No. 08-948

In The
Supreme Court of the United States

HENRY JOSEPH ANDERSON,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE
QUESTION PRESENTED

Does Louisiana's sentencing scheme violate the mandates of *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002)?

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STATEMENT OF FACTS

On September 30, 2000, the Monroe Police Department was dispatched to 3310 Concordia, Monroe, Louisianna in reference to unknown trouble. The first officer arriving was met by three (3) relatives of the victim. The relatives stated they had arrived at the residence to pick up Ms. Oneatha Brinson, the victim, to go to an University of Louisiana at Monroe football game. When they arrived, they noticed Ms. Brinson's vehicle was missing. As the relatives were attempting to enter the house, one of them noticed Ms. Brinson lying on the kitchen floor in a puddle of blood. Ms. Brinson was 85 years of age at the time of her death.

Subsequent investigation revealed that in addition to Ms. Brinson's automobile being missing, there were also coins and a 13" TV/VCR combo missing from the residence. A BOLO was issued on Ms. Brinson's stolen automobile and it was entered into NCIC by the Monroe Police Department. While the investigative officers were still at the scene, they were notified that the victim's automobile had been stopped and was occupied by three individuals. In separate interviews, the three occupants stated that the person who first was seen driving the automobile was the defendant, Henry Joseph Anderson. Two of the occupants stated that Anderson had bags of coins with him. One of the occupants purchased a bag of coins from Anderson. These coins were turned over to the police. The coins were in two bank bags similar to empty bank bags found at the scene.

Another witness interviewed stated he had seen Anderson in the victim's automobile on the evening of September 29, 2000 at a local crack house. This witness also observed the defendant with some type of TV/VCR combo. During a subsequent search of the crack house, the TV/VCR combo was found as well as other items taken from the victim's home.

On October 2, 2000, Monroe Police were contacted by a witness who stated that on September 21, 2000, Ms. Brinson had contacted the witness inquiring about the defendant. According to the witness, Ms. Brinson was contemplating hiring Anderson to do yard and general maintenance work at her residence.

Based upon the above information, the Monroe Police Department secured an arrest warrant for Henry Anderson. Anderson was arrested on October 2, 2000, and after being advised of his rights, gave a voluntary statement. The following is a brief synopsis of Anderson's statement:

> Anderson said he met Brinson approximately 1 week prior to this date. He spoke to her at 3310 Concordia about doing yard work for her. Anderson gave Elkin as a job reference. Anderson returned the next day and performed yard work for Brinson for which she paid him cash.
>
> On 9/29/00, Anderson went by Brinson's house to see when she wanted more work done. Brinson wanted Anderson to do some work right then. Brinson allowed Anderson to come inside the house where she gave him

a glass of water. Brinson then began "going-off" on Anderson because he didn't want to do the work right then. Brinson called Anderson a "nigger" so he turned to leave. Before Anderson could exit the house, Brinson cut him on the right forearm with a knife. Anderson then "went-off" and took the knife away from Brinson. Brinson jumped at Anderson, impaling herself on the knife which he was holding in his hand. Brinson backed off, pulling the knife out of her chest. Anderson caused Brinson to fall to the ground. Anderson stabbed Brinson again in the chest. Brinson hit her head as she fell. Anderson washed and dried the knife and put it into a rack on the kitchen wall. Anderson took a TV/VCR combo from a bedroom dresser and a small radio. Anderson took two bags of coins from an office desk where he noticed mail lying on the floor. Anderson tried to take a larger T.V. out of a front den but changed his mind after having unhooked it and moved it out from the wall. Anderson put these items into Brinson's car and put his bike in the vehicle trunk. Anderson took Brinson's car keys and drove the car away. Anderson recalled a radio being on in the kitchen during the incident. Brinson was moaning while Anderson was taking items from the house but was quiet when he left. Anderson thought she had gone ahead and "shut-up."

Anderson felt Brinson brought it on herself for calling him a nigger. Anderson dropped his bike off at 511 Dellwood before going to

Winnie Gene's house on Stonegate. Anderson gave the TV/VCR combo and a radio to Winnie Gene. He told Winnie Gene that Brinson had given these things to him and let him have the car for the weekend. Anderson rented the car to Poncho for crack. Anderson sold the coins to Little-J for crack. Anderson remembered talking to police on Stonegate when the car was recovered.

Anderson said he was in a rage and could have stabbed Brinson more times. Anderson said he did not call an ambulance because he was mad and didn't care what happened to Brinson. Anderson said he was wearing a black T-shirt, black pants, and black steel-toe boots during the incident. The clothes had been washed after the incident and were in his belongings.

Anderson then added that he hit Brinson on the head with a 6" to 7" tall drinking glass. Anderson said he washed it also and put it near the sink. Anderson said he acted alone and told nobody of what he had done. Anderson said he had accidentally stabbed himself in his right thigh during this incident while trying to drop the knife. Anderson's final account of the incident was that Brinson cut him on his arm as he was leaving her house. Anderson took the knife away from Brinson who ran into the knife stabbing herself in the chest. Brinson backed off of the knife and came at Anderson again. Anderson wrestled with Brinson knocking her to the floor. Anderson went to put the knife down and

> stabbed himself in his right thigh by accident. Anderson said, "Now look what you made me do." Brinson sat up so Anderson hit her in the head with a drinking glass. Brinson fell back and Anderson stabbed her in the chest while she was down. Anderson washed the knife and glass and dried them off.

According to the pathologist, Ms. Brinson died of multiple sharp force and blunt force injuries, including multiple penetrating stab wounds to the chest. More specifically, Ms. Brinson received three (3) stab wounds to the chest, an incised wound to the scalp, a stab wound to her abdomen, two (2) incised wounds to her right hand, an incised wound to her left thumb, an incised wound to her left jaw, a patterned laceration to her left temporal scalp and various abrasions and contusions.

Although the defendant was offered a life sentence, he declined. Anderson was subsequently tried and found guilty as charged. The jury returned a verdict of death in the sentencing phase, finding the existence of two aggravating circumstances.

LAW AND ARGUMENT

Petitioner, Henry Anderson, seeks to extend this Court's rulings in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) and *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d

556 (2002) to cover all of Louisiana's capital sentencing scheme. In *Apprendi*, this Court established the principle that any fact that increases the statutorily prescribed maximum penalty, other than a prior conviction, must be proven beyond reasonable doubt. In *Ring*, this Court held that capital defendants, no less than noncapital defendants, were entitled to a jury determination of any fact on which the legislature conditioned an increase in their maximum punishment. The Arizona statute under question in *Ring* provided that after a defendant was convicted of first degree murder, a judge alone at separate sentencing hearing, had to determine the existence of certain enumerated circumstances. If the judge found the presence of at least one enumerated aggravating circumstance, he was authorized to sentence the defendant to death if there were no mitigating circumstances sufficiently substantial to call for leniency. This Court held that, because at least one aggravating circumstance had to be found before a death sentence could be imposed, the finding of the particular aggravating circumstance operated as an element of offense thus governed by the Sixth Amendment to the U.S. Constitution.

Louisiana defines first degree murder in R.S. 14:30 as follows:

> "A. First degree murder is the killing of a human being:
>
> (1) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted

perpetration of aggravated kidnapping, second degree kidnapping, aggravated escape, aggravated arson, aggravated rape, forcible rape, aggravated burglary, armed robbery, assault by drive-by shooting, first degree robbery, second degree robbery, simple robbery, terrorism, cruelty to juveniles, or second degree cruelty to juveniles.

(2) When the offender has a specific intent to kill or to inflict great bodily harm upon a fireman, peace officer, or civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory engaged in the performance of his lawful duties, or when the specific intent to kill or to inflict great bodily harm is directly related to the victim's status as a fireman, peace officer, or civilian employee.

(3) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(4) When the offender has specific intent to kill or inflict great bodily harm and has offered, has been offered, has given, or has received anything of value for the killing.

(5) When the offender has the specific intent to kill or to inflict great bodily harm upon a victim who is under the age of twelve or sixty-five years of age or older.

(6) When the offender has the specific intent to kill or to inflict great bodily harm while engaged in the distribution, exchange,

sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedules I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(7) When the offender has specific intent to kill or to inflict great bodily harm and is engaged in the activities prohibited by R.S. 14:107.1(C)(1).

(8) When the offender has specific intent to kill or to inflict great bodily harm and there has been issued by a judge or magistrate any lawful order prohibiting contact between the offender and the victim in response to threats of physical violence or harm which was served on the offender and is in effect at the time of the homicide.

(9) When the offender has specific intent to kill or to inflict great bodily harm upon a victim who was a witness to a crime or was a member of the immediate family of a witness to a crime committed on a prior occasion and:

(a) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or

(b) The killing was committed for the purpose of exacting retribution for the victim's prior testimony.

B. (1) For the purposes of Paragraph (A)(2) of this Section, the term "peace officer" means any peace officer, as defined in R.S.

40:2402 and includes any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator.

(2) For the purposes of Paragraph (A)(9) of this Section, the term "member of the immediate family" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

(3) For the purposes of Paragraph (A)(9) of this Section, the term "witness" means any person who has testified or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

C. Penalty provisions.

(1) If the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment may be capital shall apply.

> (2) If the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply."

A verdict of guilty of first degree murder must be unanimous. Under Louisiana's sentencing scheme, Louisiana Code of Criminal procedure provides:

> "The sentencing hearing shall focus on the circumstances of the offense, the character and propensities of the offender and the victim, and the impact that the crime has had on the victim, family members, friends and associates. . . . " La. Code of Criminal Procedure Art. 905.2 (West 2009).

Furthermore, "a sentence of death shall not be imposed unless the jury finds beyond a reasonable doubt that at least one statutory aggravating circumstance exists and, after consideration of any mitigating circumstances, determines that the sentence of death should be imposed." La. Code of Criminal Procedure Art. 905.3. A death verdict must be unanimous. La. Code of Criminal Procedure Art. 905.6. Louisiana's aggravating circumstances are as follows:

> "A. The following shall be considered aggravating circumstances:
>
> (1) The offender was engaged in the perpetration or attempted perpetration of

aggravated rape, forcible rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to juveniles, second degree cruelty to juveniles, or terrorism.

(2) The victim was a fireman or peace officer engaged in his lawful duties.

(3) The offender has been previously convicted of an unrelated murder, aggravated rape, aggravated burglary, aggravated arson, aggravated escape, armed robbery, or aggravated kidnapping.

(4) The offender knowingly created a risk of death or great bodily harm to more than one person.

(5) The offender offered or has been offered or has given or received anything of value for the commission of the offense.

(6) The offender at the time of the commission of the offense was imprisoned after sentence for the commission of an unrelated forcible felony.

(7) The offense was committed in an especially heinous, atrocious or cruel manner.

(8) The victim was a witness in a prosecution against the defendant, gave material assistance to the state in any investigation or prosecution of the defendant, or was an eye

witness to a crime alleged to have been committed by the defendant or possessed other material evidence against the defendant.

(9) The victim was a correctional officer or any employee of the Department of Public Safety and Corrections who, in the normal course of his employment was required to come in close contact with persons incarcerated in a state prison facility, and the victim was engaged in his lawful duties at the time of the offense.

(10) The victim was under the age of twelve years or sixty-five years of age or older.

(11) The offender was engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedule I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(12) The offender was engaged in the activities prohibited by R.S. 14:107.1(C)(1).

B. For the purposes of Paragraph A(2) herein, the term "peace officer" is defined to include any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator,

district attorney, assistant district attorney, or district attorney's investigator."

The mitigating circumstances the jury shall consider are:

"Art. 905.5. Mitigating circumstances

The following shall be considered mitigating circumstances:

(a) The offender has no significant prior history of criminal activity;

(b) The offense was committed while the offender was under the influence of extreme mental or emotional disturbance;

(c) The offense was committed while the offender was under the influence or under the domination of another person;

(d) The offense was committed under circumstances which the offender reasonably believed to provide a moral justification or extenuation for his conduct;

(e) At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;

(f) The youth of the offender at the time of the offense;

(g) The offender was a principal whose participation was relatively minor;

(h) Any other relevant mitigating circumstance."

Thus, Louisiana has limited the class of murderers to which the death penalty may be applied following the principles of *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) and its progeny. A Louisiana jury must consider all relevant mitigating circumstances following *Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) and its progeny. As can be seen by Louisiana's statute, before a person is ***eligible*** for a death sentence, the jury must find the existence of at least one statutorily enumerated aggravating circumstance beyond a reasonable doubt. See *Louenfield v. Phelps*, 484 U.S. 231, 108 S.Ct. 546, 98 L.Ed.2d 568 (1988); *Zant v. Stephens*, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983). The aggravating circumstance may be contained in the definition of the crime or in a separate sentencing factor (or in both). *Louenfield*, supra, at 244-246, 108 S.Ct. at 554-555.

Louisiana is not a "weighing" state. It does not require capital juries to weigh or balance mitigating against aggravating circumstances, one against the other, according to any particular standard. *State v. Koon*, 96-1208 (La. 5/20/97) 704 So.2d 756.

Ring described a substantive element of a capital offense as one that makes an increase in authorized punishment contingent on a finding of fact. Using this description, the substantive element of capital-murder in Louisiana was the jury's finding of the

aggravating circumstance necessary to support a capital sentence. It was that finding, not the consideration of mitigating circumstances, that authorized the jury to consider imposing the death penalty. That is, the increase in punishment from life imprisonment without parole to the death penalty was contingent on the factual finding of an aggravating circumstance. Louisiana's provision that the jury make the factual finding of an aggravating circumstance beyond a reasonable doubt was all that *Ring* required. Once that finding was made, the substantive elements of the capital crime were satisfied. This Court has said:

> In aggregate, our precedents confer upon defendants the right to present sentencers with information relevant to the sentencing decision and oblige sentencers to consider that information in determining the appropriate sentence. The thrust of our mitigation jurisprudence ends here. "[W]e have never held that a specific method for balancing mitigating and aggravating factors in a capital sentencing proceeding is constitutionally required." *Franklin*, supra, at 179, 108 S.Ct. 2320 (citing *Zant*, supra, at 875-876, n. 13, 103 S.Ct. 2733). Rather, this Court has held that the States enjoy "'a constitutionally permissible range of discretion in imposing the death penalty.'" *Blystone*, 494 U.S., at 308, 110 S.Ct. 1078 (quoting *McCleskey v. Kemp*, 481 U.S. 279, 305-306, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). See also 494 U.S., at 307, 110 S.Ct. 1078 (stating that "[t]he

requirement of individualized sentencing in capital cases is satisfied by allowing the jury to consider all relevant mitigating evidence"); *Graham*, supra, at 490, 113 S.Ct. 892 (THOMAS, J., concurring) (stating that "[o]ur early mitigating cases may thus be read as doing little more than safeguarding the adversary process in sentencing proceedings by conferring on the defendant an affirmative right to place his relevant evidence before the sentencer"). *Kansas v. Marsh*, 348 U.S. 163, at 175; 126 S.Ct. 2516, at 2525.

CONCLUSION

Louisiana's capital sentencing scheme does not violate the holdings in *Apprendi* and *Ring*, nor does it run afoul of the U.S. Constitution.

WHEREFORE, the State of Louisiana prays that Henry Anderson's application for writ of certiorari be denied.

Respectfully submitted,

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