

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
)	
v.)	
)	
TYRONE N. GUY, JR.,)	ID No. 0107017041
)	
Defendant.)	

FINDINGS AFTER PENALTY HEARING

Penalty Hearing Commenced: July 7, 2004
Penalty Hearing Concluded: July 8, 2004
Jury Recommendation: July 8, 2004
Decided: September 30, 2005

Peter N. Letang and David R. Favata, Deputy Attorneys General, Department of Justice, 820 North French Street, Wilmington, Delaware. Attorneys for the State.

Jennifer-Kate Aaronson, Potter, Carmine & Aaronson, P.A. 840 North Union Street, P.O. Box 514, Wilmington, Delaware and Anthony A. Figliola, Jr., Figliola & Facciolo, 1813-A Marsh Road, Wilmington, Delaware. Attorneys for Defendant.

CARPENTER, J.

I. Background

The Defendant, Tyrone Guy was charged with one count of Murder in the First Degree (Intentional Murder), one count of Murder in the First Degree (Felony Murder), one count of Possession of a Firearm During the Commission of a Felony, one count of Attempted Robbery in the First Degree, and one count of Conspiracy in the Second Degree¹ on September 24, 2001.

Jury selection began on June 3, 2004² and continued until June 15, 2004. The trial commenced on June 15, 2004 and the guilt phase lasted to June 29, 2004. The jury deliberated over the course of several days and delivered their verdict of guilty on all counts on July 2, 2004.

Between July 7, 2004 and July 8, 2004, a capital murder penalty hearing was held as required by 11 *Del. C.* § 4209(b). The jury that determined the guilt phase of the trial was the same jury which heard the evidence at the penalty hearing, with the exception of one juror who experienced a personal tragedy and was unable to continue her service. An alternate juror was substituted for her at the beginning of

¹ Defendant was originally charged with Conspiracy First Degree but the count was amended by the State prior to the case proceeding to the jury.

² The delay between trial and the arrest of the Defendant relates to the Defendant originally being tried together with his co-defendant and the trial ending in a mistrial when the jury was unable to reach a unanimous verdict. The Defendants were subsequently severed and tried separately.

the penalty hearing. At the penalty hearing, the State argued that it had established the following statutory aggravating circumstance beyond a reasonable doubt:

- 1) 11 *Del. C.* § 4209(e)(1)(j) – 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 rape, unlawful sexual intercourse, arson, kidnapping, robbery, sodomy or burglary.

The State also presented evidence that the following non-statutory aggravating circumstances existed: (1) substantial, emotional, psychological, and financial impact on the victim’s family and (2) impact on the community.

The defense presented evidence that the following mitigating circumstances existed in the case: (1) the age of Defendant at the time of the crime; (2) lack of prior criminal history; (3) loving and supporting family who will suffer great emotional stress if he is executed; (4) two young children who will be left without a father; (5) he is amenable to prison life; (6) the relative lack of disciplinary record while incarcerated since his arrest on July 24, 2001; and (7) the lack of any antisocial disorders. Finally, Defendant refused to exercise his right of allocution pursuant to 11 *Del. C.* § 4209(c)(2).

At the completion of the evidence, the Court instructed the jury regarding the statutory framework of the Delaware death penalty statute and how their deliberations should be conducted. The jury returned its sentencing recommendation on July 8, 2004 and found (a) that the State had established beyond a reasonable doubt the

existence of a statutory aggravating circumstance as evidenced by the verdict on the felony murder count and (b) that the mitigating circumstances outweighed the aggravating circumstances by a vote of eleven to one.

II. Non-Statutory Aggravating Circumstances

Since under the present death penalty statute the decision as to whether the State has established beyond a reasonable doubt the existence of a statutory aggravating circumstance is left solely to the jury to decide, the Court will proceed to its review of the aggravating and mitigating factors presented. The Court finds that the following non-statutory aggravating circumstances have been established through sufficient and reliable evidence.

A. Substantial, emotional, psychological, and financial impact on the victim's family

Sally Alameri, the victim's eldest daughter, was 26 years old when she testified on behalf of her family, detailing the significant impact that her father's murder had on the family. Sally arrived in the United States in July 1995 with her father. At the time, her parents were separated and their mother lived in Yemen, so Abdulla Alameri had sole responsibility for raising his five children. In order to support his family, he worked seven days a week, driving his Jack & Jill ice-cream truck despite the fact that he had received an accounting degree from Oxford University. His wife, Samya

Nasar, recalled from one of her visits to the U.S. how exhausted Abdulla was from his long hours, noting that he would often sleep on the couch because he was too tired to go up to his bedroom. Despite his wife's pleas for him to return to Yemen with the children, where he could earn a better wage at a better job, Abdulla chose to sacrifice his own comfort for the well-being of his family. He brought his family to the United States in hopes that they would all have a better life. He told all the children that this was the greatest country in the world, and that it was a place where they would receive an education and more importantly where they would be safe.

Sally Alameri, who was 23 years old at the time of her father's death, immediately recognized that the burden of taking care of the family fell upon her shoulders when her father was killed. To make matters worse, her mother's attempts to obtain a visa in order to visit and help her children cope in their greatest time of need were foiled initially and ultimately, it took her three months to enter into the United States. During that time, the children managed as best as they could with the tragedy that had devastated their lives. All of the Alameri children were in school at the time of their father's death and Sally Alameri and her sister Sumir were also working. However, after the murder, Sally Alameri was forced to quit school, work full-time and overtime in order to support the family. The family was unprepared to juggle the responsibilities of school, miscellaneous bills and the mortgage on the

family home, purchased in 1997. The family recalled anonymous donations soon after their father's death and these donations were instrumental in paying the family's first month's bills.

The children remain stunned and horrified by the reality that their hardworking and generous father could be gunned down in such a senseless manner. In the words of Sally Alameri, the family's "dreams just fell apart." Adel Alameri, the victim's eldest son, was twenty-two when he testified about the impact his father's death had on he and his family, saying "no words" could describe the loss. Summer Alameri, one of Mr. Alameri's younger daughters who was twenty-four at Defendant's trial, said that she misses her father tremendously. In an attempt to fill the void she feels, years after his murder, she still writes him letters every morning.

Badr Alameri, the victim's youngest son who was twenty at the time of Defendant's trial, recalled how he used to go to his father for advice and enjoyed watching sports with him. He testified that he was traumatized by his father's murder and misses him. At one point, Badr Alameri said he could not believe his father was "dead" and confided that he still dreams about him. Mr. Alameri's youngest child, Sarah, was sixteen at the time of the trial. She testified that like her other siblings she missed "joking" with her dad who she described as "more of a friend" than a father. Sarah Alameri remembered her father's advice and guidance saying "He always just told me to do good in school, respect my sisters and my brothers, and appreciate that

I have my brothers and sisters with me.” All of the children have suffered a horrible injustice, having their father cruelly taken from them, leaving them in a country to which they were just getting accustomed.

B. Impact on the community

The morning after Abdulla Alameri’s murder the Jack & Jill truck drivers who were acquainted with him went to his house. They told his family that in memory of Abdulla they had organized a procession of about 23 Jack & Jill trucks from Philadelphia down to Tenth and Madison, in Wilmington, where Abdulla had been gunned down. When the drivers arrived at the intersection, some of them stopped and tried to clean Abdulla’s dried blood from the street while the others gathered around and prayed. In addition, the family received letters from Wilmington school children extending their condolences for the loss of Abdulla and offering money they earned selling ice-cream to help ease the financial burdens on the family.

III. Mitigating Circumstances

The Court finds that the defense presented reliable and sufficient evidence to establish the following mitigating circumstances.

A. The age of Defendant at the time of the crime

Tyrone Guy was 20 years old at the time Mr. Alameri was killed.

B. Lack of prior criminal history

Before this arrest, Defendant did not have a criminal record.

C. Loving and supporting family who will suffer great emotional stress if he is executed

Charles Omar Wisher, Defendant's older brother, testified that of all his siblings, he was closest to Defendant. As children, they played Little League football, baseball and basketball together. Wisher worried about how Defendant's girlfriend and three children, only one of whom is Defendant's, would cope with his incarceration. He admitted that his family has taken Defendant's place in caring for his children. Wisher revealed that, despite his incarceration, Defendant is a "major support system" in his life. When asked if he would continue to support Defendant regardless of the sentence, he said "I'll always be there for him."

Charlene Guy, Defendant's mother, took the stand to plead for her son's life. She recalled how Defendant had always been there to care for his sick father, and to look after his own family. When asked what her visits with her son are like now, she replied "hell" and explained the agony she suffers at not being able to touch her son. Similarly, she lamented the fact that Defendant cannot have any physical contact with his own family. Finally, she said it would be totally unfair for her son to receive the death penalty "just as it is unfair for [the Alameris] to have to deal with what they're dealing with." Like his wife, Tyrone N. Guy, Sr., Defendant's father, testified that

his youngest son was a “very helpful” child. These days he goes to see Defendant as often as he can despite the pain he feels at having to see his son behind bars. Mr. Guy confirmed his commitment to his son, saying that he would continue to visit him in prison for the rest of his life.

D. Two young children who will be left without a father

Defendant has two young children, who would both be left without a father if the Court were to impose the most serious sanction. Defendant contends that he can still contribute to the lives of his children if his life is spared.

E. He is amenable to prison life

According to Dr. Edward J. Dougherty, a forensic psychologist, Defendant is not a danger to himself or others and has the type of personality that will enable him to adapt to life in prison. To date the Defendant has functioned well in prison.

F. The relative lack of disciplinary record while incarcerated

since his arrest on July 24, 2001

While incarcerated, Defendant had approximately three write-ups. The most serious infraction stemmed from an altercation which started when an individual made offensive comments regarding Defendant’s family and then attacked him. In response, Defendant became physically aggressive and as a result, he and the other participant were sent to solitary confinement.

G. The lack of any antisocial disorders

Dr. Dougherty met with Defendant on November 16, 2003 in order to conduct a comprehensive psychological evaluation of Defendant. Dr. Dougherty concluded that Defendant is not a danger to himself, nor to other inmates, given his environment.

IV. Conclusion

While the trials of Mr. Guy and Mr. Hassan-El were separated after the jury was unable to reach a unanimous verdict when they were initially tried together, the Court can find no reasonable basis to impose different sentences on these defendants. The evidence supports the conclusion that both Defendants participated in the attempted robbery, both fired a handgun during the robbery attempt, and no particular individual was the leader or mastermind of the event. In fact, the evidence would suggest that the idea of robbing the ice cream man was hatched on the same evening it occurred without a great deal of organization or thought as to how it would occur or the possible ramifications if things went wrong. This was simply a crime of opportunity performed by two immature individuals who at that moment exhibited a thug mentality so inconsistent with the morals and social fabric of their families that it is difficult to understand or rationalize.

The unfortunate consequence of their conduct has been the loss of a wonderful man who cared for his family, cared for the neighborhood children and was simply

a decent human being. He had brought his family to America with a dream of giving them a better future filled with promise, hope and a better way of life than that available in his homeland. He loved this country and believed if you worked hard and treated people with kindness and compassion that the American dream would come true. By all accounts, he had raised a wonderful family of bright and caring individuals with promising futures. However, in a matter of seconds, this American dream was dashed by the conduct of two strangers whose only motive was a reward of a few dollars that had been gained from that night's sale of ice cream. Not only was this a senseless and unnecessary act, it has forever affected the lives of the Alameri family. It is the Court's hope that while their father is not present, the words and hope of their father will live on in his children and his dreams for them will someday be realized.

Unfortunately the dreams and hopes of the families of Mr. Guy and Mr. Hassan-El, have too been forever changed. Their sons will not be there to help them as they age, their sons will not be there to help them if they become ill, and the pride of watching their sons mature into responsible young men will never occur. For Mr. Guy, he will not be there to watch his daughter kick her first soccer ball or dance in her first recital or be there to put her on the bus when she goes off to school. For Mr. Hassan-El, he will not be there to teach his nephew how to throw a football or to take

his niece to the park as he used to prior to being incarcerated. But unlike their families, Mr. Guy and Mr. Hassan-El's situation has been dictated by the decision they made on July 18, 2001. For that, the Court believes they should serve the remaining part of their lives in prison.

The Court agrees with the jury that while neither Defendant has lived an exemplary life, their young age, the potential for a positive influence and continued interaction with their families and up to now, positive community support outweigh the aggravating factors argued by the State. As outrageous and senseless as this killing may have been, the history and background of these defendant does not reflect a situation where death is the only appropriate consequence.³ They have committed a horrible mistake that they will now pay for the rest of their lives. The Court agrees with the jury that this is sufficient punishment and that the mitigating circumstances in this case outweigh the aggravating circumstances.

As such, the following sentence is imposed.

As to IN-01-08-0388, Murder First Degree (Intentional Murder), the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for the remainder of his natural life without benefit of probation, parole or any other sentence reduction consistent with 11 *Del. C.* § 4209(a).

³ The Court recognizes that Mr. Hassan-El's background reflects a more extensive criminal history and a worse incarceration record than that of Mr. Guy. However, the Court does not find the circumstances warrant a different conclusion.

As to IN-01-08-0389, Murder First Degree (Felony Murder), the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for the remainder of his natural life without benefit of probation, parole or any other sentence reduction consistent with 11 *Del. C.* § 4209(a).

As to IN-01-08-0390, Possession of a Firearm During the Commission of a Felony, the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 10 years.

As to IN-01-08-0391, Attempted Robbery First Degree, the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 10 years.

As to IN-01-08-0392, Conspiracy Second Degree, the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 2 years which is suspended for 2 years at Supervision Level 2. This sentence is to run consecutive to Criminal Action No. 01-08-0391.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.