



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**State of Arizona v. Robert Joe Moody
No. CR-02-0044-AP**

Parties and Counsel:

Appellant: Robert Joe Moody is represented by Frank P. Leto and Brian X. Metcalf

Appellee: The State of Arizona is represented by the Arizona Attorney General's Office, by Chief Counsel of the Capital Litigation Section Kent E. Cattani and Assistant Attorney General Donna J. Lam

Facts:

On the morning of November 15, 1993, Appellant put on his best suit, purchased a bouquet of roses, and drove to the home of his ex-girlfriend's best friend, Michelle Malone. After waiting until her husband left for work, Appellant knocked on the door, entered the home and followed Malone into the kitchen. There, he pulled a kitchen knife from his coat pocket and attacked her. Appellant brought Malone into her home office where he emptied her purse and took cash, a checkbook, and some credit cards. He then brought Malone back into the kitchen and tied her to a chair with some telephone cords that he had ripped out of the wall. After having Malone write a check for \$500, he shot her and left.

On November 20, 1993, Appellant left his Tucson townhouse and went next door to Patricia Magda's home. After they talked for a while and smoked a few cigarettes, Magda went to a hallway to show Appellant a Christmas calendar she had made. Appellant followed her and pushed her to the floor. He then bound her wrists and ankles with neckties he had brought with him. He went to the kitchen and found Magda's purse, from which he took cash and credit cards before yanking the phone cords out of the wall. Appellant went to a bank and unsuccessfully attempted to use Magda's ATM card; he returned to the home, got her correct PIN number, and successfully withdrew \$300. When he returned, he shot Magda and bludgeoned her with hedge clippers.

On December 20, 1993, Appellant broke into the Yuma, Arizona, home of his ex-sister-in-law demanding money and guns. After she gave him \$500 in cash and a \$500 check, Appellant ordered her and her two young boys to get in a closet, nailed it shut, and left in her new Chevrolet Suburban.

In the early a.m. hours of January 4, 1994, Appellant flagged down a San Marino County (California) Deputy claiming that his car was stolen by a hitchhiker he picked up on the Nevada state line. Giving a fake name and no address, he filed a police report for the stolen Suburban.

Approximately twelve hours later, Appellant appeared at a rescue mission in Santa Anna, California claiming not to know who he was. At the suggestion of the mission's

director, Appellant went to the Orange County Sheriff's Department. Through fingerprint identification, the sheriff's department was able to determine that Appellant was wanted in Arizona for the murders of Michelle Malone and Patricia Magda. Appellant was arrested and extradited to Arizona.

After a conflict with counsel, Appellant was permitted to represent himself at trial for the murders of Michelle Malone and Patricia Magda. On October 26, 1995, he was convicted on both counts of murder and was sentenced to death in March, 1996. On direct appeal, this court found that Appellant was denied his right to counsel when he was forced to proceed pro se. On November 12, 1998, this court reversed Appellant's convictions and remanded the case for a new trial. *State v. Moody*, 192 Ariz. 505, 509, ¶ 24, 968 P.2d 578, 582 (1998).

Appellant was retried in May, 2001. He was again convicted of both counts of murder and an aggravation/mitigation hearing was held. After finding the prior conviction, pecuniary gain, and cruel, heinous or depraved aggravating factors, the trial court found that the proffered mitigation was insufficient to call for leniency and sentenced Appellant to death on January 28, 2002.

Automatic Notice of Appeal was filed for Appellant pursuant to Rule 31.2(b) of the Arizona Rules of Criminal Procedure.

Issues:

1. Did Appellant's retrial violate the Double Jeopardy protections of the Fifth Amendment to the United States Constitution and Article II, § 10 of the Arizona Constitution?
2. Did the trial court err in failing to dismiss the indictment because it was based in part on false evidence?
3. Was Appellant denied a fair trial because false evidence was used to defeat his claim of incompetency and insanity?
4. Was Appellant denied due process of law when the trial judge determined he was mentally competent to stand trial?
5. Did the trial court err in failing to suppress evidence that was obtained in violation of Appellant's constitutional right to counsel?
6. Did the trial court's "death qualification" of the jury deny Appellant his constitutional right to an impartial and representative jury?
7. Did the trial court deny Appellant his constitutional right to a fair trial by failing to ask his proposed voir dire questions?
8. Did improper expert testimony invade the province of the jury?
9. Did the trial court err in failing to preclude the testimony of Dr. Sullivan, one of the State's key witnesses?
10. Did the trial court's wrongful admission of evidence deprive Appellant of his constitutional right to a fair trial?
11. Did the trial court's admission of testimony from reporter David Teibel about an article that appeared in the Tucson Citizen Newspaper deprive Appellant of his

- constitutional right to a fair trial?
12. Did prosecutorial misconduct deprive Appellant of his constitutional right to a fair trial?
 13. Did the trial court's failure to instruct the jury with the correct version of A.R.S. § 13-503 about the effect of intoxication on the element of culpable mental state deprive Appellant of his constitutional right to a fair trial?
 14. Did the trial court's refusal to instruct the jury on the requirement of a voluntary act deprive Appellant of his constitutional right to a fair trial?
 15. Did the trial court's refusal to allow surrebuttal argument deprive Appellant of his constitutional right to a fair trial?
 16. Did the trial court err in instructing the jury on the consequences of a "not guilty by reason of insanity" verdict?
 17. Did reversible error occur when the trial judge, instead of the jury, sentenced Appellant under a procedure held unconstitutional in *Ring v. Arizona*, 536 U.S. 584 (2002).

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