



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JUSTIN DERENDAL v. HON. DEBORAH GRIFFITH and
PHOENIX CITY PROSECUTOR'S OFFICE, CV-04-0037-PR**

PARTIES/CONSEL:

Petitioner: Justin Derendal is represented by Neal Bassett and Laurie Herman.

Respondent: The Phoenix City Prosecutor's office is represented by Bill Solomon, Assistant City Prosecutor.

Amicus Curiae: Several "Amicus Curiae" briefs have been filed by entities that are not parties in the case, but that are interested in the case. These briefs are intended to assist the Justices in deciding the proper disposition of this case. Such briefs may not expand the issues presented. A person or entity may only file an Amicus Curiae brief upon the permission of the Court. The counsel for the various amicus curiae parties are:

Stephen Paul Barnard represents the Arizona Attorneys for Criminal Justice.

Tobin Sidles, Town Prosecutor, represents the Town of Oro Valley.

Joseph Bertoldo, Assistant City Attorney, represents the City of Scottsdale

R. Kevin Hays represents the Mesa City Prosecutor's Office.

The Maricopa County Public Defender's Office is represented by James Haas and Kathleen Carey.

Michael Rankin and Laura Brynwood represent the City of Tucson.

FACTS:

The Arizona Constitution in Article 2, Sections 23 and 24, guarantees criminal defendants the right to a jury trial. However, this constitutional guarantee is "not a grant, but a reservation of pre-statehood rights." *Benetiz v. Dunevant*, 198 Ariz. 90, 94, 7 P.3d 99 (2000).

If an offense was serious and was jury-eligible at common law when Arizona's Constitution was adopted, the Arizona Constitution guarantees the jury trial right. Conversely, if the offense was a petty crime in the common law, a defendant charged with such a crime is not guaranteed a jury trial. Drag racing has no common law antecedent.

Derendal was charged with drag racing, forbidden by A.R.S. § 28-708(A). The Phoenix City Court denied Derendal's request for a jury trial. He filed a special action in superior court. That court acknowledged that in Arizona, the crime of reckless driving is jury-eligible. *Urs. v. Maricopa County Attorney's Office*, 201 Ariz. 71, 31 P.3d 845 (App. 2001). However, the court concluded that the crime of reckless driving, A.R.S. § 28-693(A), shares no common elements with the crime of drag racing. The former statute states that a person who drives a vehicle in reckless disregard for

the safety of persons or property is guilty of reckless driving. The trial court held that drag racing contains no elements of driving in a “reckless” manner so as to “endanger property and individuals.” If recklessness were an element, drag racing would be deemed traceable to the common law of public nuisance. Reckless driving is traceable to that common law offense. *Urs*.

The trial court evaluated the moral quality of drag racing and determined that drag racing is not a crime involving dishonesty, fraud, or any other type of crime requiring a deficient moral character to commit the crime. Therefore, the court concluded that drag racing is not of such moral quality as to require a jury trial. The court also held that no sufficiently grave collateral consequences followed from the conviction of drag racing to warrant a jury trial.

Derendal appealed. The court of appeals applied the *Rothweiler* test and held that the offense is not jury eligible. The court held that drag racing is not a serious misdemeanor. The court also rejected the argument that drag racing satisfies the common-law jury eligibility test: that it is of the same “character or grade” as reckless driving, a jury-eligible common law offense. The court declined to address Derendal’s argument that grave consequences would stem if he were convicted of drag racing because the State had alleged that he had a drag racing conviction in the previous two years, thus subjecting him to license revocation under A.R.S. § 28-708(F)(Supp. 2003). The court stated that this argument had not been made below. Further, the provided record did not establish that Derendal had a prior drag racing conviction.

Derendal seeks review in this Court arguing that the courts below erred in ruling that drag racing is not a jury-eligible offense. He asserts that this opinion causes a glaring inconsistency in the law because every other major traffic violation – drunk driving, misdemeanor hit-and-run, reckless driving, and aggressive driving – has been found to be jury eligible. Derendal urges this Court to find that drag racing is a jury eligible offense under the common law jury eligibility test.

Responding, the State asserts that review is not warranted because the court of appeals correctly held that drag racing is not jury-eligible and because the court of appeals correctly applied the 3-prong test for jury eligibility articulated in *Rothweiler v. Superior Court of Pima County*, 100 Ariz. 37, 41, 410 P.2d 479, 482 (1966):

Rothweiler held that an offense is jury eligible if:

1. The maximum penalty is severe;
2. The crime involves moral turpitude or has the potential for grave consequences to the defendant’s life;
3. The offense merited a jury trial under the traditional common law.

In deciding this case, the Court may address whether Arizona should consider abandoning *Rothweiler* and adopting the jury eligibility test set forth in *Blanton v. City of North Las Vegas*, 489 U.S. 538 (1989). *Blanton* held that a jury trial is not required under the federal constitution if the term is six months or less, unless there are additional severe statutory penalties.

ISSUE:

“Is drag racing, A.R.S. § 28-708(A), a jury eligible offense in Arizona?”

A.R.S. § 28-708(A) states: “A person shall not drive a vehicle or participate in any manner in a race, speed competition, or contest, drag race, or acceleration or for the purpose of making a speed record on a street or highway.

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.