

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.)
) I.D.# 0107010230
 ROBERT GARVEY,)
)
 Defendant.)

FINDINGS AFTER PENALTY HEARING

Penalty Hearing Concluded: October 30, 2003
Decided: December 17, 2003

APPEARANCES

Natalie S. Woloshin, Esquire and Martin B. O'Connor, Esquire, Deputy
Attorneys General, for the State of Delaware

Jennifer-Kate Aaronson, Esquire and Jan A.T. van Amerongen, Jr., Esquire,
for the Defendant

COOCH, J.

BACKGROUND

On October 22, 2003, Defendant Robert Garvey was convicted by a jury of one count of Murder in the First Degree (title 11, section 636(a)(6) of the Delaware Code), two counts of Possession of a Firearm During the Commission of a Felony (title 11, section 1447A), one count of Robbery in the First Degree (title 11, section 832), one count of Attempted Robbery in the First Degree (title 11, section 531), one count of Conspiracy in the Second Degree (title 11, section 512), and two counts of Carrying a Concealed Deadly Weapon (title 11, section 1442). Pursuant to title 11, section 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 the charge of Murder in the First Degree.

The State thereafter gave notice of its intent to rely on two statutory aggravating circumstances, namely title 11, sections 4209(e)(1)(j) and 4209(e)(1)(o), which are respectively that the murder was committed “while the defendant was engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any degree of...robbery” and that the murder was committed “for pecuniary gain.” The State also

gave notice of its intent to rely on the following non-statutory aggravating factors:

1. The particular circumstances and details of the commission of the offenses as set forth in the indictment;
2. The character and propensities of Defendant including the propensity for violence;
3. Evidence of Defendant's drug dealing;
4. Defendant's prior criminal history;
5. Defendant's "wanted" status at the time of the murder;
6. Defendant's behavior while in prison awaiting trial; and
7. The impact of the murder upon the victim's family and friends.

The Defendant thereafter gave notice of his contention that the following mitigating circumstances existed:

1. Defendant suffers from Bipolar I Disorder;
2. Defendant suffers from Attention Deficit Disorder;
3. Defendant suffers from characteristics of Borderline Personality Disorder;
4. Lack of an adequate male role model;
5. Lifestyle as a child;
6. Family life and upbringing;
7. Youthful age of Defendant;
8. Defendant has a supportive family;
9. Involvement of others in the crime; and
10. Defendant's criminally negligent state of mind at the time of the murder.

Pursuant to title 11, section 4209(b), a penalty hearing commenced before the same jury on October 27, 2003. The evidence was concluded on October 29, 2003, with closing arguments that day including Defendant

himself giving allocution. The jury was instructed on the law and given a Penalty Phase Interrogatory Form.

Because the jury unanimously found during the guilt phase of his trial that Defendant had committed Murder in the First Degree under title 11, section 636(a)(6) of the Delaware Code (Felony Murder—Robbery/Attempted Robbery), the existence of a statutory aggravating circumstance was established, rendering Defendant eligible for the death penalty. However, during the penalty phase, the jury did not unanimously find that the evidence showed beyond a reasonable doubt that the murder was committed for pecuniary gain. By a vote of 9-3 after weighing all relevant evidence in aggravation or mitigation bearing upon the particular circumstances and details of commission of the offense, together with the character and propensities of Defendant, the jury thereafter found by a preponderance of the evidence that the aggravating circumstances found to exist did not outweigh the mitigating circumstances found to exist, *i.e.*, the jury recommended that Defendant be sentenced to life without benefit of probation or parole or any other reduction.

This is the Court's decision pursuant to title 11, section 4109(d) on the sentence to be imposed upon Defendant for the crime of Murder in the First Degree.

NATURE AND CIRCUMSTANCES OF THE CRIME

In the early morning of July 15, 2001, Defendant killed Donald Jordan during the course of a robbery gone awry. Defendant was one of five people who held up Jordan and his cousin, Turquoise Williams, after the two were lured to the Brandywine Hills Apartments with promises of sex. Defendant shot Jordan during a struggle on a landing inside the apartment building stairwell. Leonard Manlove, Rebecca King, Tracy Vanderworker, and Donial Fayson were arrested along with Defendant, and all four pleaded guilty to Robbery in the First Degree, Attempted Robbery in the First Degree, and weapons charges, with murder charges being dropped in exchange for their testimony at Defendant's trial. The co-defendants have not yet been sentenced.

Jordan and his cousin met Vanderworker and King at the Forman Mills clothing store on the night of July 14, 2001. The four conversed and eventually exchanged phone numbers. The two women told Jordan and his cousin, who resided in Pennsylvania, to come back to Delaware later that night in order that they could then engage in sexual relations.

Jordan and his cousin arrived in Delaware sometime around 2:00 a.m. on Sunday, July 15, 2001, and the two women invited the men up to their apartment. As Jordan and his cousin followed the women into the building,

the four were ambushed by Defendant, who was armed with a semiautomatic handgun. A struggle ensued during which Jordan's cousin apparently attempted to grab the handgun from Defendant, and the weapon discharged. Jordan then ran to another part of the apartment building before collapsing, the victim of a single gunshot wound to the chest.

Following the struggle, Defendant chased Jordan's cousin out of the building and into the dumpster area of the complex. There, Defendant pistol-whipped the cousin, before taking his jewelry and threatening to kill him. The cousin eventually escaped and was picked up by the police down the road from the Brandywine Hills apartment complex.

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 recommendations 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.¹

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.²

Statutory Aggravating Circumstances

By finding the Defendant guilty in the trial phase, the jury has unanimously found that the evidence shows beyond a reasonable doubt that the murder was committed while Defendant was engaged in the commission of, or attempted commission of, or in flight after the commission or attempted commission of Robbery in the First Degree. The jury did not unanimously find that the evidence showed beyond a reasonable doubt that the murder was not committed for pecuniary gain. Therefore, one statutory aggravating circumstance has been established beyond a reasonable doubt.

Non-Statutory Aggravating Circumstances

Turning to the non-statutory aggravating circumstances, the Court has already described the nature of the crime.

The State has shown that, at the time of his arrest for the murder of Donald Jordan, Defendant was wanted in the State of New York on drug

¹ DEL. CODE ANN. tit. 11, § 4209(d) (Supp. 2002).

² Id.

charges. The State has also shown that, at the time of his arrest, Defendant was on probation from a guilty plea entered in 2000 to a drug charge incurred in Delaware. Additionally, the State has shown that in 2001, Defendant pleaded guilty to larceny charges in New York.

The State has shown that Defendant was disciplined while in prison in Delaware, including discipline for an altercation involving a cellmate.

It was very clear from the penalty testimony from Donald Jordan's relatives that the loss of Donald Jordan has had a significant impact upon his surviving relatives who loved him and miss him dearly.

Mitigating Circumstances

The fact that the felony murder of Donald Jordan was committed with criminal negligence and not intentionally or recklessly is a mitigating circumstance. In connection with the homicide charge, the State never charged Defendant with having any state of mind other than that of "criminal negligence." "Criminal negligence" is defined as "a failure to perceive [a risk] constitut[ing] a gross deviation from the standard of conduct that a reasonable person would observe in the situation."³ Additionally, Defendant has established other mitigating circumstances, as follows.

³ DEL. CODE ANN. tit. 11, § 231(d) (2001).

A defense expert (Dr. Edward Dougherty, a psychologist) established that Defendant suffers from Bipolar I Disorder, Attention Deficit Disorder, and characteristics of Borderline Personality Disorder.

Defendant was an “unwanted” child who grew up in a neglectful and unsafe home, with a father who in effect lived two lives—one with his family and the other with his “girlfriends.” Defendant’s father made no attempt to rectify or disguise this facet of his relationship with his family.

In contrast to his other siblings, all of whom were older, Defendant had no real relationship with his father, as evidenced by the fact that at one time, Defendant’s father abandoned him on the porch of the house he was living in while separated from Defendant’s mother. Nevertheless, Defendant’s family would be seriously impacted by his execution, as both a sister and brother testified regarding their affection for Defendant.

Defendant established that he is capable of following rules in a structured prison environment.

Defendant has stated to the jury and the Court in allocution that he prays for the continued healing of the victim’s family, as well as of his own. Defendant acknowledged that it was not enough but still offered his apologies.

CONCLUSION

The jury has found beyond a reasonable doubt the existence of at least one statutory aggravating circumstance. The same jury has unanimously recommended by a 9-3 margin that the aggravating circumstances do not outweigh the mitigating circumstances in this case. The Court instructed the jury in this case that it would give great weight to its recommendation. The jury serves as the “conscience of the community.” This Court deems it appropriate to give great weight to the considered recommendation of the jury “while recognizing that [it is] not bound by any recommendation the jury makes if the evidence leads...to a different conclusion.”⁴ In this case, the evidence does not.

Defendant showed a callous disregard of another human life by his actions on July 15, 2001. The murder of Donald Jordan was an utterly reprehensible act. Donald Jordan’s family and friends will never completely heal from this. But after balancing all of the circumstances, including the fact that at most the jury has found that the Defendant acted with a criminally negligent state of mind, the Court will not override the jury

⁴ State v. Ploof, I.D.# 0111003002, 2003 WL 21999031, at *4 (Del. Super. Ct. Aug. 22, 2003).

recommendation in this case that the aggravating circumstances found to exist do not outweigh the mitigating circumstances found to exist. Accordingly, the Court concludes that the appropriate sentence for Defendant's July 15, 2001 killing of Donald Jordan for which he was found guilty of Murder in the First Degree is imprisonment for the remainder of Defendant's life without benefit of probation or parole or any other reduction.

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
xc: Counsel
Investigative Services