



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. FRANK WINFIELD ANDERSON  
CR-02-0402-AP**

**PARTIES/COUNSEL:**

**Petitioner:** Plaintiff/appellant State of Arizona, represented by Kent E. Cattani, Chief Counsel, Capital Litigation Section and Robert J. Gorman, Assistant Attorney General, Capital Litigation Section.

**Defendant:** Defendant/appellee Frank Winfield Anderson, represented by Thomas J. Phalen and Thomas A. Gorman.

**FACTS:**

In August, 1996 Frank Winfield Anderson and Kimberly Lane were hitchhiking from California to Arizona. They were picked up in Las Vegas by an unidentified driver and taken to Golden Valley, Arizona. The driver suggested that they stay with the Kagens, who were known to take in boarders. Anderson and Lane agreed, and they were taken in by the Kagens. Residing at the home were Leta and Elliot Kagen, Leta's son Robert Delahunt and two others, Roland Wear and Robert "Bobby" Poyson. Elliot Kagen was attending a sick friend in Kingman and was not expected to return for several days.

Anderson, Poyson and Lane devised a plan to kill the residents of the home and steal Wear's pickup. While Elliot was away, Anderson, Poyson and Lane killed Delahunt, Leta, and Wear, then stole several items from the Kagens' home and left in Wear's pickup. Anderson was arrested five days later in Southern Illinois, still driving the stolen truck. Poyson and Lane were arrested several days later. Anderson confessed to having participated in the conspiracy and murders.

He was convicted of armed robbery, conspiracy to commit murder, and three counts of first-degree murder. On direct appeal, the Arizona Supreme Court reversed the convictions and remanded for a new trial, holding that the trial court violated proper procedure in disqualifying jurors who voiced opposition to the death penalty. *State v. Anderson*, 197 Ariz. 314, 4 P.3d 369 (2000). On retrial, Anderson was again found guilty on all counts. He received three death sentences for the murders, life imprisonment for the conspiracy, and twelve and one-half years imprisonment for armed robbery.

**ISSUES:**

Anderson raises the following issues on appeal:

1. Whether the standard of review of A.R.S. § 13-703.05 violates the 8<sup>th</sup> and 14<sup>th</sup> Amendments.

2. Whether Anderson did not receive pretrial notice of aggravating elements per A.R.S. § 13-703.01(B) in violation of the 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.
3. Whether A.R.S. § 13-703.01(E) was not complied with because the sentencing jury was not the trial jury, in violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.
4. Whether duplicitous indictments violated Anderson's rights under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments.
5. Whether there was sufficient evidence of armed robbery.
6. Whether the felony murder convictions must be vacated because the armed robbery predicate felony did not exist as a matter of law.
7. Whether the felony murder death sentences must be vacated because no *Enmund-Tison* findings were made.
8. Whether the conspiracy to commit first-degree murder conviction must be vacated because it is unclear whether the jury convicted Anderson of conspiracy to commit first-degree felony murder.
9. Whether Anderson was denied his right to a fair and impartial guilt jury under the 6<sup>th</sup> and 8<sup>th</sup> Amendments and Article 2, § 24 of the Arizona Constitution and his rights to a fair trial and due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments and Article 2, § 4 of the Arizona Constitution.
10. Whether the reasonable doubt instruction lowered the State's burden of proof and violated the 6<sup>th</sup> and 14<sup>th</sup> Amendments and Article 2, §§ 4, 23 and 24 of the Arizona Constitution.
11. Whether the court improperly denied Anderson's instructions in violation of the 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.
12. Whether Anderson was denied his right to a fair and impartial aggravation/sentencing jury, in violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments and Article 2, § 24 of the Arizona Constitution.
13. Whether Anderson's death sentences violated the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments and Article 2, §§ 4, 24 and 30 of the Arizona Constitution because Anderson was not indicted for a capital crime.
14. Whether subjecting Anderson to a second trial on the issue of aggravation and punishment before a new jury violated the state and federal double jeopardy clauses.
15. Whether retroactive application of the new death statute to Anderson violated the *ex post facto* clauses of the state and federal constitutions and contravened A.R.S. § 1-244.
16. Whether imposition of a death sentence under a statute not in effect at the time of a

defendant's trial violates due process under the 5<sup>th</sup> and 14<sup>th</sup> Amendments.

17. Whether the instruction defining aggravating factors was a prejudicial misstatement of the law, in violation of the 5<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments.
18. Whether the “especially heinous, cruel or depraved” aggravator is unconstitutionally vague in light of *Ring v. Arizona*.
19. Whether the “especially heinous, cruel or depraved” aggravator was unconstitutionally imputed to Anderson in violation of the 8<sup>th</sup> Amendment.
20. Whether the aggravating factor “especially heinous, cruel or depraved” was not proved beyond a reasonable doubt, was not found unanimously by the jury, and was unconstitutionally applied in violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.
21. Whether the pecuniary gain aggravating factor was not proved and double counted an element of capital felony murder in violation of the 5<sup>th</sup> and 8<sup>th</sup> Amendments.
22. Whether the multiple murders aggravating circumstance was not proved beyond a reasonable doubt and was applied in violation of the 8<sup>th</sup> Amendment.
23. Whether the premeditated murder instruction lowered the state's burden of proof on an element of the offense, in violation of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments.
24. Whether Anderson was denied his right to allocution, in violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments, Article 2, § 24 of the Arizona Constitution and Rule 19.1.D.5.
25. Whether the consecutive sentences for the armed robbery and conspiracy convictions violate the 5<sup>th</sup> Amendment and A.R.S. § 13-116.
26. Whether inherently unreliable statements of non-testifying co-defendants were admitted in violation of the 6<sup>th</sup> and 8<sup>th</sup> Amendments.
27. Whether the statute placed an unconstitutional burden on Anderson to prove mitigation was “sufficiently substantial to call for leniency.”
28. Whether the instruction that the jury had to unanimously determine that mitigation was “sufficiently substantial to call for leniency” violated the 8<sup>th</sup> Amendment.
29. Whether the prosecutor's comments constituted prosecutorial misconduct in violation of the 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.
30. Whether a purported “causal nexus” requirement for mitigating evidence violated the 8<sup>th</sup> Amendment.
31. Whether admission of unduly gruesome photographs resulted in the denial of a fair trial, in

violation of the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments.

32. Whether the instruction prohibiting the jury from considering “sympathy or sentiment” violated the 8<sup>th</sup> Amendment.
33. Whether evidence of the sexual relationship between Anderson and Kimberly Lane prejudiced Anderson’s trial and sentencing.
34. Fourteen other constitutional challenges raised to preserve them for future appellate review.

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