

People v. Marco Lee: review of death penalty law

The following statement provides a brief explanation of the law that applies to a Colorado death penalty case, pursuant to Colorado Revised Statute §§18-1.3-1201:

In Colorado there are **four steps in a death penalty case**. These apply after the jury has unanimously agreed that all the elements of first degree murder have been proven beyond a reasonable doubt.

First, the prosecution must prove beyond a reasonable doubt that the aggravating factors that have been charged against the defendant and are laid out by statute outweigh evidence presented by the defendant in mitigation. This must be unanimous. In this case, the following five aggravators would have been presented:

1. The defendant intentionally killed a person who was engaged in official duties,
2. The defendant killed Officer Jordan while lying in wait or from ambush,
3. During the commission, the defendant knowingly created a grave risk of death to another person, in addition to the victim of the offense,
4. The defendant committed the offense for the purpose of avoiding or preventing a lawful arrest or prosecution or effecting an escape from custody. This factor also includes the intentional killing of a witness to a criminal offense.
5. The defendant's possession of a weapon used to commit a class 1 felony is a felony offense.

Second, the law guarantees that the defense has the right to present mitigating factors. In this case, credible evidence would have been presented to establish the following mitigating factors:

1. Defendant's age
2. Capacity to appreciate wrongfulness, or to conform conduct to law was significantly impaired,
3. Under unusual or substantial duress,
4. Emotional state of defendant at the time the crime was committed,
5. Absence of any significant prior convictions,
6. Extent of cooperation with law enforcement and District Attorney,
7. Under the influence of alcohol or drugs: the defendant's medically drawn BAC was .266, legal BAC was .156 (approximately 4 hours) and .122 (approx. 6 hours)
8. Defendant not a continuing threat to society

The law also allows the Defense to present any other evidence regarding this decision. There is no burden of proof for the Defendant.

Third, the law requires the jurors to unanimously find beyond a reasonable doubt that the aggravation outweighs the mitigation presented. Each juror has absolute discretion regarding how much weight to give to each aggravator and mitigator; the mere number of aggravators or mitigators does not determine the outcome. Only following a unanimous decision under the third step does the jury's analysis continue to the fourth step.

In the **Fourth** and final step, each juror must use their individual moral judgment to decide whether to impose the death penalty. The twelve jurors must unanimously agree to impose the death penalty in order for such a judgment to enter against the defendant.