



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
1501 West Washington - Phoenix Arizona 85007- 3231  
Public Information Office: (602) 542-9310**

**Case:** CR-01-0275-AP; STATE OF ARIZONA, Appellee v. SHAWN RYAN GRELL,  
Appellant

**Parties/Counsel:**

The State is represented by the Arizona Attorney General's Office, by Kent E. Cattani, Chief Counsel, Capital Litigation Section, and Monica B. Klapper, Assistant Attorney General.

Shawn Ryan Grell is represented by Lawrence S. Matthew and James Rummage, Deputy Maricopa County Public Defenders, and Rudolph J. Gerber, of Shugart, Thomson, Kilroy, Goodwin & Raup.

**Facts and Procedural History:**

The State charged Shawn Grell with murdering his two-year-old daughter, Kristen, by driving her to a remote area near Apache Junction, dousing her in gasoline, and setting her on fire. Grell elected to avoid a jury trial and the parties submitted the case to the trial judge based on a set of stipulated facts.

The stipulated facts show that on December 2, 1999, Grell picked up Kristen from daycare and drove her to Mesa, Arizona. Grell made several stops at convenience stores where he bought beer, gasoline, a sports drink, and a red plastic gas container. Grell then drove to the outskirts of Apache Junction where he placed Kristen in a drainage ditch and set her on fire. Kristen died from smoke inhalation and severe burns over 98% of her body.

Early the next morning, after drinking beer and driving around most of the night, Grell turned himself in to authorities. Several months later, Grell held a press conference at the jail during which he admitted killing his daughter.

Based on these stipulated facts, the trial judge found Grell guilty and sentenced him to death.

On appeal, Grell argues that Arizona's first degree murder statute is unconstitutional because it fails to adequately distinguish between first and second degree murder. For purposes of this appeal, the only difference between first and second degree murder is that first degree murder requires premeditation on the part of the defendant. According to the statute:

“Premeditation” means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion. A.R.S. § 13-1101(1) (1998).

Grell contends that this definition of premeditation is unconstitutionally vague because it relieves the State of the burden of proving that he actually reflected on his decision to commit the murder. Thus, he argues, his conviction is based on an unconstitutional statute and must be reversed.

Grell also argues that his death sentence violates the 8<sup>th</sup> Amendment’s prohibition against cruel and unusual punishment. The U.S. Supreme Court recently held in *Atkins v. Virginia* that the 8<sup>th</sup> Amendment prohibits imposing the death penalty on the mentally retarded. Grell argues that he is mentally retarded and offers his low IQ and deficiencies in adaptive functioning as evidence of that fact. The State counters that although Grell’s IQ is low, he is not mentally retarded because he has demonstrated sufficient adaptive capabilities throughout his life. The trial judge concluded that Grell did not prove he was mentally retarded, but the court decided Grell’s case before the *Atkins* decision was issued by the U.S. Supreme Court.

Grell presents several other sentencing issues on appeal. This court has consolidated numerous death penalty cases, including Grell’s, to consider death penalty sentencing issues in light of *Ring v. Arizona*, a recent U.S. Supreme Court decision. Accordingly, those sentencing issues will not be determined as part of this proceeding.

**Issues:**

1. Does the definition of the term “premeditation” render the Arizona statute on premeditated murder unconstitutional?
2. Did the United States Supreme Court’s decision in *Atkins v. Virginia* render Grell’s sentence of death unconstitutional under the 8<sup>th</sup> Amendment?

***This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.***

Tuesday, December 10, 2002



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**Case:** STATE OF ARIZONA v. KELLY CRAIG FETTERS, CR-02-0184-PR.

**Parties and Counsel:** The petitioner is Kelly Craig Fetters, represented by Lee Brooke Phillips. The respondent is the State of Arizona, represented by Robert A. Walsh, Assistant Attorney General.

**Facts:** Department of Public Safety (DPS) officer John McFarland saw defendant driving a truck with an out-of-state license and a bed cover. Although McFarland personally never had seized contraband from that type of vehicle, nor had he ever had formal training indicating that that type of vehicle fit a profile for drug trafficking, he had heard from other officers of success in seizing drugs from that vehicle combination. He decided to follow defendant "to see if he committed any traffic violations," so the officer could stop him and check for the possibility of drug trafficking.

When defendant crossed the center line twice, McFarland stopped him. He went to the passenger side window and asked to see the driver's license and registration. McFarland smelled air freshener in the truck cab. He also saw clothes hanging in the back of the cab, and fast food wrappers on the floorboard. The officer did not ask any questions about his observations, however. He thought defendant exhibited a heightened level of nervousness throughout the encounter.

McFarland did not assign "a lot" of significance to the food wrappers and clothing, but he did assign more significance to the air freshener, which could have been intended to mask the smell of contraband. He also said that the nervousness exhibited at that point in the encounter was "fairly typical," and that he did not assign a lot of significance to it.

Defendant was asked to step out of his vehicle and back to the patrol car because McFarland was going to issue a written warning. While the officer was writing the warning, he asked defendant about his employment, his wife's employment, where he was coming from, and where he was going. McFarland thought it was significant that defendant remained "very nervous" even after he had been told he was going to be given only a warning, but the officer did not find anything odd about defendant's explanation of his travel plans.

The officer finally ended the traffic stop by returning defendant's documents, giving him the warning, shaking hands with him, and saying "have a safe trip." Defendant attempted to return to his truck, but the officer called to him and asked him if he could "take a couple of minutes" of his time. Defendant turned, took two steps back toward the officer and stopped, but didn't say anything. The officer asked defendant if he had any marijuana, cocaine, methamphetamine or anything of that nature in the vehicle. Defendant shook his head and said "no." The officer noticed defendant become even more nervous, and then asked if he could search the vehicle. Defendant said "no," that he did not want his trip delayed, and that he needed to get going. He attempted to return to his truck. The officer testified at the suppression hearing that "[he] decided at that point" that, based on his previous observations, he had reasonable suspicion to believe that there was contraband in the vehicle. He decided to "detain" defendant for a canine search. The officer told defendant to stop, come back, and stand in front of the patrol car. He testified: "I just told him that. I didn't ask." Officer McFarland then went to defendant's vehicle and "began smelling at the seam of the custom bed liner in the truck" to see if he could smell marijuana without the aid of a dog. He did not smell anything, however.

The dog arrived 22 minutes later, and alerted to the truck bed. A search was conducted and 272 pounds of marijuana found. A videotape of the stop, detention, and search was admitted at the suppression hearing. A list of items removed from the vehicle during an inventory search did not include air freshener, although the officer testified that he recalled finding air freshener during the inventory search.

Defendant was charged with, and convicted of, transportation of marijuana for sale having a weight greater than two pounds. The trial court denied his motion to suppress, finding that "[t]here was no seizure or detention of the Defendant by the officer immediately following issuance of the warning," but rather a consensual encounter; and that, under the totality of the circumstances as defined in *State v. O'Meara*, 198 Ariz. 294 (App. 1999), the officer's observations of defendant throughout the encounter gave him reasonable suspicion to believe that defendant was engaged in criminal activity.

Defendant appealed, and the court of appeals affirmed. This court then granted defendant's petition for review.

#### **Issues Presented:**

Did reasonable suspicion of criminal activity exist to justify a second detention of Mr. Fetters following conclusion of the initial stop?

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