

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44094

JOHN BEJARANO A/K/A JUAN
MUNOZ A/K/A JOHN BEJARNO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44297

FILED

MAR 16 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DIRECTING ORAL ARGUMENT

This court has determined that oral argument will be of assistance in resolving these appeals. Accordingly, we hereby consolidate these appeals for the limited purpose of hearing oral argument. The clerk of this court shall schedule the appeals for oral argument before the en banc court in June 2006 in Carson City. The oral argument shall be limited to a total of 60 minutes.

The parties shall be prepared at oral argument to focus on the following three issues: (1) whether this court's decision in McConnell v. State¹ should be applied retroactively to the appellants

¹(McConnell I), 120 Nev. 1043, 102 P.3d 606 (2004) rehearing denied by McConnell v. State (McConnell II), 121 Nev. ___, 107 P.3d 1287 (2005).

on collateral review so as to invalidate the robbery aggravator found in both cases, i.e. that the murders were committed during the commission of a robbery;² (2) whether the "receiving money" aggravator³ found in appellant Bejarano's case is invalid under this court's decision in Lane v. State (Lane II);⁴ and (3) whether jury instruction no. 7, in appellant Rippo's case, improperly advised the jury that "[t]he entire jury must agree unanimously . . . as to whether . . . the mitigating circumstances outweigh the aggravating circumstances."⁵

²See NRS 200.033(4).

³See NRS 200.033(6).

⁴114 Nev. 299, 304, 956 P.2d 88, 91 (1998).

⁵More specifically, jury instruction no. 7 provided in pertinent part:

The jury may impose a sentence of death only if

(1) the jurors unanimously find at least one aggravating circumstance has been established beyond a reasonable doubt and (2) the jurors unanimously find that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

Otherwise, the punishment imposed shall be imprisonment in the state prison with or without the possibility of parole.

A mitigating circumstance itself need not be agreed to unanimously; that is, any one juror can find a mitigating circumstance without the agreement of any other jurors. The entire jury must agree unanimously, however, as to

continued on next page . . .

It is so ORDERED.

Re, C.J.

cc: Federal Public Defender/Las Vegas
Christopher R. Oram
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Washoe County District Attorney Richard A. Gammick

... continued

whether the aggravating circumstances
outweigh the mitigating circumstances or
whether the mitigating circumstances outweigh
the aggravating circumstances.