to end her life and to deceive the police so he could collect money.

III. DISCUSSION

The law provides that if a jury has been impaneled and if it has found the existence of at least one statutory aggravating circumstance beyond a reasonable doubt, the Court is to consider the findings and recommendation of the jury without hearing or reviewing any additional evidence. A sentence of death shall be imposed if the Court finds by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found by the Court to exist. 11 *Del. C.* § 4209(d). Otherwise, the Court shall impose a sentence of imprisonment for the remainder of the defendant's life without benefit of probation or parole or any other reduction. *Id.*

A. Statutory Aggravating Circumstances

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

The jury has unanimously found that the evidence shows beyond a reasonable doubt that the murder was committed for pecuniary gain. This statutory aggravating circumstance has been established beyond a reasonable doubt.

B. Non-Statutory Aggravating Circumstances

Turning to the non-statutory aggravating circumstances, I have already described the nature of this crime. Additionally, the State has proven to my satisfaction by a preponderance of the evidence that the murder was without provocation and that the victim was defenseless.

The State has shown that Ploof was disciplined in prison for minor offenses and a major offense involving possession of a shank. Ploof claimed the shank was an etching device. Nonetheless, the shank could be used as a weapon and it was contraband he could not possess. While in the military, Ploof was disciplined for having an affair with his friend and subordinate's wife.

Ploof has a criminal record for theft of a tractor and was arrested but not prosecuted for conduct that would have established his assault in the third degree of a prior girlfriend. He intentionally caused physical injury to her by hitting her in the face.

The loss of Heidi Ploof has had a significant impact upon her surviving relatives who love her and miss her dearly.

I find that the State's evidence of future dangerousness in prison is in conflict with other testimony of the defense expert. I conclude that this factor has not been established by a preponderance of the evidence. Nor has the proffered aggravating

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

circumstance of actual intimidation of a witness been proven by a preponderance of the evidence.

C. Mitigating Circumstances

There are no mitigating circumstances at all which bear upon the particular circumstances or details of the commission of the murder. The defense has focused on other facts and circumstances which it contends are mitigating. I find that the following mitigating circumstances have been established.

The defendant grew up in difficult family circumstances with a physically handicapped and mentally retarded brother, Kevin. His parents devoted much of their time to Kevin and to thirty foster children they took into their home. The defendant has a good relationship with his family members and can be a positive influence for them, particularly his brother.

Ploof has served in the U.S. Air Force over nineteen and one-half years within the U.S. and abroad. He has achieved the rank of Staff Sergeant (E-5) and been awarded numerous commendations and service medals. While in prison he has adjusted relatively well, but I note he does have a disciplinary record.

Ploof lacks a substantial criminal record and has no prior felony convictions. He has no prior conviction for a crime of violence, but did previously intentionally cause physical injury to a former girlfriend by hitting her in the face.

Ploof is capable of following rules and regulations if he wants to and has the potential to do well in a structured prison environment. By doing that he has the potential for a positive impact upon the prison population.

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

The opinion of the defense expert on lack of future dangerousness in prison is in conflict with his own testimony that the best predictor of future behavior is past behavior. Given Ploof's conduct for which he has been convicted, I do not find the claimed mitigator of a lack of future propensity for violence or future dangerousness to have been proven by a preponderance of the evidence.

Ploof's family and loved ones would be seriously impacted by his execution.

Ploof has stated to the jury and the Court in allocution at the penalty hearing that he is sorry, that he has much remorse for Heidi, that he is sorry she will never get to see her daughter and that she will not get to reconcile more with her family. He expressed that he is sorry for her family and his family. However, after killing Heidi Ploof, he acted to cover up the murder he planned and also pretended to cry in front of the police as he tried to avoid detection and to mislead their investigation.

IV. CONCLUSION

In conclusion, the jury has found beyond a reasonable doubt the existence of at least one statutory aggravating circumstance. The same jury has unanimously recommended that the aggravating circumstances outweigh the mitigating circumstances in this case. The Court instructed the jury in this case that it would give great weight to their recommendation. The law has been amended since the jury's recommendation to clarify the General Assembly's intention that the Court give such weight as it deems appropriate to the jury's recommendation. I deem it appropriate to give great weight to the recommendation of the jury while recognizing

State v. Gary W. Ploof
I.D. No. 0111003002
August 22, 2003

that I am not bound by any recommendation the jury makes if the evidence leads me to a different conclusion. In this case, the evidence does not.

Here, there were several opportunities for Ploof to abandon his plan of murder but at every stage of his plan he chose death for Heidi Ploof. He chose death for Heidi Ploof so he could collect insurance on her life. He chose death for Heidi Ploof as part of his plan to live with his mistress. The killing of Heidi Ploof was without any pretext of moral or legal justification. It was preceded by a course of planning, reflection and calculation that makes this murder especially egregious and cold-blooded. While there are mitigating circumstances which have been proved, they are insubstantial when compared to the nature of the crime and the true character of the defendant as revealed by his crime and by his conduct.

After balancing all the circumstances, the Court agrees with the jury recommendation in this case that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

Accordingly, the Court concludes that the defendant's sentence for the Murder in the First Degree of Heidi Ploof shall be death by lethal injection.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely
President Judge

oc: Prothonotary