

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

STATE OF DELAWARE,)	
)	
)	
v.)	
)	
AKBAR HASSAN-EL,)	ID No. 0107017049
)	
Defendant.)	

FINDINGS AFTER PENALTY HEARING

Penalty Hearing Commenced: June 1, 2005
Penalty Hearing Concluded: June 3, 2005
Jury Recommendation: June 3, 2005
Allocution: June 2, 2005
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.

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Andrew J. Witherell, 100 East 14th Street, Wilmington, Delaware. Attorneys for Defendant.

CARPENTER, J.

I. Background

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

Jury selection began on May 10, 2005² and continued until May 13, 2005. The trial commenced on May 17, 2005 and the guilt phase lasted until May 26, 2005. After more than a day of deliberation, the jury found the Defendant guilty of Murder in the First Degree (Felony Murder), Murder in the Second Degree (LIO of Murder in the First Degree), Possession of a Firearm During the Commission of a Felony, Attempted Robbery and Conspiracy in the Second Degree.

Between June 1, 2005 and June 3, 2005, a penalty hearing was held as required by 11 *Del. C.* § 4209(b) before the same jury that had found the Defendant guilty.

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.

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; (2) impact on the community; (3) Defendant’s propensity for past and future violence; (4) lack of remorse; and (5) lack of amenability to a correctional environment.

The defense presented evidence that the following mitigating circumstances existed in the case: (1) supportive family; (2) potential for rehabilitation; (3) age of the Defendant at the time of the commission of the offense ; (4) impact of death penalty would have on his family; (5) evidence that the Defendant did not actually kill victim; (6) Tyrone Guy was also convicted of first-degree murder and the jury has recommended a life sentence be imposed; (7) mercy ; and (8) positive attributes. Finally, Defendant exercised 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 June 3, 2005, finding that (a) that the State had established beyond a reasonable doubt the existence of a statutory aggravating circumstance as evidenced by their 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 statutory aggravating circumstances 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, testified on behalf of her family, detailing the significant impact that her father's murder had on the family. Because their parents were separated and their mother lived in Yemen, 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 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. All of the Alameri children were in school at the time of their father's death and Sally and her sister Sumir were also working. However, after the murder, Sally 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 a mortgage, bills and school. 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, the family's "dreams just fell apart."

B. Impact on the community

Defendant's own mother, Mrs. Saduqah Hassan-El, testified that Mr. Alameri was a "nice, caring person," who was often generous enough to give free treats to those children who could not afford them. Furthermore, he was admired and cherished by his co-workers as evidenced by their organization of a memorial procession of about 23 Jack & Jill trucks, which drove from Philadelphia to Tenth and Madison, in Wilmington, where Abdulla was killed. 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. Moreover, the family received letters from Wilmington school children extending their condolences for the loss of Abdulla and offering money they had earned to help ease the financial burdens on the family.

C. Propensity for past and future violence

Detective Michael Lawson, the Chief Investigating Officer in the case, testified as to the Defendant's prior criminal history. On April 17, 2001, Defendant was arrested after being observed firing a 9-millimeter handgun. On January 3, 2003, a jury found Defendant guilty of Reckless Endangering First Degree and Possession of a Firearm During the Commission of a Felony.

Toby Davis, the Records Supervisor at the State of Delaware Department of Correction testified that Defendant was being held in the Secure Housing Unit (SHU) at the time of trial. Davis reported that Defendant had approximately 15 disciplinary infractions since his arrival at the prison on July 24, 2001. While some of the infractions were minor, consisting of Defendant talking while in the chow-line or not getting out of the shower quickly enough, on January 22, 2002, September 19, 2003, and November 21, 2003, Defendant was cited for infractions stemming from disorderly or threatening behavior and failing to obey an order. Moreover, on December 21, 2004, Defendant was written-up for assault, disorderly or threatening behavior, creating a health safety or fire hazard, and failing to obey an order. After a hearing Defendant was found guilty of all of the charges, except for the assault charge which was dismissed.

D. Lack of remorse

While Defendant expressed sympathy for the Alameri family during his allocution saying “I’m sorry for [your] loss,” he refused to accept any responsibility for Mr. Alameri’s death. Despite his description of the crime as “senseless” and a “tragedy,” he repeatedly denied his guilt saying that he “didn’t do it” and that he planned to appeal “until, God willing, it is proven that I did not kill Abdulla I didn’t have nothing to do with your father being killed.”

E. Lack of amenability to a correctional environment

The State contends that Defendant is not amenable to the correctional environment and suggests this as an aggravating factor weighing in favor for the imposition of the death penalty. In defense of the State's contention that he has a propensity for past and future violence, Defendant said:

"I came in jail 19 years old still a boy, basically, around grown men who, you know, you either hold it down for yourself or they going to hold you down and take what you got, you know, your property, your manhood, if that's what it come to. So I establish myself that I'm one of the strong, you know? And they use that against me and say, yeah, he's violent. But what they showing you is minor things. That what goes on in prison. Me telling people, you know, I'm not going to stand for this or standing up for myself or fighting with somebody who approaches me, that doesn't that I'm a killer, that I killed somebody, and I deserve to be put to death. . . . So you take a boy, you put him in a jungle, what you expect him to become in the jungle but that he adapt to his environment and become what it is to survive in there I'm saying, it's like y'all can't see into our world that I grew up in, where I'm in, in my environment."

While this Court recognizes the realities of the prison environment and the influence such a harsh environment can have on individuals, the Defendant's ability to adjust his behavior to an incarceration setting and his disregarding of prison rules and regulations while incarcerated is relevant as an aggravating circumstance. That said, Defendant's record while imprisoned is not particularly noteworthy and will not play a critical role in the Court's determination of the appropriate penalty.

III. Mitigating Circumstances

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

A. Supportive family

The Hassan-El family appeared in some form every day of the trial. Members of the family testified about their dedication to their religion and their attempt to raise Defendant to respect life and law. They conveyed their dedication to their son, brother, nephew, and uncle by their presence in the courtroom, day after day as well as through their testimony which recounted the joy and value that Defendant had brought into each of their lives. Each member of the family who testified, expressed unconditional support for the Defendant in the future regardless of the sentence imposed. It is a tragedy that all of this love and dedication could not save Defendant from this lamentable fate.

B. Potential for rehabilitation

Defendant referred several times to his religious faith and God during his allocution. At one point, he revealed his potential for education and rehabilitation saying “I make mistakes. And you got to learn from mistakes. And you know, basically, me being put to death, there is nothing to learn from that. It’s over. But by me being put in jail, possibly the rest of my life, I’m saying, I have a lot more of time to grow. As my time goes on, you know, I have time to build and become, maybe

become something, you know, or whatever, you know, in jail, whatever the programs that they have to offer to better yourself, until whatever happens happens.”

C. Age of the defendant at the time of the commission of the offense

Defendant was only 19 when he was arrested and imprisoned for this crime.

D. Impact death penalty would have on his family

Jamilla Hassan-El Wise, Defendant’s older sister, testified that they had a very close-knit family, and that in his youth Defendant enjoyed being close to his sister and often confided in her when he had a problem. In addition, she explained how Defendant assisted her with many of the problems accompanying the separation from her husband in 1998. She recalled how Defendant would often stop by to take her children to the park and even encouraged his nephew to become involved in football. Finally, she detailed the sense of anger and loss her children feel now that Defendant has been found guilty and faces the chance of being sentenced to death. Despite the sadness and anger felt by Jamilla Hassan-El Wise and her family, she confirmed that she would support her brother regardless of the sentence he receives.

Larry Wise, Sr., Defendant’s brother-in-law, testified that he had known Defendant since he was 12 years old and described Defendant as a “kind, soft young man . . . [who is] good with kids.” He explained that Defendant had provided he and his children with support when they were going through the 1998 separation. Finally,

Wise admitted that Defendant had caused his family stress, but that he was committed to supporting Defendant regardless of the sentence he received.

Thirteen year old Shakiyla Wise testified that she cared deeply for her “Uncle Poppy” and that he had always been there for her. She recalled the walks she and her uncle used to take in Brandywine Park. Furthermore, she explained how Defendant would help her with her math homework in order to maintain good grades in school. Shakiyla Wise testified that Defendant’s conviction “hurt” her feelings and affected her grades. Twelve year-old Larry Wise, Jr. provided similar testimony to the Court, regarding the happy memories of time shared with his uncle and his anger and disappointment at the verdict. However, despite the suffering both have endured as a result of their uncle’s fate, both indicated they would continue to support him in the future.

Tanya Lea White, Defendant’s older half-sister, was reunited with him in April 2000. While Defendant and White share a father, and likely even played together as children, she had never know her father, nor half siblings. She recalled their emotional meeting and how Defendant immediately made her feel welcome and a part of the family. When White discovered she was pregnant the following year, Defendant would often bring a homemade lunch to her workplace and encourage her to take care of herself. She tearfully told the jury how she is reminded of Defendant whenever she looks at her son who was born later that year.

Defendant's aunts and uncles were equally devastated by the news of Defendant's arrest and conviction. Veronica Congo, Defendant's aunt, testified that she had known him his entire life and forged a strong relationship with him that she really thought of him as a son. "I love him like I love my own children." Similarly, James Cheeks, Defendant's uncle, testified that as an elder in the family, he had tried to be a role model for Defendant and that Defendant's conviction was a terrible blow to him, because having no sons of his own, he has always treated Defendant as his son. "It's sort of like I'm losing my own son." James E. Coffield, Jr., another of Defendant's uncles, shared the family's sense of disappointment and loss at the conviction of his nephew. He recalled that Defendant had always been "courteous" and "polite." Coffield said he was shocked by Defendant's arrest and devastated by his conviction. He could not believe the nephew he knew and loved so much and who had always treated him with respect and love could be involved in such a horrible crime. "This is not the Akbar that we know."

Finally, Defendant's mother, Mrs. Saduqah Hassan-El testified that her son "was always the quiet one" and "never gave [her] any trouble." Mrs. Hassan-El pulled her children out of the public school system when Defendant was in the ninth grade in order to provide a more disciplined educational experience for them. She relied on computer software to aid her and sought advice from acquaintances who

were familiar with home-schooling methods. Their days would commence with an early morning prayer and then later Mrs. Hassan-El would conduct class. In the afternoon, she would frequently take her children over to the community recreation center near her home for their required physical education. When Defendant was 17 years old, he enrolled in a school that she referred to as “MAP” because he wanted to receive the certification necessary to matriculate into Del Tech. Months later, he passed the GED test and ultimately graduated in May 1998.

Mrs. Hassan-El described the “terrible” impact Defendant’s imprisonment and conviction has had on her family. “I raised my children to be real close, so we’re a tight-knit family. I have eleven brothers and sisters. And so not only has it affected me personally and my children, it’s affected my sisters, my brothers, my nieces and nephews, and just everybody in the family in general.” Finally, she insisted that she would continue to support her son in the future, even if he were to be incarcerated for the rest of his life.

The members of Defendant’s family, who testified on his behalf, all cherished the role Defendant had played in each of their lives and were committed to supporting him in the future. The Court finds that the Defendant could use his life experiences to teach and encourage his niece and nephew to avoid similar tragedies in their own lives. As such, he could provide a valuable role model for his relatives if they face

challenges similar to those which Defendant contends are responsible for his present circumstances.

E. Tyrone Guy was also convicted of first-degree murder and the jury has recommended a life sentence be imposed

The jury in the trial of Tyrone Guy recommended a sentence of life by a vote of 11 to 1. The Court finds that was an appropriate factor for the jury to consider and the Court has considered the equal culpability of these Defendants in crafting its sentence.

F. Mercy

The Defendant's counsel has urged the Court to have mercy given Defendant's youth, hope for rehabilitation, religious faith, desire to learn from his mistakes, his family's dedication to him and the jury's recommendations of life for both defendants in this case. The Court will give appropriate weight to all of these factors as outlined in this opinion.

G. Positive attributes, acts and relationships

Dwight Davis, the president of the Motivational Center, Inc., a non-profit organization, created in 1970, providing alternative educational programs for high school dropouts and pregnant teenagers, testified that he has know the Hassan-El family for more than twenty years. Davis described the Hassan-El family as "close-knit" and Defendant as "a quiet person and respectful person." Davis found

Defendant's most recent conviction "out of character," and said he would continue to befriend and support Defendant for the rest of his life.

Mohammed Iman Salaam, Director of the Community Intervention Task Force and Director of Islamic Services in the prisons in the State of Delaware, has known Defendant and his family for years and testified on Defendant's behalf. He described Defendant as a "quiet young man." Salaam told the jury that his daughter and Defendant had a very strong relationship at one point, and that she had hoped to be present that day in Court, but her studies at Penn State had prevented her. While he has not visited Defendant during his incarceration, he stays in contact with the Hassan-El family and said that he would continue to support Defendant.

Shakeerah Hameen Haikal, a family acquaintance, testified that she was surprised to learn of Defendant's arrest for this crime because, in her opinion, such behavior is uncharacteristic for Defendant. She explained that being raised in a Muslim family, Defendant was accustomed to a fairly strict routine and was taught to respect his elders.

Faheem Akil, a friend of the family for almost twenty years, echoed the sentiments of Defendant's family members. He recalled that Defendant had always been "decent" and treated Akil with respect. When asked how the jury's verdict has affected him, he explained that he was incredulous, because such behavior was

completely out of character for the Defendant. Akil voiced sympathy for the loss the Alameri family has suffered, but hoped Defendant would be granted the opportunity to reflect and learn from this experience. Like the others, Mr. Akil emphasized his support for Defendant regardless of the sentencing decision. Mr. Akil's wife, Sherri R. Akil, shared her husband's sense of shock and loss. When asked if she would continue to support Defendant she said "Most definitely. . . . This doesn't affect one family or another family. This is about community. And so we, as a family, as individuals, and as a Muslim community, will support him."

Keith Booker, a close friend of Defendant's father and former president of the Wilmington NAACP and Delaware NAACP , also testified on Defendant's behalf. Booker has held various leadership roles in the local community and became acquainted with Omar Hassan-El, Defendant's father, through these leadership positions. Booker recalled conversations he had with Defendant, giving him advice on how to succeed in life and to avoid the pitfalls of life on the street. He was saddened that Defendant had fallen prey to a fate similar to that of "many African-Americans, particularly young males."

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 defendants 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 IN01-08-0394, 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 IN01-08-0393, Murder Second Degree, the Defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 25 years.

As to IN01-08-0395, 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.

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 IN01-08-0396, 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 IN01-08-0397, 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 consecutively to Criminal Action No. 01-08-0396.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.