



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State of Arizona v. John Michael Allen (CR-17-0556-AP)

PARTIES:

Appellant: John Michael Allen

Appellee: State of Arizona

FACTS:

In July of 2011, Allen, his wife, their children, and his wife's extended family lived together in Phoenix, Arizona. A.D., his wife's cousin and the ten-year-old victim in this case, resided with them. A.D. was regularly abused by Allen and the other adults living in the house. For example, the adults would punish A.D. by closing her inside a small footlocker-type box for a couple of hours at a time.

One July night, Allen and his wife believed A.D. stole a popsicle, and so they punished her in numerous ways, including forcing her to face the living room wall with her hands above her head and against (but not touching) the wall and her head tipped back, to do jumping jacks and run around the yard, and to remain in a backbend position with her feet and head on the floor and her back arched upwards for about three hours. At approximately 1:00 a.m., Allen instructed A.D. to retrieve the small footlocker-type box from outside. Once A.D. brought it inside, Allen told her to get in the box. He decided to lock the box shut after his wife reminded him that A.D. could escape from the box. Allen then took the only key to the locked box with him to his bedroom and fell asleep. A.D. was found dead in the box the following morning.

Allen was indicted on five counts: one count of first-degree murder, one count of conspiracy to commit child abuse, and three counts of child abuse. The State sought the death penalty and alleged three aggravating circumstances: (1) Allen had been convicted of a serious offense, A.R.S. § 13-751(F)(2); (2) Allen committed the offense in an especially heinous, cruel or depraved manner, A.R.S. § 13-751(F)(4); and (3) Allen was an adult at the time the offense was committed and the murdered person was under fifteen years of age, A.R.S. § 13-751(F)(7). At trial, the jury unanimously found Allen guilty of all five counts, unanimously found all three aggravating circumstances, and sentenced Allen to death.

ISSUES:

Allen appeals nine issues, and lists an additional twelve issues that he acknowledges this Court has previously rejected in order to avoid preclusion and preserve them for further review.

1. Whether there is sufficient evidence to support the jury's *Enmund/Tison* finding.

2. Whether the trial court committed fundamental error by failing to instruct the jury on foreseeability for the F(6) cruelty aggravator pursuant to this Court's decision in *State v. Carlson*.
3. Whether sufficient evidence supports the jury's verdict on especially cruel.
4. Whether sufficient evidence supports the jury's verdict on especially heinous or depraved. Alternatively, whether the jury instruction was illogical and prevented the jury from returning a proven verdict on especially heinous or depraved, thereby rendering the jury's verdict void.
5. Whether the court gave an illogical jury instruction on especially heinous or depraved that permitted the jury to weigh the victim's age twice when it deliberated its death verdict.
6. Whether this Court must vacate the death sentence and remand for a new penalty phase proceeding because the prosecutor told the jury to sentence Defendant to death in order to tell him that his life is not worth more than the victim's.
7. Whether the jury abused its discretion in imposing the death penalty.
8. Whether the Arizona death penalty scheme is unconstitutional because it fails to adequately narrow the class of persons eligible for the death penalty.
9. Whether sufficient clearly enumerated circumstances supported the trial court's imposition of greater than presumptive sentences on counts 2, 4, and 5 and whether the trial court illegally enhanced count 2 pursuant to A.R.S. § 13-705.

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