



Court Of Appeals Hears Last Death Penalty Case In System; Future of Death Penalty Hangs In Balance

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Introduction

The case of John Taylor v. People of the State of New York represents the last death penalty case currently in the New York State court system. The highest court in New York, The Court Of Appeals, had previously ruled New York's Death Penalty Statute un-Constitutional in the case People v. LaValle. Now, three years later, this last case could be one that brings back the death penalty judicially. Since the previous ruling, there have been two new justices appointed to the Court by George Pataki, a governor who had brought back the death penalty in 1995. Governors generally appoint judges whose political and judicial positions resemble their own. Such is the setting in which John Taylor's horrific and brutal crime for which he stands sentenced to death is being considered. As such, the case represents a clear possibility that the death penalty might be judicially reinstated.

Factual Background

John Taylor and his accomplice, Crag Godineaux entered a Wendy's restaurant in Flushing on May 24, 2000 as workers were preparing to close for the night. Taylor robbed the manager at gunpoint, taking about \$2400. They then ordered all seven employees into a large freezer in the basement, binding and gagging five of them, and tying plastic bags over their heads. They shot each of the seven in the head, killing five. Jaquoine Johnson and Patricio Castro survived and testified at trial. Godineaux, his accomplice, who is mentally retarded, pled guilty and was sentenced to life in prison without parole. Taylor was convicted of five counts of first degree murder and sentenced to death on three of them. On the remaining counts and other non-capital crimes, he was sentenced to 15 consecutive terms of 25 years to life in prison.

Prequel

This case was the sole case heard

by The Court Of Appeals heard on September 10, 2007. Representing the Defendant was Capital Defender Kevin Doyle, First Deputy Capital Defender Susan Salomon, and Deputy Capital Defender Barry J. Fischer. Representing the People, on behalf of Queens County District Attorney Richard Brown were Assistant District Attorney's Gary Fidel, John Castellano, and Donna Aldea. The format was as follows: The Defense was given an hour and twenty minutes, the prosecution an hour and fifty minutes, followed by thirty minutes of rebuttal by the Defense.

Although there were many issues which were argued in the legal briefs, there were three main issues which were the subject of the oral argument. 1) Whether the court should uphold it's previous decision in People v. LaValle, 2) The Prosecutor's comments regarding the Defendant's children testifying at the penalty phase of the trial, and, 3) The Defendant's Right To Counsel.

Because the judicial decision rendered in this case had death penalty implications, issues surrounding the death penalty were also argued.

Upholding Lavelle

The main issue was whether the court should uphold its previous decision in Lavelle, which was that the New York Death Penalty Statute was Constitutionally defective, in that the statute required judges to inform the jury that they could sentence a defendant to death or to life imprisonment without parole, or should they deadlock, the Court would sentence the defendant to the maximum amount that it could. The previous ruling was that such an instruction was coercive because it encouraged a jury to do the same thing and sentence a defendant to the maximum amount they could, death. Being flawed in that way, the Court said the legislature would have to redraft a new statute if they wanted a death penalty. The prosecution sought to overturn that decision attempting to compel the Court to bring back the death penalty

judicially. Susan Salomon, of the Capital Defenders Office, argued this issue on behalf of Taylor. She argued that the statute was indeed flawed in its construction, and under questioning from Judge Smith, indicated that any attempt by a judge to fix the flaw by substituting the legislature-required jury instruction to one of their own was improper.

Prosecutor Aldea, countered, opening her presentation by saying that the previous ruling of the court was "unnecessary, inappropriate and incorrect." This prompted the immediate response from Chief Judge Judith Kaye, "Those are fighting words, counsel." Aldea tried to make light by chuckling a little while going forward with her argument, but it was clear that she had antagonized Kaye. One particularly telling exchange between Aldea and Judge Smith occurred when Smith asked her, "So you are saying that we should save the statute any way that we can, even if it means that we interpret the statute in a way other than that intended by the Legislature?" Her response was "Yes." If LaValle is overturned, it could mean the reinstatement of the death penalty in New York.

Right To Counsel

An interesting issue with respect to the right to counsel was raised in this case. In order to uphold the 6th Amendment guarantee of The Right To Counsel, the law dictates that once it has been communicated to the authorities that a defendant has an attorney, all communication between police and the suspect must cease outside of the presence of that attorney, and any waiver of that right must be made in the presence of a lawyer.

Unusualness In The Taylor Case

Taylor incriminated himself verbally, in writing, and on videotape. The problem is that while Taylor was in custody, but before he incriminated himself, Pam Jordan, an attorney who had represented him in a previous matter, called the police and told them she was representing him. They then conveyed

that information to the Defendant, who replied that he did not want her to represent him. The police then continued to question him, and at some point thereafter he implicated himself. The next day, when the police wanted to conduct a police lineup they then called Jordan and had her come to the station to observe the lineup.

Arguments Surrounding This Issue

Barry Fisher argued this point on behalf of the Defense. Summarized, the arguments were: that the police should not delve into the relationship between the suspect and the lawyer, or inquiring as to whether the suspect wants to waive the right to counsel, because that is a Pandora's Box which could only open the door to a lot of controversies in other cases. Fischer mentioned the need for police to have a 'bright line' clearly indicating to them that once an attorney has communicated to the police that he is representing a defendant, all questioning must cease.

The question was asked what constituted sufficient relationship between a lawyer and a suspect, given that a lawyer who was a virtual stranger with no connection to a suspect could not simply call the station and announce he was representing the suspect. The reply was that a sufficient connection was being retained by the suspect or the suspect's family, or previous representation on a separate case. Fisher found it suspicious that the police had accepted his waiver outside of the presence of Jordan, and yet insisted that she come to the station the next day for the lineup despite what Taylor had previously said. When the Prosecution was asked by one of the Judges why the police had suddenly brought the lawyer in the next day for the lineup, one of them replied "Out of expediency". The court's follow up remarks indicated that that was an insufficient answer.

The importance of this issue was that if a violation of Taylor's Right To Counsel was found, that would mean suppression of all of the statements, which is what furnished some of the



evidence of premeditation at the penalty phase. This is an unusual case in that the Defendant was not raising this issue so as to get a reversal of his conviction, but merely to get a new sentencing hearing.

Prosecution Comments

At the sentencing hearing, the defendant's children testified that they loved their father, and that he was loving. The prosecution attacked the Defendant by questioning what kind of father would subject his children to the horrible experience of testifying in such a hearing, and also referred to them as "props", in a defense that was staged. Fisher argued on behalf of the Defendant that allowing such a commentary, which has previously been unknown in other cases, would have a "chilling effect on family mitigation". Aldea argued that the word "props" did not mean that the children were lying, and she also opined that the entire relationship between the defendant and his children was established only after he had been arrested. Fisher responded on rebuttal that that was not true. Aldea's reply to this issue in general was "The comments were proper given that the issue was injected by Defendant."

The Death Penalty Issue as a Whole

Because this case is one in which the court could bring the death penalty back judicially, the proposition of the Death Penalty's reinstatement loomed large over the proceedings. The defense therefore focused on the subject of the death penalty itself during a portion of the time allotted to them during oral argument. The defense elected to have Kevin Doyle, the Capital Defenders, focus solely on this issue. Putting forth a variety of arguments against the death penalty, he stated that a dozen polls taken since 2003 showed that the public has been turning against the death penalty, not just in New York, but also in other states, and internationally. He indicated three reasons for the shift in opinion:

- 1) When life without parole was introduced as an alternative punishment, favor for the death penalty drops considerably
- 2) The Catholic Factor
- 3) The Issue of Innocent People possibly being Executed

Evolving Standards Of Decency Argument

Doyle stated that evolving standards of decency were against the death penalty. He indicated, "Right across the Hudson in New Jersey, for example, there is a current moratorium on the death penalty and it is on the verge of being abolished there as a result of the findings of a study commissioned by the Governor, which recommended that it be abolished." He also referenced the United States Supreme Court decision in Roper v. Simmons, which declared that the execution of juveniles was against the evolving standards of decency. Within that opinion the Court considered that all countries save the United States and Somalia had ratified Article 37 of the United Nations Convention on the rights of children, which prohibited capital punishment, and the fact that the United States stood alone with only Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, and the Democratic Republic of Congo and China in permitting capital punishment for anybody. He urged the judges to make New York a moral example that other states with the death penalty could look to in considering whether or not to continue it.

The Catholic Factor

Catholics make up a large portion of New York State's population, and the recent definitive position taken by the Church against the death penalty was responsible for some of the change of opinion.

Innocence Argument

Doyle also argued that the death penalty has implications with respect to wrongful convictions. New York currently has an alarming 23 DNA exonerations. The reinstatement of the death penalty would assure that there would be executions of people who were innocent but who had nonetheless been wrongfully convicted. To further support this contention he mentioned that in the 19th century eight likely innocent people had been put to death in New York. When asked by *The Guardian*, following the hearing the source of that statistic, Doyle mentioned the book *In Spite Of Innocence* by Bedau and Radelet. He also referenced the fact that former Gov. Cuomo, a staunch enemy of the death

penalty, had also referred to that number in a 1983 speech at St. Rose College in Albany.

Comments Following The Hearing

A number of people offered comments after the hearing, both those who were directly involved, and those who had an interest in its outcome.

Those with direct involvement

Commenting on the importance of the decision of the Court in this case, Kevin Doyle stated after the hearing that if the Court brought back the death penalty "the execution of the innocent is a virtual inevitability." Regarding the racial dynamics inherent in the death penalty's application, he said, "The dynamics of discretion is damned to be discriminatory." He also said "We believe the Court will stand by its precedent. We believe the death penalty is finished in New York."

Richard Brown, District Attorney of Queens, had some interesting comments. He stated that although he was the respondent in this case and his office was arguing for the reinstatement of the death penalty, he was personally against the death penalty. He stated that his problem with it was that it was a "Terribly inefficient use of prosecutorial resources which took away from manpower that could be used in the prosecution of other violent crimes; and that it didn't provide the closure that families of victims seek because appellate procedures create long intervals between trial and execution of sentence, which often lasts as much as 20 years. When asked by *The Guardian* about the contradiction between his position and the fact that his Office was seeking to reinstate the very penalty that he was opposed to, Brown's response was, 'I had to defend the law as it existed'. It didn't seem to matter to him that it is within a district attorney's discretion whether or not to seek the death penalty, and that therefore there was no contradiction between not seeking the death penalty and the obligation to uphold the law, and that therefore he did not need to seek the reinstatement of a penalty that he felt was not good for society.

Interested Parties who were not involved in the litigation

There were people who were not parties in the litigation who nonetheless

were interested in the outcome of the case.

Sharon Witbeck, whose nephew was killed, stated that "It's ironic that we are talking about premeditation and morality, yet we are premeditating about executing him." She also opined that the financial resources that are spent on the death penalty would be better spent on crime prevention. She wondered out loud about the cost of the hearing itself and all of the research and time that went into the preparation of the briefs, argumentation etc. inherent in capital prosecution and defense.

Marie Verzulli, whose sister was murdered, and who works as a Victim's Outreach Liaison with the group New Yorkers Against The Death Penalty, said, "I hope that the Court upholds its decision." She did not want to live in a state that had the death penalty, because it put all of the focus on the defendant and not on the victims, and that the attendant publicity during the appeals process was a hindrance to victims' family members healing.

David Kaczynski, Executive Director of New Yorkers Against The Death Penalty issued a press statement which, in part, stated, "The Court Of Appeals got it right in 2004. The Lavelle decision found that the 1995 Capital Punishment Law contained an inherent bias that could not withstand Constitutional scrutiny." Kaczynski referred to 2004 and 2005 public hearings of the Assembly in which victim family members, law enforcement personnel, and other experts, testified about cases in which the death penalty was given. The Assembly learned that the victims were re-victimized by the attention given the perpetrator, and taxpayers spent \$200 million over 10 years while creating a serious risk that innocent people could be wrongfully executed. Public opinions show that New Yorkers increasingly prefer life without parole to the death penalty.

Rebecca Kurti, of the group Campaign To End The Death Penalty, found it outrageous that the prosecutor commented on Taylor's children testifying in his defense. Her sentiment was that the State was trying to execute their father and they wanted him to live because they loved him. what were they supposed to do, keep quiet and let him be executed? ■