

Kagan Stands With Death Penalty Verdict Despite Juror's Contempt Charge

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Supreme Court nominee Elena Kagan

WASHINGTON -- A federal judge warned jurors in a death penalty trial 41 times not to discuss the case with anyone, not even each other, until they were sent off to deliberate on a verdict.

That didn't stop Cynthia Wilson, the jury foreman, from calling five news organizations and placing 71 other telephone calls to two fellow jurors.

U.S. District Judge Joseph F. Anderson Jr. of South Carolina found Wilson's behavior so outrageous that he held her in contempt of court, ordering her to return \$2,500 of her juror's pay and perform 120 hours of community service.

Anderson said he would have put Wilson in jail for six months if she did not have four children at home.

But when the defendant in the case, Brandon Basham, asked for his death sentence to be thrown out as a result of Wilson's conduct, Anderson refused and the 4th U.S. Circuit Court of Appeals in Richmond, Va., backed him up.

And when Basham took his plea to the Supreme Court, Solicitor General Elena Kagan agreed that the judge had made the correct call. The high court, to which Kagan has since been nominated, could say as early as Tuesday whether it will hear Basham's case.

It is no surprise that the government is seeking to preserve what it already has won, especially after the time and expense of a capital punishment trial.

Basham's guilt in a brutal, senseless crime is not in dispute, as even his lawyers concede. Basham was convicted by a jury and Chadrick Fulks pleaded guilty to kidnapping and killing 44-year-old Alice Donovan during a two-week crime spree after the pair escaped from a Hopkins County, Ky., jail in 2002. Fulks also has been sentenced to death.

They also have pleaded guilty to killing 19-year-old Marshall University student Samantha Burns in West Virginia.

The claim that Basham is raising at the Supreme Court deals only with the actions of juror Wilson, a nurse from Lyman, S.C., in the penalty phase of his trial.

The court has previously ruled that the presence of a biased juror is so serious that it requires a verdict to be thrown out. Basham and the government disagree over whether Wilson actually was biased and tried improperly to sway other jurors who might not have favored a death sentence.

Wilson testified that her calls to the media were intended to spur stories that women shopping alone should be careful, since Donovan was abducted from a Wal-Mart parking lot and Burns from a mall in Huntington, W.Va.

But Basham said the testimony from Wilson, her husband and a television news producer Wilson called suggested that she was interested in publicity for herself and was also worried that some jurors might not vote for a death sentence.

Basham also zeroed in on the 71 phone calls and the judge's refusal to investigate them thoroughly. Anderson explained, as quoted in Basham's appeal, that he had overseen trials in which jurors formed romantic relationships "and I'm not sure it's anybody's business what jurors talked about."

Kagan said Anderson conducted a thorough investigation, interviewed each juror and, besides, had wide discretion to deal with juror misconduct.

As for the phone calls, Kagan said the judge properly used his "discretion in concluding that no further inquiry was necessary."

The case is Basham v. U.S., 09-617.