



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**KERBY JAMES McKANEY v. HON. JOHN FOREMAN,  
respondent, and STATE OF ARIZONA, Real Party in Interest  
CV-04-0032-SA**

**Parties and Counsel:** Kerby J. McKaney is represented by Vikki M. Liles, Deputy Public Defender. The State of Arizona is represented by Paul J. McMurdie, Deputy County Attorney.

**Facts:**

Mr. McKaney has been indicted on various charges including first degree murder. The State filed a Notice of Intent to Seek the Death Penalty and a Notice of Aggravating Factors. Mr. McKaney filed a motion asking the trial court to dismiss those notices, and foreclose the State from seeking the death penalty, because the alleged aggravating factors were not set forth in the indictment and presented to the grand jury for a determination of probable cause. Judge Foreman denied the motion. The Arizona Supreme Court accepted jurisdiction of Mr. McKaney's Petition for Special Action.

**Issue:**

"In view of the principles set forth by the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002) ("*Ring II*") and the requirements of the Arizona Constitution and Arizona law, must the aggravating circumstances in A.R.S. § 13-703(F) be treated as elements of the offense, and, therefore, supported by a finding of probable cause in the charging document before the state can seek the death penalty?"

***This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office 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.***