

# High court reviews exclusion of death penalty in 2007 Carnation killings

The oral arguments before the Supreme Court centered on whether a lower-court judge was right when he ruled in January that prosecutors couldn't seek the death penalty against the defendants charged with aggravated first-degree murder in the slayings of six family members.

By [Sara Jean Green](#)

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OLYMPIA — A King County judge overstepped his bounds when he ruled that prosecutors can't seek the death penalty against the two people accused of killing a family of six on Christmas Eve 2007 in Carnation, the state Supreme Court was told Thursday.

King County Senior Deputy Prosecutor James Whisman argued that under the state's death-penalty statute, "discretion is placed with the prosecutor" to decide whether to seek capital punishment.

But in [ruling out the death penalty](#), Superior Court Judge Jeffrey Ramsdell wasn't privy to all of the information King County Prosecutor Dan Satterberg considered in deciding to seek the death penalty, Whisman said.

"The court ruled the prosecutor can't consider the strength of the evidence ... but he wasn't clear on what he meant by 'strength of the evidence,'" Whisman told the nine-member panel. Ramsdell did not have access to mitigation information on both defendants that was submitted by their defense attorneys, and the judge had previously denied a defense motion to compel Satterberg to spell out "which factors in the mitigation package he found persuasive and which ones" he didn't, Whisman said.

But defense attorney Kathryn Ross, who represented defendants Michele Anderson and her former boyfriend, Joseph McEnroe, before the Supreme Court, said Satterberg's decision to seek the death penalty was based only on the evidence and not on the mitigation evidence submitted by the defense. Ross argued that the state's death-penalty statute is unique in that prosecutors are directed to impose it only if there isn't sufficient evidence of mitigating factors to merit leniency.

"I guess that's why we're here — to decide how to read that statute. Is mitigation the only thing they consider" in deciding to seek the death penalty, said Chief Justice Barbara Madsen.

## **Trial judge's decision**

The oral arguments before the Supreme Court centered on whether Ramsdell was right when he ruled in January that prosecutors couldn't seek the death penalty against Anderson and McEnroe, who are each charged with aggravated first-degree murder in the [shooting deaths](#) of six members of Anderson's family: her parents, brother, sister-in-law and the younger couple's two preschool-aged children.

The judge handed down his ruling Jan. 31 after 3,000 jury subpoenas had been mailed out on the eve of McEnroe's trial.

Ramsdell ruled that while Satterberg properly considered the "facts and circumstances" of the crimes, the prosecutor erroneously considered the strength of the state's evidence against Anderson and McEnroe in deciding whether to seek the death penalty.

He said the prosecutor should only have weighed whether there were sufficient mitigating circumstances to warrant leniency if convicted — which in the case of aggravated first-degree murder means life in prison without the possibility of release, instead of death.

Under state law, mitigating factors in potential death-penalty cases can include evidence of an extreme mental disturbance or impairment. Leniency also can be merited if a suspect acted under duress or domination of another person.

Meanwhile, three weeks after Ramsdell issued his ruling, King County Superior Court Judge Ronald Kessler ruled Satterberg abused his discretion by relying on a flawed investigation into mitigating factors that could have merited leniency for accused cop-killer Christopher Monfort.

Kessler tossed the death penalty in the case even though Monfort's defense team hadn't provided any mitigation evidence to the state for more than three years after Monfort was [charged in the fatal shooting](#) of Seattle police Officer Tim Brenton on Halloween 2009.

The Supreme Court is to hear oral arguments in Monfort's case June 27.

While McEnroe and Anderson's attorneys want the Supreme Court to uphold Ramsdell's ruling and dismiss the death penalty from consideration, Satterberg's office has asked the court to reverse Ramsdell's decision, reinstate the death-penalty notice and remand the case to Superior Court for trial.

It typically takes between two and six months for the justices to release their written rulings.

## **Prosecution arguments**

Whisman, the senior deputy prosecutor, argued Thursday that Ramsdell had repeatedly denied “a series of (defense) motions all surrounding the prosecutor’s decision” to seek the death penalty, and each one of them was “trying to get to the core issue” of why the prosecutor didn’t find the defense’s mitigation packages compelling.

“Ultimately, the only way to make this decision (to seek the death penalty) reviewable is to have a trial at the charging phase,” when a prosecutor decides what charges to file against a defendant, Whisman said. But, he said, that would then make “the judge a decision-maker,” which the Supreme Court “has consistently said” is inappropriate at the accusatory stage of a trial.

Whisman pointed out that prosecutors proposed the statute’s mitigation language back in 1980 and said the decision to seek the death penalty isn’t subject to judicial review because “it’s a charging decision.” He also said upholding Ramsdell’s ruling in the case could potentially overturn earlier Supreme Court decisions.

Ross said if a prosecutor decides to seek the death penalty based “only on how easy it is for the state to prove” a crime, the application of it becomes random. She claimed Satterberg’s office “didn’t care” about the mitigation evidence.

### **“Mainstream white people” argument**

Ross, in a passing reference before the Supreme Court, also raised a racial argument outlined in the defense brief.

Ross and her co-counsel argued in their brief that Satterberg has made six death-penalty decisions during his tenure, filing notice of intent to seek the punishment against McEnroe, Anderson and Monfort, who are all accused of killing “mainstream white people.” He did do so in the other cases, where victims included a lesbian, a gay man, an Asian child and a mixed-race baby, the brief says.

In their reply brief, Whisman and Senior Deputy Prosecutor Andrea Vitalich called the allegations “politically charged and specious.” In all three cases where the death penalty was not sought, the defendants presented mitigating evidence, “including documented instances of mental illness predating their crimes,” the brief says.

Outside the courtroom, Pam Mantle — whose daughter Erica Anderson and grandchildren Nathan and Olivia were among those killed — said the constant delays in the case have taken a toll.

“Everything has been put on hold. You just wait and wait and nothing happens,” she said.

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*Information from Seattle Times archives is included in this report.*

