

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

12-28-2006

### Summary of Johnson v. State, Nev. Adv. Op. No. 113

Jason Ray  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

---

#### Recommended Citation

Ray, Jason, "Summary of Johnson v. State, Nev. Adv. Op. No. 113" (2006). *Nevada Supreme Court Summaries*. 508.

<https://scholars.law.unlv.edu/nvscs/508>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

## ***Johnson v. State*, Nev. Adv. Op. No. 113 (Dec. 28, 2006)<sup>1</sup>**

### **CRIMINAL LAW – CAPITAL PENALTY HEARING**

#### **Summary**

Appeal from a death sentence and conviction by jury of four counts of first degree murder with the use of a deadly weapon, among other crimes, after a death sentence entered by a three judge panel was appealed and vacated.

#### **Disposition/Outcome**

Affirmed. The confrontation clause of the Sixth Amendment of the United States Constitution and the United States Supreme Court Holdings in *Crawford v. Washington*<sup>2</sup> do not apply to the selection phase of a bifurcated capital penalty hearing. This and other issues raised on appeal do not warrant reversal of his conviction and sentence.

#### **Factual and Procedural History**

The facts underlying Johnson's conviction are explained in more detail in the court's 2002 opinion.

In August of 1998, Johnson entered a home intending to commit robbery. While inside, Johnson murdered 20-year-olds Tracey Gorringer and Matthew Mowen, 19-year-old Jeffery Biddle, and 17-year-old Peter Talamantez. He left the home with several items of insignificant value. Johnson was later arrested and charged with four counts of first degree murder. In 2000, a jury convicted him on all counts, but could not agree during his penalty hearing on what sentence to impose. Another penalty hearing was later held before a three-judge panel, which sentenced Johnson to death for each of the murders.

The Nevada Supreme Court affirmed Johnson's conviction in 2002, but the fact that he was sentenced by a three-judge panel violated the Supreme Court's holding in *Ring v. Arizona*.<sup>3</sup> His death sentence was vacated and remanded for a new penalty hearing. The hearing was bifurcated into two separate phases: death –eligibility and selection.

#### **Death eligibility phase**

The State introduced evidence of a single aggravating circumstance it pursued for each murder- that Johnson had been convicted of more than one murder.

Johnson called several family members to testify on his behalf. They stated that his mother and father abused alcohol and illegal drugs, including crack cocaine and PCP, sometimes in Johnson's presence. Johnson was beaten and watched his mother being abused by his father.

---

<sup>1</sup> By Jason Ray

<sup>2</sup> 541 U.S. 36 (2004).

<sup>3</sup> 536 U.S. 584, 609 (2002).

At one time, his sisters, and several of his cousins were forced to live in a shed for about a month in horrible conditions. When the authorities found out, he was taken into custody by the State and later given to his grandmother. Johnson grew up in Compton where, as Johnson explained, there was a lot of violence and he was often chased and beaten.

The jury returned four special verdicts finding the single aggravating circumstance and seven mitigating circumstances. The jury found the aggravating circumstances outweighed the mitigating circumstances and that Johnson was eligible for death.

### Selection phase

Evidence regarding Johnson's prior bad acts was admitted during this phase of the hearing. The State introduced several instances of criminal activity, both in and out of prison, from the time Johnson was 15 to the time he was arrested for the quadruple murder.

In addition to the prior bad act violence, the State also admitted impact testimony from the families of Johnson's four victims. The mother or father of all four victims testified that their respective child was intelligent, caring, and had a promising future.

The Defense again called on members of Johnson's family, each expressing the positive aspects of Johnson's life. The Defense also presented evidence regarding involvement in street gangs to stop the harassment of his family. A professor of Sociology from the University of California at Berkeley testified about gangs. Several specialists with whom Johnson had worked also gave favorable testimony about him. An accomplice in an incident in prison claimed all responsibility for the incident.

The Jury returned four separate verdicts imposing a death sentence for each of the murders.

### Discussion

The Confrontation Clause and the ruling in *Crawford* do not apply to the selection phase of a bifurcated capital penalty hearing

Johnson's first argument is that the district court violated his right to confrontation by admitting copies of his inmate disciplinary reports from the Clark County Detention Center during the selection phase of his hearing. These reports contained hearsay statements by witnesses who were not shown to be unavailable and whom he had no opportunity to cross-examine.

However, as the court explained in *Summers v. State*, the right to confrontation does not apply to evidence admitted in a capital penalty hearing. Therefore, Johnson did not have the right to confrontation.

### Admittance of Johnson's juvenile records into evidence not an abuse of court discretion

The Supreme Court decision of *Roper v. Simmons*<sup>4</sup> did not prohibit the admission of juvenile records during a death penalty hearing, but instead held that executing offenders for crimes they committed as a minor was cruel and unusual punishment. As there was no question that Johnson was an adult when he committed the crime, the court's discretion to allow this evidence was not an abuse of discretion. Johnson's juvenile record was relevant to his tendency to violence and gang activity, but also his amenability to rehabilitation. Despite the prejudicial effect of the evidence, it was only admitted during the selection phase, thus there are no concerns that it may have influenced the jury's weighing of mitigating and aggravating circumstances.

The district court was proper in allowing the State to ask questions during "voir dire" to discover the ability of the jurors to carry out the law.

The district court is given considerable discretion to determine whether a line of questioning is improper. As the defense made an objection and were overruled, the district court had the discretion to overrule the defense.

### Prosecutor misconduct

While some remarks of the prosecutor were improper, the prejudice resulting from them was minimal and did not deprive Johnson of a fair hearing. The remarks by a prosecutor are considered a harmless error where there is overwhelming evidence of guilt, thus resulting in no prejudice to the defendant.<sup>5</sup>

Johnson raises several allegations of prosecutorial misconduct.

#### 1. Alleged misconduct during the death-eligibility Phase:

First, the prosecutor argued that if the jurors found in favor of Johnson, it would be disrespectful to the members of Los Angeles where Johnson grew up. While this reference to public opinion was inappropriate, its impact was minimal given the correct jury instruction given that "a verdict may never be influenced by prejudice or public opinion." The allegation that the prosecutor violated a pretrial order by referring to the victims as kids was dismissed for similar reasons. Another statement made in error by the prosecutor was immaterial.

#### 2. Alleged misconduct during the selection Phase:

Johnson claimed that the prosecutor made remarks during his opening statement that referred to inadmissible evidence and were highly prejudicial. While a prosecutor has a duty to refrain from making statements in opening arguments that cannot be proved at trial,<sup>6</sup> Johnson did not contend that the remarks were made in bad faith.<sup>7</sup> These remarks were serious because they

---

<sup>4</sup> 543 U.S. 551 (2005).

<sup>5</sup> See *Pelegri v. State*, 104 Nev. 625, 628-29 (1998).

<sup>6</sup> *Rice v. State*, 113 Nev. 1300, 1312 (1997).

<sup>7</sup> *Id.* at 1312-13.

implied that Johnson would continue the violence even while in prison. However these two isolated comments were undermined by a five day selection phase and a jury instruction that opening statements are “not evidence and should not be given evidentiary value.”

Johnson’s penalty hearing was not unfair because a victim’s brother passed out in the courtroom

The victim’s brother had a right to be there, as it was a public hearing

### Mandatory Review

The court reviewed the death sentence independently<sup>8</sup> and found that the evidence supported the finding, the death sentence was not imposed under the influence of passion, prejudice any arbitrary factor, and was not excessive. The murders Johnson committed were unprovoked, vicious, and utterly senseless. The death sentence was not excessive.

### Concurring Opinions

Justice Rose, with whom Justices Maupin and Douglas agreed, filed an opinion concurring. While J. Rose agreed that Johnson was not entitled to relief, J. Rose believes that Capital defendants have a Sixth Amendment right to confront the declarants of testimonial hearsay statements when admitted throughout an unbifurcated hearing and during the eligibility phase of a bifurcated hearing.

### Conclusion

Neither the Confrontation Clause, nor *Crawford* extend to evidence admitted during the selection phase of a capital penalty hearing. Johnson’s hearing was fair. The death sentence is Affirmed.

---

<sup>8</sup> NEV. REV. STAT. § 177.055(2)(c)-(e) (2005).