

## 資料 9

米国では、死刑の執行方法が残虐か否かについて裁判でしばしば争われます。これは、1 つには死刑の執行が全て公開されていることが大きいと思われます。以下に引用するのは、米国で電気イス（電気殺刑）がネブラスカ州の憲法に違反するとされた判決の一部（和訳と英文）です。この判決の結果、2009年になってネブラスカ州は致死薬物注射を死刑の執行方法として採用することになりました。2009年末現在、死刑制度を持つ全ての州が致死薬物注射を採用していて、その中の一部の州では、死刑囚が他の死刑の執行方法を選ぶこともできます。

《引用開始》

745 N.W. 2d 229

275 Neb, 1

被上訴人 ネブラスカ州

対

上訴人 レイモンド・マタ・ジュニア

No. S - 05 - 1268

ネブラスカ州最高裁

2008年2月8日

上訴人側 ジェームズ・R・モーブレイ、ジェリー・L・サウシー、及びジェフ・ピッケンス  
（ネブラスカ公的弁護委員会、リンカーン）

被上訴人側 ジョン・ブルーニング州司法長官及びJ・カーク・ブラウン

ヘヴィカン州最高裁長官、及びライト、コノリー、ゲラード、ステファン、マコーマック、  
及びミラー - ラーマン判事

コノリー判事

目次～（略）

. 1～7（略）

. 8 電気殺刑の合憲性

(a)～(i)(略)

(i) 結論：電気殺刑は残虐で異常な刑罰である。

不必要な苦痛の重大なリスクが示されたことを除いても、我々は電気殺刑が無意味に身体的暴力を課し、死刑囚の体を損傷するという点において不必要に残虐であると結論する。電気殺刑で体が燃えたり炭化したりしたとする証明された歴史は、進展する品位の水準や人間の尊厳、いずれの概念とも両立しない。他の州は、瞬間的で苦痛のない死という初期の仮説が全く誤っていることや死刑を執行するにあたってより人道的な方法があることを認めた。現在の科学的な知見に照らして、「“電気殺刑”は」州の囚人のための「処刑室よりもフランケンシュタイン男爵の実験室にふさわしい恐竜のようなものである」<sup>128</sup>ことは明らかである。我々はネブラスカ州法29節2532で規定される電気殺刑が残虐で異常な刑罰を禁じたネブラスカ州憲法1編9節反すると結論する。

#### (k) 解決策

電気殺刑が残虐で異常な刑罰であるとの結論を出したので、我々は本件上訴をどのように処理するかの問題に直面する。ネブラスカ州の法律がマタの死刑を執行するための、憲法上受容される死刑の執行を現在持っていないとはいえ、同人はネブラスカ州法に従って、第1級殺人罪について適正に有罪判決を受け、死刑を宣告された事実は残っている。我々はすでに彼の有罪宣告を維持した。彼に対する死刑宣告は、現在の法律ではそれを執行することができないが、なお法的に有効である。

(中略)

#### ・結論

マタに対する死刑宣告は維持される。しかし、我々の政治体制の下では、州議会は死刑を維持することを議決することはさしつかえない反面、憲法上の権利を侵害する死刑を創り出してはならないのである。我々は死刑囚が罪なき犠牲者に苦痛を与えたのと同じだけ死刑囚にも苦痛を与えたいとの誘惑を認識している。しかし、残虐な行為に対して残虐な行為を行うことなしに罰することが文明社会の輝かしい証明である。死刑確定囚はその犯罪とは関係なく、拷問して死に至らしめてはならない。

そして証拠は明白に多くの死刑確定囚において意識消失と死が瞬間的ではないことを証明した。これらの死刑囚は電気殺刑を執行されれば、高電圧の電流が人体に与える苦痛を持続的に経験することになる。証拠は、電気殺刑が激しい痛みと著しい苦しみを与えることを示している。それ故に死刑の執行方法として電気殺刑は、ネブラスカ州憲法1編9節に反する残虐で異常な刑罰である。そして、憲法上受容できる死刑執行方法なしにはマタの死刑宣告は停止される。

判決は維持された、そして死刑は停止された。

注記(略)

反対意見(略)

《引用終了》

**745 N.W.2d 229**  
**275 Neb. 1**  
**STATE of Nebraska, Appellee,**  
**v.**  
**Raymond MATA, Jr., Appellant.**  
**No. S-05-1268.**  
**Supreme Court of Nebraska.**  
**February 8, 2008.**

James R. Mowbray, Jerry L. Soucie, and Jeff Pickens, of Nebraska Commission on Public Advocacy, Lincoln, for appellant.

Jon Bruning, Attorney General, and J. Kirk Brown for appellee.

HEAVICAN, C.J., and WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

**TABLE OF CONTENTS**

I.	
Introduction .....	
.....	240
II.	
Background .....	
.....	240
1. Events Preceding Mata’s Direct Appeal .....	240
2. Mata’s Direct Appeal and Order of Resentencing .....	241
3. Resentencing Proceedings .....	
.....	241
III. Assignments of Error .....	
.....	243

IV. Standard of Review .....	243
V. Analysis .....	243
1. Jurisdiction .....	243
2. Arguments That This Court Erred in Ordering Mata's Resentencing Under L. B. 1 .....	244
3. The Exceptional Depravity Aggravator Is Not Unconstitutional .....	248
4. Capital Sentencing Statutes Did Not Prejudice Mata's Right to a Jury Trial .....	248
5. The Division of Roles Between the Jury and the Three-Judge Panel Does Not Violate the 8th and 14th Amendments .....	249
6. Jury Was Properly Instructed .....	252
(a) Use of the Term "Apparently Relished" Did Not Render Aggravator Instruction Unconstitutionally Vague .....	252
(b) Jury Was Not Required to Unanimously Agree on Alternative Theories of Exceptional Depravity .....	253
7. Proportionality Review .....	254
8. Constitutionality of Electrocution .....	255
(a) Nebraska Constitution Governs the Issue .....	256

(i) Early U.S. Supreme Court Decisions on Electrocution .....	257
(ii) This Court's Duty to Safeguard Constitutional Rights .....	260
(b) Legal Standards Defining Cruel and Unusual Punishment .....	261
(i) Substantial Risk That Prisoner Will Suffer Unnecessary and Wanton Pain	261
(ii) Evolving Standards of Decency .....	262
(iii) Dignity of Man .....	264
(iv) No Requirement to Show Legislature Intended to Cause Pain or Lingering  Death .....	
265	
(c) Standard of Review .....	266
(i) Questions of Law and Fact .....	266
(ii) Deference Due Legislature .....	267 (d)
Parties' Contentions .....	267
(e) Nebraska Statutes Require a Continuous Electric Current but Fail to Specify Its Strength or Force .....	268
(f) Preparations for Electrocution .....	269
(g) The Prisoner's Body Is Burned .....	269
(h) 2004 Protocol Will Not Eliminate Risk of Prisoner Burning or Catching Fire	270

(i) District Court Found Some Prisoners Would Experience Unnecessary Pain and Torture .....	270
(i) Heart Capable of Restarting .....	272
(ii) State's Theories of Instantaneous Loss of Brain Function .....	273
(iii) Defense Experts Reject State's Theories .....	274
(iv) Evidence Shows Some Prisoners Still Alive .....	275
(v) Sources of Pain in an Electrocution .....	277
(vi) Evidence Supports Court's Finding That Some Prisoners Will Experience Unnecessary Pain, Suffering, and Torture .....	277
(j) Conclusion: Electrocution Is Cruel and Unusual Punishment .....	278
(k) Resolution .....	278
VI. Conclusion .....	279

## I. INTRODUCTION

A jury convicted Raymond Mata, Jr., of first degree murder and kidnapping. A three-judge panel sentenced Mata to death for the first degree premeditated murder of 3-year-old Adam Gomez. The presiding judge sentenced him to life imprisonment for kidnapping. Between his sentencing and our decision in his first direct appeal, the U.S. Supreme Court decided *Ring v. Arizona*,<sup>1</sup> which required juries to find whether aggravating circumstances exist in death penalty cases. In *State v. Mata (Mata I)*,<sup>2</sup> we affirmed both of Mata's convictions, but, applying *Ring*, we vacated his death sentence

and remanded the cause for resentencing. After a jury found the existence of an aggravating circumstance, a three judge panel resentedenced Mata to death.

In this appeal, Mata argues that this court and the trial court erred in numerous respects regarding his resentencing. He also argues that electrocution is cruel and unusual punishment prohibited by the U.S. and Nebraska Constitutions.

## II. BACKGROUND

In June 2000, a three-judge panel sentenced Mata to death for premeditated murder. The three judge panel found the existence of an aggravating circumstance, exceptional depravity, under Neb.Rev.Stat. § 29-2523(1)(d) (Cum.Supp.2002). While Mata's direct appeal was pending, the U.S. Supreme Court promulgated a new constitutional rule and the Nebraska Legislature responded by amending Nebraska's capital sentencing statutes.

### 1. EVENTS PRECEDING MATA'S DIRECT APPEAL

In June 2002, the U.S. Supreme Court decided *Ring*.<sup>3</sup> The Court determined, under the Sixth Amendment, that Arizona's aggravating circumstances in capital cases are the functional equivalent of elements that expose a defendant to greater punishment. Therefore, it determined that they must be found by a jury. In November, the Governor signed into law L.B. I,<sup>4</sup> emergency legislation that reassigned responsibility for determining the existence of aggravating factors from judges to juries, as required by *Ring*, for any capital sentencing proceeding occurring on or after November 23, 2002.

In March 2003, this court decided *State v. Gales*.<sup>5</sup> We stated that new constitutional rules apply to pending direct appeals. Therefore, under *Ring*, we vacated the defendant's death sentence because the sentencing judge, not a jury, had determined the existence of aggravating circumstances. We remanded the cause for resentencing and set out a new procedural rule for capital cases in the wake of *Ring*. We recognized that L.B. 1 had amended Neb.Rev.Stat. § 29-1603 (Reissue 1995) to require that when the State seeks the death penalty, the information must contain a "notice of aggravation which alleges one or more aggravating circumstances." But we concluded that the notice requirement did not apply to the defendant's resentencing because it is a procedural rule that has no retroactive effect.<sup>6</sup> We limited, however, the

We reject the State's argument that electrocution would not be cruel and unusual punishment if a prisoner remained conscious for 15 to 30 seconds. Fifteen to thirty seconds is not a blink in time when a human being is electrically on fire. We reject the State's argument that this is a permissible length of time to inflict gruesome pain. It is akin to arguing that burning a prisoner at the stake would be acceptable if we could be assured that smoke inhalation would render him unconscious within 15 to 30 seconds.

[60] Given the evidence and the district court's finding thereon, we conclude that electrocution will unquestionably inflict intolerable pain unnecessary to cause death in enough executions so as to present a substantial risk that any prisoner will suffer unnecessary and wanton pain in a judicial execution by electrocution.

(j) Conclusion: Electrocution Is Cruel and Unusual Punishment

[61] Besides presenting a substantial risk of unnecessary pain, we conclude that electrocution is unnecessarily cruel in its purposeless infliction of physical violence and mutilation of the prisoner's body. Electrocution's proven history of burning and charring bodies is inconsistent with both the concepts of evolving standards of decency and the dignity, of man. Other states have recognized that early assumptions about an instantaneous and painless death were simply incorrect and that there are more humane methods of carrying out the death penalty. Examined under modern scientific knowledge, "[electrocution] has proven itself to be a dinosaur more befitting the laboratory of Baron Frankenstein than the death chamber" of state prisons.<sup>198</sup> We conclude that death by electrocution as provided in § 29-2532 violates the prohibition against cruel and unusual punishment in Neb. Const. art. I, § 9.

(k) Resolution

[62] Having concluded that electrocution is cruel and unusual punishment, we face the question of how to dispose of this appeal. The fact remains that although the Nebraska statutes currently provide no constitutionally acceptable means of executing Mata, he was properly convicted of first degree murder and sentenced to death in accord with Nebraska law. We have already affirmed his conviction.<sup>199</sup> His sentence of death, although it cannot be implemented under current law, also remains valid.



[63, 64] Under Nebraska law, the sentencing panel can fix the sentence either at death or at life imprisonment.<sup>200</sup> Because a panel's sentencing authority does not extend beyond that, the method of imposing a death sentence is not an essential part of the sentence.<sup>201</sup> And Nebraska's statutes specifying electrocution as the mode of inflicting the death penalty are separate, and severable, from the procedures by which the trial court sentences the defendant.<sup>202</sup> In short, that a method of execution is cruel and unusual punishment "bears solely on the legality of the execution of the sentence and not on the validity of the sentence itself."<sup>203</sup> Because we find no error in imposing a sentence of death, we affirm the district court's judgment.

[65] On direct appeal in a capital case, our responsibility extends beyond the validity of the conviction and sentence. We are also charged with the duty to administer and supervise the implementation of the death penalty by appointing the day for execution of the sentence and issuing a death warrant.<sup>204</sup> It is in exercising that duty that we have considered whether electrocution is constitutional.<sup>205</sup> And obviously, the State cannot carry out Mata's sentence without a constitutionally acceptable method of execution.

Thus, although we affirm the judgment, we decline to "appoint a day certain for the execution of the sentence"<sup>206</sup> and stay Mata's execution.<sup>207</sup> When the State moves that an execution date be set, in addition to the other requirements for such a motion,<sup>208</sup> the State should allege, and be prepared to demonstrate, that a constitutionally acceptable method of carrying out Mata's sentence is available.

## VI. CONCLUSION

Mata's sentence of death is affirmed. But under our system of government, while the Legislature may vote to have the death penalty, it must not create one that offends constitutional rights. We recognize the temptation to make the prisoner suffer, just as the prisoner made an innocent victim suffer. But it is the hallmark of a civilized society that we punish cruelty without practicing it. Condemned prisoners must not be tortured to death, regardless of their crimes.

And the evidence clearly proves that unconsciousness and death are not instantaneous for many condemned prisoners. These prisoners will, when electrocuted, consciously suffer the torture that high voltage electric current inflicts on the human body. The evidence shows that electrocution inflicts intense pain and

agonizing suffering. Therefore, electrocution as a method of execution is cruel and unusual punishment in violation of the Nebraska Constitution, article I, § 9. And, without a constitutionally acceptable method of execution, Mata's sentence of death is stayed.

SENTENCE AFFIRMED, AND EXECUTION STAYED,

---

Notes:

1. *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002).
2. *State v. Mata*, 266 Neb. 668, 668 N.W.2d 448 (2003).
3. *Ring*, *supra* note 1.
4. 2002 Neb. Laws, L.B. 1.
5. *State v. Gales*, 265 Neb. 598, 626, 658 N.W.2d 604, 625 (2003).
6. *Id.*
7. *Id.* at 636, 658 N.W.2d at 631.
8. *Mata I*, *supra* note 2.
9. See *State v. Mata*, 269 Neb. xxii (No. S-04-1332, Jan. 20, 2005).
10. *State v. Clapper*, 273 Neb. 750, 732 N.W.2d 657 (2007).
11. *State v. Sklenar*, 269 Neb. 98, 690 N.W.2d 631 (2005).
12. *State v. Merrill*, 273 Neb. 583, 731 N.W.2d 570 (2007).
13. *State v. Kula*, 254 Neb. 962, 579 N.W.2d 541 (1998).
14. See *Mata I*, *supra* note 2.
15. *State v. Thomas*, 268 Neb. 570, 685 N.W.2d 69 (2004).