CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

Volume 40, No. 1 Winter 2022

BOSTON BOMBER'S DEATH SENTENCE REINSTATED BY SUPREME COURT

In a 6-3 decision released on March 4, 2022, the U. S. Supreme Court reinstated the death sentence of Boston Marathon bomber Dzhokhar Tsarnaev. The high court overturned a 2020 First Circuit Court of Appeals ruling which had voided the sentence. The case of **United States v. Tsarnaev** involved Tsarnaev's conviction and death sentence for his role in setting off two pressure-cooker bombs at the 2013 Boston Marathon, killing three people and maiming hundreds of others. Tsarnaev committed this crime along with his older brother, who was killed during their escape.

At issue in the case was Tsarnaev's claim that the judge at his trial failed to adequately question potential jurors to assure that they were not prejudiced by the publicity surrounding the bombing. The First Circuit accepted this claim and overturned Tsarnaev's death sentence. In addition, the First Circuit held that the trial judge had erred in excluding marginally relevant hearsay evidence concerning a murder years earlier that Tsarnaev's brother may have been involved in.

The Criminal Justice Legal Foundation joined the case to encourage a decision overturning the First Circuit's ruling. CJLF's brief argued that in order to reach its decision, the First Circuit added new requirements governing jury selection and the introduction of evidence beyond those required by Supreme Court precedent.

In the Court's majority opinion, Associate Justice Clarence Thomas wrote, "lower courts cannot create prophylactic supervisory rules that circumvent or supplement legal standards set out in decisions of this Court." Justice Barrett, joined by Justice Gorsuch, added a concurring opinion noting her "skepticism that the courts of appeals possess such supervisory power in the first place."

On the issue of the evidence of the prior murder, the Court held that the trial judge had reasonably exercised his discretion to exclude evidence with minimal probative value. That authority is expressly conferred by the Federal Death Penalty Act in language very similar to evidence rules that have long applied in both state and federal courts. The Court rejected the claim that the Eighth Amendment requires a different rule for the penalty phase of capital cases.

The evidence of Tsarnaev's guilt was overwhelming and included his confession. Tsarnaev can be seen on a security camera intentionally placing his bomb near a group of children watching the race. That bomb filleted open to the bone the leg of Boston University student Lingzi Lu, who bled to death within minutes. The bomb also shredded the body of 8-year-old Martin Richard, sending nails, glass, and BBs through his spinal cord, pancreas, liver, kidney, spleen, intestine, and abdominal aorta, and nearly severed his left arm. He bled to death on the sidewalk while his mother helplessly watched. The bomb placed by Tsarnaev's brother, Tamerlan, nearly blew the legs off of 29-year-old Krysten Campbell, who bled to death on the sidewalk. The bombs caused hundreds of permanent injuries, including loss of limbs, blindness, and hearing loss.

While looking for a vehicle to steal for their escape, Tsarnaev sneaked up on the parked patrol car of a young MIT police officer and shot him to death. After the brothers carjacked an MIT graduate student and forced him to withdraw money from an ATM, the student managed to escape at a gas station in Watertown where he reported the two terrorists and his stolen SUV to police. When officers spotted the SUV and began following, the terrorists stopped and began shooting and throwing bombs at them. After Tsarnaev's brother was wounded in the shootout, Tsarnaev ran over him while

continued on page 4

CA INITIATIVE DOES NOT ALLOW EARLY RELEASE OF VIOLENT FELONS

In a January 3, 2022 decision, the California Supreme Court overturned a 2019 appeals court ruling, which had granted parole eligibility to a violent repeat felon. The lower court had held that under Proposition 57 a criminal convicted of multiple violent and nonviolent crimes qualifies for early release after serving only the sentence for one of the nonviolent crimes.

Writing for a unanimous court in the case of **In re Mohammad**, Chief Justice Cantil-Sakauye found that the language in Proposition 57 was ambiguous and that in such cases the court looked to the ballot materials to determine the intent of the proponents and the voters. The court concluded that the initiative did not require the early release of violent felons. This approach is "consistent with the distinction between violent and nonviolent felonies emphasized in the ballot materials," wrote the Chief Justice.

continued on last page

VIEWPOINT

THE ROAD TO HELL

In the struggle to achieve racial justice, New York and California have set the pace for the rest of America. Over the past several years, the Governors, state legislatures, and Attorneys General of both states have promoted and implemented criminal justice reforms attempting to create equal outcomes among "marginalized racial groups." To create equity, both states have effectively decriminalized certain offenses deemed nonviolent, such as selling illegal drugs on the street, using drugs, traffic offenses, drunk driving, most theft, vandalism, some domestic violence, assaults, resisting arrest, and illegal firearms possession. Bail has also been eliminated or sharply reduced for all but the most violent offenses, including car theft, commercial burglary, strong-arm robbery, and vehicular manslaughter, among others. Progressives tell us that reducing the arrest, prosecution, and punishment for these crimes is necessary because people of color are disproportionately targeted by America's systemically racist criminal justice system. This is the kind of one-dimensional reasoning that children use. In February, New York Congresswoman Alexandria Ocasio-Cortez exhibited this, tweeting out that the spike in crime in her state is because "the child-tax credit just ran out, on December 31st, and now people are stealing baby formula." She has 12 million followers on Twitter.

As noted by the Manhattan Institute, in 2009 in America's 75 largest counties, blacks constituted 62% of all robbery defendants, 57% of all murder defendants, 45% of all assault defendants, but only 15% of the population. This means that if police departments are focusing on reducing crime, they are going to be disproportionately arresting black offenders. Reducing the consequences for crimes to reduce the number of minority offenders arrested and prosecuted is a fundamental cause of the unprecedented increase in crime and violence in the United States.

This type of sentencing reform enabled the stalking and brutal stabbing murder of 35-year-old Christina Yuna Lee in her New York Chinatown apartment on February 13, 2022. Habitual criminal Assamad Nash has been charged with stabbing Lee over 40 times as she fought for her life. CBS News reported that Nash, who did not know Lee, is homeless, was on supervised release for other crimes, and has had multiple arrests for assault, drugs, and harassment over the last two years. According to FoxNews, "Nash had three open cases against him at the time of the alleged murder." Progressive social justice reforms eliminated the consequences for those crimes in New York City. As Nash was led to his arraignment he said, "I didn't kill nobody."


Christina Yuna Lee


Emma Roark


Brianna Kupfer

On January 27, 2022, a young woman's parents reported that their daughter had gone missing after leaving their suburban home for a walk. Stan Stanton of the Sacramento Bee reported that five days later, detectives found the brutalized body of 20-year-old Emma Roark under a tarp by the American River in Rancho Cordova, CA, just a half mile from her home. She had been raped, sodomized, and tortured. Mikilo Rawls, who is homeless, was arrested after DNA evidence tied him to the murder. Rawls, 37, has a prior conviction for first-degree burglary, and has recent arrests for illegal weapons, assault, receiving stolen property, and illegal drugs. California's progressive social justice reforms removed any real consequences for these crimes. The Sacramento District Attorney said she might seek the death penalty for Rawls even though California Governor Gavin Newsom is blocking its enforcement.

On January 13, 2022, a homeless man walked into a high-end furniture store in the exclusive Los Angeles neighborhood of Hancock Park and stabbed a 24-year-old UCLA

continued on page 3

Advisory layout design by Irma H. Abella

CALIFORNIA SUPREME COURT REJECTS MURDERER'S DEATH PENALTY CHALLENGE

In a unanimous August 26, 2021 decision, the California Supreme Court rejected a double-murderer's claim that the state has misapplied its death penalty law since it was enacted 42 years ago, invalidating every death sentence handed down since 1978.

Specifically, Donte Lamont McDaniel argued that the law required sentencing juries to find each aggravating factor of a murder true beyond a reasonable doubt and find that a death sentence is appropriate beyond a reasonable doubt, but that no court has ever complied with those requirements.

The Criminal Justice Legal Foundation joined **People v. McDaniel** to encourage a decision rejecting the murderer's claim, arguing that nothing in the law supports the requirements he seeks.

In the opinion of the court, Associate Justice Goodwin Liu writes, "In sum, having examined our case law and relevant history, we are unable to infer from the jury trial guarantee in article I, section 16 of the California Constitution or Penal Code section 1042 a requirement of certainty beyond a reasonable doubt for the ultimate penalty verdict." *The court cited the CJLF brief and utilized CJLF arguments in its decision*.

In March 2009, a Los Angeles jury convicted McDaniel of the 2004 murders of Annette Anderson and George Brooks and the attempted murder of Debra Johnson and Janice Williams. At a later sentencing hearing, a separate jury unanimously recommended that he be sentenced to death.

Overwhelming evidence introduced at trial indicated that on April 6, 2004, McDaniel and an accomplice went to the apartment of Annette Anderson in the LA projects looking for George Brooks. McDaniel and his accomplice were members of the Bounty Hunter Bloods (BHB) street gang, a group primarily engaged in drug dealing and murder. A week earlier, Brooks had stolen some drugs from a BHB member, and McDaniel and his accomplice had been dispatched to seek revenge. At the apartment that night were Anderson, Brooks, Williams, and Johnson.

Anderson, 52, was like an older sister to the younger residents in the neighborhood and they often hung out at her apartment. When she answered a knock at her kitchen door, McDaniel and his accomplice stormed in shooting, hitting Williams in the mouth, arms, and legs. Brooks suffered so many fatal gunshots to the head that his face collapsed. Anderson was shot in the head and chest and also died. Debra Johnson was sleeping on the living room floor when she heard gunshots in the kitchen. She opened her eyes to see McDaniel pointing a gun to her head. He shot her in the face and the chest. She played dead and survived along with Williams. Both women, who were permanently disabled from the shooting, testified at McDaniel's trial. Witnesses testified that after the killings McDaniel bragged about it.

Before the state Supreme Court on direct appeal, McDaniel claimed that California death penalty law discriminates against African Americans and has been misapplied since its adoption in 1978. The American Civil Liberties Union, the California Association of Public Defenders, a group calling itself the California Constitutional Law Scholars, and *Governor Gavin Newsom* filed briefs in support of the murderer in this case. McDaniel, his accomplice, and all four shooting victims were African American.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Legal Director Kent Scheidegger argued that nothing in California legal history, English common law, or the 1978 death penalty ballot measure (adopted by 71% of voters) suggests that jurors are required to find the aggravating factors in a murder case or the appropriateness of a death sentence "beyond a reasonable doubt."

Existing state and federal law requires that a defendant's guilt be found beyond a reasonable doubt based upon the weight of the evidence. This standard does not fit with judgments that are not findings of fact, including the appropriate sentence for a crime. Nobody knows how a jury would go about sentencing a murderer to death beyond a reasonable doubt.

The CJLF brief noted that McDaniel's claimed requirement would toss out precedents that go back over 40 years for the aggravating circumstances and decades longer for the penalty verdict based on nothing more than a far-fetched interpretation of an 1872 statute that has never been held to have such an effect before. Such a revision would have a devastating impact on hundreds of well-deserved judgments for horrible crimes.

"Today's decision upholds the law as written and preserves the sentences of California's worst murderers, which certainly includes Donte Lamont McDaniel," said Scheidegger.

"Road to Hell"

continued from page 2

grad student to death. Brianna Kupfer was working alone that afternoon when a habitual criminal identified as Shawn Laval Smith, 31, entered the store and attacked her. Smith, who was on probation for a prior crime, had a warrant out for his arrest for assaulting a police officer and had been arrested for shoplifting at a Home Depot in Los Angeles County. Because Smith committed these crimes in California, he received "social justice" rather than any real consequences for committing them.

All three of the murder suspects in these cases were beneficiaries of progressive criminal justice reforms to achieve racial equity instead of justice. When they got their second or third chances for committing their previous "low level" crimes, they moved on to violent crimes and three young women died horribly because of it.

Politicians, think tanks, and reporters who tell us that this is not true are lying. It's time for the public to throw out the politicians pushing the racial equity narrative and replace them with people who will pass new laws to crack down on criminals.

Michael Rushford
President

VICTIM'S FAMILY SUES TO BLOCK JUVENILE MURDERER'S PAROLE ELIGIBILITY

The Criminal Justice Legal Foundation has filed a lawsuit, on behalf of the family of a Los Angeles man killed in 1996 by a 16-year-old, to block enforcement of an unconstitutional state law authorizing parole eligibility for juvenile murderers sentenced to life without parole. The case of **Peterson v. California Board of Parole Hearings** involves the life-without-parole sentence given to gang member Lawrence Cottle, who murdered Alan Peterson during a five-day crime spree.

On November 14, 1996, Peterson, a Laguna Hills contractor, was just leaving a Jack in the Box with his lunch when Cottle shot him in the chest, during an attempted carjacking. Peterson died in a hospital 30 minutes later. The next day Cottle robbed a man at gunpoint in Culver City. An hour later, he robbed a young mother at an Inglewood check cashing store, pointing his gun at her 4-year-old daughter's head as the woman emptied her purse. The next day Cottle robbed a man and stole his car in Gardena and was caught when he crashed the stolen vehicle into a police car.

For his crimes, Cottle was tried as an adult and convicted on 13 counts including aggravated first-degree murder. While he could have received a death sentence if he were an adult at the time of the murder, due to his age, Cottle was sentenced to life in prison without parole (LWOP). Under California's 1990 Proposition 115, state judges have the discretion to sentence aggravated murderers under 18 years old to either 25 years to life or LWOP. The initiative specified that it could only be amended by a two-thirds vote of the membership of both houses of the California Legislature.

In 2017, the Legislature passed, and Governor Jerry Brown signed, SB 394 into law. That law made murderers under 18 years old who were sentenced to LWOP eligible for parole during their 25th year of incarceration. On February 25, 2022, Cottle was granted parole by the Board of Parole under this law. That same morning, on behalf of Laura Peterson (Alan Peterson's daughter), CJLF Associate Attorney Kymberlee Stapleton appeared in Sacramento Superior Court to argue that SB 394 is unconstitutional because it was not adopted by a two-thirds vote of the membership of both houses: It passed in the Assembly with 44 votes, 9 votes shy of two-thirds, which is 53. In a March 4 ruling, Judge Stacy Boulware Eurie declined to issue a preliminary injunction, but agreed that Laura Peterson had standing to petition the court for a finding that SB 394 is invalid. CJLF filed that petition on March 10, and hopefully will win a decision announcing that Cottle cannot be paroled under an unconstitutional law.

"A sentence of LWOP exists for good reason, and legal finality for the murder victim's family is one of them. The Legislature's transformation of LWOP sentences into 25-years-to-life sentences, for juvenile murderers without the required legislative majority, sentences victims' families to a lifetime of frequent and difficult parole hearings. This unlawful change to the initiative statute by the Legislature is contrary to the will of the voters," said Stapleton.

"BOSTON BOMBER"

continued from front page

trying to escape in the stolen SUV. He abandoned the vehicle a few blocks away and was found hiding in a boat in a resident's backyard the next day. Tamerlan died, partly as a result of having been run over.

Prior to trial, Tsarnaev made four separate requests for a change of venue due to pretrial publicity he claimed would prejudice his case. The district court judge denied them, noting that while coverage of the bombing was extensive, it was not "blatantly prejudicial" toward him and that he would address possible juror bias during jury selection. The judge kept his word, summoning over 1,300 prospective jurors to fill out a 100-question questionnaire, inquiring into their background, social media habits, views on the death penalty, and knowledge of the case. Later, the court called back 256 of the prospective jurors for further questioning over 21 days, narrowing the pool down to 75 people, from which the parties selected the 12 jurors. During that process, Tsarnaev again petitioned the Court of Appeals asking for a change of venue. The court denied the request after reviewing the process the district court was undertaking and determined that it had taken ample time to weed out prospective jurors who might harbor bias against the defendant.

At trial, Tsarnaev never disputed his guilt, claiming instead that his older brother was the mastermind of the bombings and had influenced his participation. After a 17-day trial, the jury unanimously found Tsarnaev guilty on all counts. At the close of a 12-day penalty trial, the jury unanimously recommended the death sentence, which the judge imposed.

On appeal, Tsarnaev claimed that the trial judge's questioning of potential jurors regarding pretrial publicity was inadequate and that the judge's decision to exclude evidence of his deceased brother's possible involvement in an earlier, unrelated murder was improper. The Court of Appeals accepted both claims and overturned his sentence.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Legal Director Kent Scheidegger argued that the trial judge acted properly, following a 1991 Supreme Court decision specifying the requirements for questioning potential jurors. The brief further argued that the appeals court does not have the authority to add new requirements and also that the trial judge did not err in excluding marginally relevant evidence of his brother's involvement in an earlier, unrelated murder.

"The trial judge in this case did a thorough job in screening potential jurors and was well within his discretion to exclude the unrelated evidence under federal law. The Supreme Court recognized that the lower court ruling improperly limited the judge's discretion in matters entrusted to him by Supreme Court precedent and the governing statute," said Scheidegger. "In the end, the appropriate sentence for this murdering terrorist was upheld," he added.

COLLUSION ON LA DEATH SENTENCES BETWEEN AG BONTA AND LA DA GASCÓN EXPOSED

In a press release last fall, the Criminal Justice Legal Foundation called out California Attorney General Rob Bonta and Los Angeles District Attorney George Gascón for partnering to overturn the death sentences of every condemned murderer convicted in Los Angeles County.

On November 5, 2021, Bonta's office issued Notices of Withdrawal in at least four death penalty cases before county judges to consider new claims by murderers challenging their sentences. In each case, Gascón's office then tells the court that it agrees (concedes) with the murderers' claims and asks the judge to vacate the death sentence and re-sentence the murderer to life without the possibility of parole (LWOP).

"The Constitution of California says that it is the 'duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced.' Attorney General Bonta is doing exactly the opposite. He is facilitating collusive litigation by the Los Angeles District Attorney for the purpose of defeating the enforcement of the law," said CJLF Legal Director Kent Scheidegger.

In death penalty cases not being handled by Attorney General Bonta, Gascón is conceding to the murderers' claims on appeal and partnering with defense counsel to have the death sentences vacated. While prior to Gascón's election, cases of this type were handled by multiple deputies, they are now handled by one Deputy District Attorney, Shelan Joseph, a longtime member of the Public Defender's office until Gascón hired her last March. Nobody under Gascón's authority is defending the citizens of Los Angeles County and the murder victims in these cases.

The death penalty cases dropped by Attorney General Bonta, and in which Gascón's office has reduced the murderer's sentence to LWOP, include murderers Stanley Davis and Carlos Hawthorne. Stanley Davis is a habitual felon who kidnapped and murdered two college students in 1985 to steal their car for a planned robbery. Carlos Hawthorne, a gang member, was convicted and sentenced to death for the 1996 home invasion and murder of Vanessa Sells and the attempted murder of her 16-year-old daughter. Hawthorne hogtied both victims and shot each one in the back of the head. The daughter miraculously survived. Attorney General Bonta is also withdrawing from the case of Tiequon Cox, a gang member sentenced to death for the 1984 murders of the mother, sister, and two nephews of NFL star Kermit Alexander.

District Attorney George Gascón and Attorney General Rob Bonta "selfie."

In addition to transferring the capital habeas corpus cases to Shelan Joseph, the cases have been removed from the District Attorney's internal tracking system, preventing other deputies from knowing their status.

"Not only is District Attorney Gascón partnering with defense attorneys to overturn lawful sentences for the worst murderers in Los Angeles, he is trying to prevent deputies in his office from knowing that he's doing it," said Scheidegger.

The story was picked up by numerous news broadcasts and newspapers across the country, from The San Diego Union-Tribune to The Boston Globe.

Over the past few weeks, CJLF has won decisions to block the early release of violent felons from prison and uphold the death sentence of the Boston Bomber. We are currently fighting to prevent Governor Gavin Newsom's plan to allow habitual criminals to serve only 1/3 of their sentences. CJLF research has debunked the false claim by George Gascón that longer sentences cause more crime and has spoken out against policies that are flooding neighborhoods with vagrants and drug addicts. Please help us continue our work by making a tax-deductible contribution today. Return the card on the right with your check, give at our website www.cjlf.org, or call us at (916) 446-0345 to contribute with your credit card. **Many thanks**.

THIS IS MY CONTRIBUTION TO CJLF

Please fill out and mail with your check to:

Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Name: _____

Address: _____

_____

Type of Contribution (check one): ☐ Business ☐ Personal

If you itemize your deductions, your contributions to CJLF are TAX DEDUCTIBLE.
IRS I.D. Number: 94-2798865

I would like to receive CJLF bulletins via e-mail. My e-mail address is:

_____

Winter 2022

Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816
RETURN SERVICE REQUESTED

"EARLY RELEASE OF VIOLENT FELONS"

continued from front page

The Criminal Justice Legal Foundation had joined the case to argue that the lower court's very literal interpretation of Proposition 57 was contrary to voter understanding and intent. If it had been upheld, it would have created an absurd result.

In 2016, Governor Jerry Brown and progressive hedge fund billionaire George Soros pooled $10 million to convince California voters to adopt Proposition 57, the so-called "Public Safety and Rehabilitation Act." The act was advertised as permitting early parole eligibility for state prisoners "convicted of a nonviolent felony offense" after completing the full term of their primary offense.

For defendants convicted of multiple felonies, sentencing courts have the authority to decide which crime to designate as the primary offense. Proposition 57 left it to the California Department of Corrections and Rehabilitation (CDCR) to devise the rules to determine which inmates qualified for early release. The CDCR promulgated regulations that excluded inmates serving a sentence for a violent crime from early parole consideration.

In early 2012, four years before Proposition 57 was adopted, habitual felon Mohammad Mohammad pleaded no contest to nine counts of robbery (violent felonies) and six counts of receiving stolen property (nonviolent felonies). Remarkably, the sentencing court designated one of the nonviolent felonies as the primary offense and ordered him to serve a base term of three years in prison. The court then ordered consecutive one-year terms on each of the nine violent offenses and consecutive eight-month terms on each of the remaining five nonviolent felonies. With sentencing enhancements added, Mohammad's aggregate sentence was 29 years.

After completing his three-year term for the nonviolent primary offense, Mohammad requested an early parole consideration hearing. CDCR denied his request. Mohammad appealed, and on November 26, 2019, a three-judge panel of California's Second District Court of Appeal granted relief in a ruling stating that, because Mohammad had completed the full term of his primary offense, under Proposition 57 he was eligible for early parole consideration even though he was also convicted and sentenced for violent offenses. The Court of Appeal interpreted the measure to mean that an inmate who is serving an aggregate sentence for more than one conviction will be eligible for an early parole hearing if one of those convictions was for "a" nonviolent felony offense.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Associate Attorney Kymberlee Stapleton argued that the Court of Appeal's erroneous interpretation of the measure failed to consider the expressed intent of the proponents and the language of the materials describing the initiative to the voters. The appeals court interpretation of Proposition 57 would give a large percentage of the state prison population the opportunity for early release, contrary to the voters' understanding and intent of the initiative. Such an interpretation would also lead to the absurd result that inmates convicted of multiple violent crimes and one nonviolent crime would be eligible for early parole consideration, whereas inmates convicted of only one violent crime would not.

The CJLF brief cited California Supreme Court precedent noting, "It is settled that the language of a statute should not be given a literal meaning if doing so would result in absurd consequences that the Legislature did not intend. To this extent, therefore, intent prevails over the letter of the law and the letter will be read in accordance with the spirit of the enactment."

"Nothing in the campaign to adopt Proposition 57 suggested that criminals with both violent and nonviolent convictions would qualify for early release after serving a short sentence for one of the nonviolent crimes," said Stapleton. "Today's decision validates the intent of the voters and the initiative's proponents to exclude violent criminals from early release," she added.