

Fate of Central Florida mom could hinge on judge's ruling on death penalty



RED HUBER/Orlando Sentinel file
Casey Anthony listens during a July hearing.

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In the final phase of a death-penalty case, jurors must rely on recollection of evidence, veracity of court testimony and, ultimately, instructions given to them by the judge.

If Casey Anthony's murder case gets to that point, her jury will consider language such as "cold, calculated or premeditated" when deciding whether she should live or die.

Orange-Osceola Chief Judge Belvin Perry recently issued a series of orders denying Anthony's defense team motions that challenged aspects of Florida's death-penalty process. In doing this, Perry allowed for the prosecution to use several "aggravating circumstances" during her trial's so-called penalty phase, should Anthony be convicted.

Such aggravators - asking jurors to consider whether a murder, for instance, was committed in a "heinous, atrocious, or cruel" way - must get weighed against so-called "mitigating circumstances," meant to offer explanations for why someone kills.

Perry's rulings did not come as a surprise, nor did they get as much media attention as other recent case developments, but they could have significant ramifications later.

'Hybrid' system

In Florida death-penalty cases, when there is a conviction, the jury recommends a sentence to the judge - either death or life in prison - but judges can decide against a jury's recommendation.

Although 35 states allow the death penalty, Florida is one of only three states that allow judges to decide against a jury, according to the Death Penalty Information Center in Washington. The others are Alabama and Delaware.

Florida's "hybrid" system has been "an area of controversy," says Richard Dieter, the Death Penalty Information Center's executive director.

"I don't think the average person realizes Florida is that different," Dieter said. "In all of those (other) states, the judge can't state, 'I'm going to impose death anyhow (despite the jury's sentence).'"

In 30 states, including others with large death-row populations such as Texas and California, the jury must vote unanimously to sentence someone to death. In those states, an 11-1 vote for death means a mandatory life sentence, whether the judge agrees or not.

Not so in Florida. An 11-1 vote for death here would be a strong show of support for a death sentence - and although judges would probably be inclined to rule that way, experts and high-court rulings say they are not required to.

'They don't know'

Many criminal-defense attorneys argue, predictably, that Anthony's case does not qualify as a death case.

"This case falls far from being a death case," said Jose Baez, who represents Anthony, accused of killing her 2-year-old daughter, Caylee Marie. "They don't know how she (Caylee) died. They don't know when. They don't know why. Before you take someone's life, you should have all the answers."

Terry Lenamon once worked for Anthony's defense team and is a veteran of at least eight death-penalty cases and 20 other first-degree-murder cases. He agrees Anthony shouldn't be facing a potential death sentence. Rather, he said, the defense should have reached a plea agreement earlier in the case.

Recent court documents submitted by the defense suggest that very early on, Anthony was offered a 10-year prison sentence in exchange for telling authorities where Caylee's remains were located. True or not, no deal ever emerged. Baez would not discuss the issue.

Now, Lenamon insists, "This is never going to reach death. It's just not going to happen," despite the politics, personalities and media attention surrounding the case.

The prosecution, however, has maintained since soon after Caylee's remains were found near her family home in late 2008 that "sufficient aggravating circumstances exist to justify the imposition of the Death Penalty" if Anthony is found guilty, according to court documents.

In Florida and elsewhere, jurors in death-penalty cases are "death-qualified," which means they must be willing to vote for a death sentence in order to sit on the jury. Likewise, they must be willing to vote for a life sentence without parole, if they determine the mitigating circumstances outweigh the aggravators.

This means people opposed to capital punishment are automatically excluded from death-case juries. Mitigation expert Brooke Butler says these rules generate more conviction-prone and more death-penalty-prone juries.