

## **U.S. Supreme Court to review Fort Worth death penalty case**

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### Body

The U.S. Supreme Court will review the death penalty case of a Fort Worth man who shot and killed a 5-year-old girl and her grandmother at a children's birthday party. The high court said Friday it would look into a legal distinction between ineffective lawyering in the trial court and during state appeals.

Erick Davila, 29, received the death penalty for the 2008 shooting deaths of Annette Stevenson, 47, and her 5-year-old granddaughter, Queshawn, according to Davila's brief filed to the U.S. Supreme Court. Davila, a gang member, drove up to a house where he knew a rival gang member, Jerry Stevenson, was and shot into the house and front porch. Instead of killing the man, Davila killed Stevenson's daughter and mother.

During his trial, defense attorneys said Davila didn't intend to kill multiple people, only Jerry Stevenson, which would make the case ineligible for a capital murder conviction and the death penalty. To be convicted of capital murder in this case, Davila must have knowingly and intentionally killed multiple people.

In his brief to the high court, Texas Attorney General Ken Paxton said Davila did intend to kill multiple people because he said after his arrest that he wanted to shoot "the guys on the porch and ... [was] trying to get the fat dude." Aside from Jerry Stevenson, only women and children were at the party, the brief said.

The trial jury seemed to hesitate on the intent issue, submitting a question to the court during deliberations asking: "Are you asking us did he intentionally murder the specific victims, or are you asking us did he intend to murder a person and in the process took the lives of 2 others."

The court sent legal definitions and included a charge that said Davila would be responsible for a crime if the only difference between what happened and what he wanted was that a different person was hurt, the brief said. The defense objected, saying it was an improper jury instruction, but the court overruled the objection. Within an hour, the jury came back with a capital murder conviction, later sentencing Davila to death.

The crux of Davila's current legal argument rests on this jury instruction and how his subsequent appellate lawyers dealt with it.

Davila's direct appeal began after his sentence, but his appellate lawyer didn't raise improper jury instruction as an issue -- a mistake Davila's current lawyer says was "life-threatening."

"The judge gave a bad instruction. The lawyer on direct appeal did not raise it," said Seth Kretzer, Davila's federal appellate attorney. "Had she attacked it and won, he might have gotten a new trial, not death-eligible."

After his direct appeal, Davila's state habeas appeal, where one raises issues outside of the trial, didn't argue that his lawyer in the direct appeal was ineffective for not raising the jury issue -- another mistake, Kretzer said.

Texas objects

Paxton said in Texas' brief that Davila's arguments are meritless, that a federal district court looked into the jury instruction in question and found no fault against it.

Death row inmates can also appeal their case in the federal courts system, but it is generally ruled that issues that could be raised at the state level -- like the jury instruction -- can't be reviewed at the federal level until they have gone through the state courts. One exception to this rule is if the state habeas lawyers failed to raise the issue of ineffective trial counsel.

Now, Kretzer is trying to argue that exception should also apply to state habeas lawyers who fail to raise the issue of ineffective appellate counsel as well. In that case, Davila could argue that because his state habeas lawyer didn't fault his direct appeals' lawyer for not bringing up the jury instruction, the federal courts can now hear it.

"The way the law works right now is if the trial counsel made a mistake, the federal court could save the inmate's life, but if the appellate counsel made the mistake, they would have to go ahead and execute," Kretzer said.

The Supreme Court has gotten involved because different federal appeals courts have ruled differently on the distinction between ineffective trial counsel and appellate counsel. In previous rulings, the 9th Circuit Court of Appeals has said that there is no distinction between the two, but the 5th Circuit, which covers Texas, as well as the 6th, 7th, 8th and 10th circuit courts, all have ruled that the two shouldn't be treated the same, the state's brief said.

"If the Court was willing to address a potential circuit split, Davila's case is not an appropriate vehicle for doing so," Paxton wrote, re-emphasizing that the federal district court rejected the case based on both procedure and merit.