

Sixth Circuit reverses first death penalty imposed in Michigan since 1937

3. August 2011 By Madelaine Lane

Today the Sixth Circuit Court of Appeals overturned the first death penalty to be imposed in Michigan since 1937. *United States v. Gabrion*, Case Nos. 02-1386, 1461, 1570, arises out of a federal murder prosecution in the United States District Court for the Western District of Michigan. Although Michigan abolished the death penalty in 1846, defendants convicted in the federal system are still eligible for the death penalty. Mr. Gabrion murdered a 19-year old woman and her infant daughter and dumped the bodies in Manistee National Forest giving the federal government jurisdiction to prosecute the defendant. Although the Sixth Circuit panel unanimously affirmed Mr. Gabrion's conviction, Judges Merritt and Moore determined that Mr. Gabrion's sentence must be reversed because defense was entitled to inform the jury that Mr. Gabrion would not have been eligible for the death penalty if this case had been prosecuted by Michigan state authorities. It is likely that the government will file for en banc review or a writ of certiorari, to appeal this case to the United States Supreme Court. Either request has a fair chance of being granted.

In 1996, the State of Michigan accused Mr. Gabrion of raping Rachel Timmerman. While awaiting trial on the rape charge, Mr. Gabrion murdered Ms. Timmerman and her young daughter. Although the child's body was never found, Ms. Timmerman's body was recovered on July 5, 1997 in Oxford Lake. The lake is located within Manistee National Forest. Because Ms. Timmerman was found in Manistee National Forest, both the State of Michigan and the United States Government had jurisdiction over the case. Ultimately, the federal government assumed jurisdiction over the case and prosecuted Mr. Gabrion for the murder of Rachel Timmerman. Following trial, which included numerous courtroom antics by Mr. Gabrion, he was convicted of Ms. Timmerman's murder.

At sentencing, the defense sought to tell the jury that had Mr. Gabrion been tried under Michigan state law, he would not be subject to the death penalty. The defense claimed that this statement constituted "other [mitigating] factors" under 18 USC sec. 3592(a)(8). The government and the trial court disagreed. Ultimately, the district court judge concluded that Michigan's longstanding policy against imposing the death penalty could not be presented to the jury as a reason for sparing his life. The judge noted that Michigan's policy regarding imposition of the death penalty was not an "other factor" for purposes of sec. 3592.

The Sixth Circuit reversed the district court's decision and ruled that the state's policy regarding the death penalty was a mitigating factor which must be presented to the jury. In reaching this conclusion, the majority noted that the difference between the federal and state penalties could be seen as an element of randomness in the process. Accordingly, the defense was entitled to argue to the jury that it was a mitigating factor to be considered. Additionally, the majority looked to *Gregg v. Georgia*, 428 U.S. 153, 205 (1976) and noted that the Supreme Court has previously held that past practices of juries in similar circumstances is valuable information for a death jury to consider during the sentencing phase.

Judge Batchelder concurred in the portion of the majority opinion affirming Mr. Gabrion's conviction. However, Judge Batchelder dissented from the remainder of the majority's opinion. She opined that the majority had misinterpreted the wording of sec. 3592(a). The defense should not be entitled to present "any" mitigating argument against the death penalty. Indeed, the dissenting judge considered the proposed evidence in this case to be inappropriate political argument. The defense was asking the jury to ignore the federal law allowing imposition of the death penalty in favor of Michigan's policy.