



*State of New York
Court of Appeals*

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Clerk of the Court*

*Clerk's Office
Albany, New York 12207-1095*

April 21, 2005

People &c v John Taylor - Capital Appeal

The nonbinding Statement of Issues Likely to be Raised on Appeal, as stated in appellant's Preliminary Appeal Statement filed with the Court pursuant to the Rules of the Court of Appeals in Capital Cases § 510.9, is published for the convenient reference of the Bench, Bar and Public.

The Court welcomes motions for amicus participation from qualified and interested parties. Please refer to the Rules of the Court of Appeals in Capital Cases § 510.12(c), and direct any questions to the Clerk's Office at (518) 455-7701.

Nonbinding Statement of Issues Likely to be Raised on Appeal

The following errors were committed below:

1. The trial court denied Mr. Taylor's motion to suppress his custodial statements to police.
2. The trial court denied Mr. Taylor's motion to suppress physical evidence seized from his residence, his person, and his possessions.
3. The trial court granted the prosecution's motion to consolidate two indictments for trial.
4. The trial court denied Mr. Taylor's motion challenging the death penalty as cruel and unusual punishment.
5. The trial court denied Mr. Taylor's motion to strike the death notice on the ground that the statutorily-required instruction on the consequences of a jury deadlock at the sentencing hearing is unconstitutional, and later overruled Mr. Taylor's objections to the instruction the court delivered.
6. The Appellate Division denied Mr. Taylor's motion for a change of venue.
7. The trial court denied Mr. Taylor's motion to be permitted to plead guilty to the first indictment.
8. The trial court denied Mr. Taylor's motion to redact evidence of his videotaped statement to an assistant district attorney and to substitute a transcript of the statement for the videotape.
9. The pool from which Mr. Taylor's grand jury and petit jury were drawn underrepresented cognizable groups and was illegally composed, and the Appellate Division impermissibly denied Mr. Taylor's applications for access to records to develop this claim.
10. The trial court questioned and excused several prospective jurors on grounds other than hardship, outside Mr. Taylor's unwaived presence.
11. The trial court unreasonably limited and intervened in defense voir dire.
12. The trial court granted several prosecution challenges for cause to jurors who opposed capital punishment but who indicated they could nevertheless follow the law at a sentencing hearing.
13. The trial court admitted evidence from a prosecution psychologist about his evaluation of the codefendant and about interviews with the codefendant's friends and relatives, and later

denied Mr. Taylor's motions for a mistrial and to set aside the verdict based on the admission of this evidence.

14. The trial court ruled that, if the defense raised the issue of the police's failure to videotape Mr. Taylor's second confession, the prosecution could elicit evidence of a statement by Mr. Taylor on this subject, even though the prosecution had not provided pretrial discovery of this statement.
15. The trial court permitted the prosecution to introduce evidence that Mr. Taylor shot one of the victims though the prosecution, in its bill of particulars, had alleged that the codefendant had.
16. The trial court prevented the defense from eliciting evidence of a prior inconsistent statement by prosecution witness Jaquoine Johnson.
17. The trial court permitted improper prosecution cross-examination of a defense expert, Dr. Todd Feinberg.
18. In its trial summation, the prosecution argued a theory of the charged killings that was fundamentally inconsistent with the theory underlying the convictions of the codefendant and the prosecution's allocution of the codefendant when he pled guilty.
19. In summation at the trial, the prosecution misstated the evidence and used evidence admitted for one purpose for another.
20. The trial court misinstructed the jury on the definition of "command," and failed to respond properly to a jury note about this element of several of the first-degree murder counts.
21. The trial court and counsel for the parties formulated responses to jury notes about the "command" element of several of the first-degree murder counts, outside Mr. Taylor's unwaived presence.
22. The first-degree murder convictions based on findings that Mr. Taylor killed Anita Smith and commanded the codefendant to kill three additional victims were against the weight of the evidence.
23. The trial court substituted a juror between the trial and the sentencing hearing.
24. The trial court denied Mr. Taylor's motion for a separate sentencing jury.
25. The trial court unreasonably limited pre-sentencing voir dire of the jury.

26. The trial court ruled that if the defense presented evidence of Mr. Taylor's remorse at the sentencing hearing, this would "open the door" to otherwise inadmissible evidence of a song he had written at some unspecified time in the past.
27. The trial court ruled that if the defense presented evidence at the sentencing hearing that, while he was in jail, Mr. Taylor had met with a spiritual advisor and asked for redemption, this would "open the door" to otherwise inadmissible evidence of his prior crimes.
28. At the sentencing hearing, the trial court excluded defense evidence about the possibility of meaningful relationships between inmates serving life-prison sentences and their children.
29. In its opening statement and summation at the sentencing hearing, the prosecution misstated the evidence and the law, used evidence admitted for one purpose for another, inflamed the jury, and otherwise engaged in misconduct.
30. The trial court misinstructed the jurors at the sentencing hearing on how to weigh aggravating and mitigating factors and on how to choose a sentence.
31. The trial court misinstructed the jurors at the sentencing hearing on whether they could consider the "worthiness" of the victims.
32. The trial court misinstructed the jurors at the sentencing hearing that they could not consider the impact of Mr. Taylor's execution on his children.
33. The trial court misinstructed the jurors at the sentencing hearing that Mr. Taylor's allocution was not evidence but rather like attorney argument.
34. Executing Mr. Taylor would be unconstitutionally arbitrary because the death penalty has been implicitly repealed in New York.
35. The trial court denied Mr. Taylor's motion challenging lethal injection as a method of execution.