

Supreme Court of Florida

No. SC15-258

NELSON SERRANO,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC15-2005

NELSON SERRANO,
Petitioner,

vs.

JULIE L. JONES, etc.,
Respondent.

[May 11, 2017]

PER CURIAM.

Nelson Serrano appeals the denial of his postconviction motion filed under Florida Rule of Criminal Procedure 3.851 and petitions this Court for a writ of

habeas corpus.¹ For the following reasons, we affirm the denial of his guilt phase postconviction claims, deny his habeas petition, but vacate his sentences, and remand for a new penalty phase.

I. BACKGROUND

In 2011, this Court affirmed Serrano's four convictions for first-degree murder and his four death sentences. Serrano v. State, 64 So. 3d 93 (Fla. 2011).

This Court explained the background of the case and murders as follows:

On May 17, 2001, Nelson Serrano was indicted under seal on four counts of first-degree murder for the deaths of George Gonsalves, Frank Dosso, Diane Patisso, and George Patisso. The murders occurred on December 3, 1997, at Erie Manufacturing and Garment Conveyor Systems in Bartow. George Gonsalves was one of Serrano's business partners. And Frank Dosso, Diane Patisso, and George Patisso were respectively the son, daughter, and son-in-law of Serrano's other business partner, Felice (Phil) Dosso. Serrano, a dual citizen of the United States and Ecuador, was arrested in Ecuador on August 31, 2002, and brought to the United States.

At the guilt phase, which occurred in 2006, the State presented the following evidence. In the 1960s, Phil Dosso and George Gonsalves started a tool and die business, Erie Manufacturing Cooperative, in New York. Their business provided parts to support the garment industry. In the 1980s, Phil Dosso and George Gonsalves met Nelson Serrano, who was working for a New Jersey company selling slick rail systems for the garment industry. In the middle of the 1980s, the three men created a separate company, Garment Conveyor Systems. Serrano was responsible for designing, selling, and installing slick rail systems, while Dosso and Gonsalves built the parts.

1. We have jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const. Because we are remanding for a new penalty phase, we do not address Serrano's penalty phase claims.

In the late 1980s, the partners moved the business to Bartow, Florida. At that time, they closed Erie Manufacturing Cooperative and transferred all the assets to Erie Manufacturing, Inc. As part of their oral agreement, Serrano bought into the Erie partnership and agreed to pay Phil Dosso and George Gonsalves \$75,000 each. Therefore, all three men were equal partners in both Garment Conveyor Systems and Erie Manufacturing. Garment moved to Bartow as well. Serrano's son, Francisco Serrano, began working at the business soon after they relocated to Bartow, and Phil Dosso's son, Frank Dosso, began working there at a later date. Phil Dosso's son-in-law, George Patisso, was also an employee of the business.

By the early 1990s, the business was doing well. However, friction between the three partners had developed. Nelson Serrano had failed to pay the \$75,000 to each of his partners. Further, there were disagreements about the distribution of assets and accusations that there were two sets of books. Then, in the summer of 1997, Phil Dosso and George Gonsalves fired Francisco Serrano. Also in the summer of 1997, Nelson Serrano opened a separate business checking account with a different bank and deposited two Erie checks totaling over \$200,000. And Serrano instituted a civil suit against his partners. Ultimately, Serrano was removed as president by a vote of the other two partners, and the locks were changed on the building.

Numerous Erie employees testified to the strained relations between Serrano and the other two partners, particularly Serrano's dislike of Gonsalves. Serrano made statements indicating that he wished Gonsalves were deceased. Additionally, Phil Dosso testified to hearing Serrano state that he felt like killing Gonsalves.

On the evening of the murders, most Erie employees left work at 5 p.m. or shortly thereafter. However, as was his usual practice, George Gonsalves worked late. David Catalan, an employee at Erie, testified that when he left with another employee shortly after 5 p.m. George Gonsalves' car was the only car in the parking lot. Although George Patisso and Frank Dosso remained at Erie with Gonsalves, they did not have a car parked in front because George Patisso's wife, Diane Patisso, had plans to pick them up and take them to Frank Dosso's home for a family birthday party.

When family members began calling Frank Dosso and could not get an answer, Phil Dosso and his wife decided to drive to Erie. As Phil and Nicoletta Dosso entered Erie's unlocked front door, they discovered the deceased body of their daughter, Diane Patisso. Phil

Dosso called 911 and ran to Frank Dosso's office, where he discovered the bodies of George Gonsalves, George Patisso, and Frank Dosso.

When the first law enforcement officers arrived at the scene at 7:36 p.m., there were only three cars parked in front of the entrance: Phil Dosso's car, Diane Patisso's car, and George Gonsalves' car. Inside Erie, law enforcement discovered twelve shell casings, eleven from a .22 and one from a .32. All of the victims had been shot in the head with .22 bullets, and Diane Patisso was also shot once with a .32 bullet. The three men were shot execution-style. While neither murder weapon was ever located, the State introduced evidence that Serrano possessed and owned multiple .22 and .32 caliber firearms.

In the office containing the three male victims, officers discovered a blue vinyl chair with shoe impressions on the seat. Directly above the chair, a ceiling tile had been dislodged. Although this office was Frank Dosso's office at the time of the murders, it had been Nelson Serrano's office when he worked at Erie. David Catalan testified that on one occasion, he saw Serrano in his office with a gun. Serrano was standing on a chair, moving a ceiling tile, and taking papers out of the ceiling. Further, Erie employee Velma Ellis testified that the blue chair in Frank Dosso's office was never used and always remained under a desk in the office and that there were papers and a box piled on top of the chair's seat. Ellis testified that the chair was in its usual position under the desk when she left work on December 3, 1997, at 5 p.m. Crime analysts tested the shoe impressions on the dusty seat of the blue vinyl chair and found that the class characteristics and wear pattern were consistent with a pair of shoes Serrano owned and later loaned to a nephew.

The State's theory at trial was that Serrano kept a .32 caliber firearm hidden in the ceiling of his office. Once he was ousted from the company and the locks were changed he was unable to retrieve the gun until the night of the murders. After Serrano had shot the three male victims in his former office and was leaving the scene, Diane Patisso entered the building and was shot with both a .22 and the retrieved .32. An FDLE agent testified that Serrano told the agent that he would hide a gun in the ceiling of his office when he was out of town on business. However, Serrano's fingerprints and DNA were not discovered at the crime scene.

When officers first discovered the four victims at Erie, their investigation immediately focused on Serrano. As soon as Serrano

returned to his home from a business trip to Atlanta on December 4, 1997, detectives requested that he come to the police station for an interview. At the police station, Serrano told law enforcement about his problems with his partners and explained to the detective that he had learned of the murders the previous evening when he had called his wife from his Atlanta hotel.

During his interview with law enforcement, Serrano detailed his business trip itinerary, which included leaving Lakeland early on the morning of December 2, flying from Orlando to Washington, D.C., and, on the evening of December 2, flying from Washington to Atlanta. Serrano indicated that he remained in Atlanta until December 4, 1997. When asked by the detective what he thought may have happened at Erie, Serrano replied that “somebody is getting even; somebody they cheated, and George is capable of that.” Thereafter, the detective took Serrano’s taped statement, which was played for the jury. During his taped statement, Serrano stated that maybe Diane Patisso “walked in the middle of something.”

Officers traveled to Atlanta to investigate Serrano’s alibi and met with Larry Heflin of Astechnologies regarding his business meeting with Serrano. Heflin testified that he met Serrano in Atlanta on December 3 at about 9:45 a.m., and the meeting lasted approximately one hour. Investigators also obtained the La Quinta Inn airport hotel’s surveillance videotapes. The video showed Serrano in the Atlanta hotel lobby at 12:19 p.m. on December 3. Ten hours later, at 10:17 p.m., Serrano was again seen on the video, entering the hotel lobby from the outside, wearing the same sweater and jacket as earlier in the afternoon.

Alvaro Penaherrera, Serrano’s nephew, testified that on two separate occasions Serrano asked Penaherrera to rent a car for him so that Serrano’s wife would not find out about the rentals. On October 29, 1997, Serrano drove Penaherrera to the Orlando airport, where Penaherrera picked up a rental car. Penaherrera then drove the car and left it at a nearby valet lot. Thereafter, Serrano drove Penaherrera back to his apartment. Penaherrera had no further contact with the rental car and did not know who returned it on October 31, 1997, at 7:30 p.m.

Around Thanksgiving 1997, Serrano again asked Penaherrera to rent a car for him under Penaherrera’s name because Serrano had a girlfriend from Brazil coming into town. On November 23, 1997, Penaherrera made a telephone reservation for a rental car for

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