

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2003-024938-001 DT

05/18/2007

The County Attorney, as the law allows, made a unilateral decision not to withdraw the death notice for Mr. Bearup, a defendant who, even under the State's theory of the case, did not cause the physical death of Mr. Mathis. Under the State's theory of the case, Mr. Bearup acted only as support for Mr. Johnson as he baseball batted Mr. Mathis to death or to near death, and helped drag Mr. Mathis to a car trunk and the desert. Under the State's theory, Mr. Bearup's act of cutting off Mr. Mathis' ring finger while cruel and heinous, was not a cause of the death.

The County Attorney may argue that the decision for the death penalty was the jury's decision, but in this instance, that was not true. Mr. Bearup made a decision not to present any mitigation. So this jury, like this Court, was bound to follow the law, which in effect was a directed verdict for a death penalty sentence.

The Court believes that Mr. Bearup was correctly prosecuted and convicted for the felony murder.

The Court believes that the jurors' verdict for Count 1 was based upon the facts presented and the law given to them.

This Court, nonetheless, finds that Mr. Bearup's death penalty sentence for Count 1 was not justified in the context of the relative responsibility of the co-defendants whom the County Attorney chose to withdraw the notices of death and reduce their sentencing range.

It is the County Attorney's motto that "let justice be done." This, of course, coincides with a prosecutor's unique ethical responsibility. This Court finds that justice was not done for Mr. Bearup in Count 1.

This Court leaves to the Supreme Court the ramifications of these findings.

IT IS ORDERED authorizing the Sheriff of Maricopa County to deliver the Defendant to the Arizona Department of Corrections to carry out the term of imprisonment set forth herein.

IT IS ORDERED the Clerk of the Superior Court remit to the Arizona Department of Corrections a copy of this Order or the Order of Confinement together with all presentence reports, probation violation reports, and medical and psychological reports that are not sealed in this cause relating to the Defendant.

Mr. Delozier having previously been withdrawn as counsel of record for this defendant in this matter,