



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. HOMER ROSEBERRY
No. CR-03-0247-AP**

PARTIES/COUNSEL:

Petitioner: Defendant/appellant Homer Ray Roseberry, represented by Jess Lorona and Gregory E. McClure.

Respondent: Plaintiff/appellee State of Arizona, represented by Kent E. Cattani, Chief Counsel, and Jon G. Anderson, Assistant Attorney General, Capital Litigation Section.

FACTS:

On at least three occasions, Homer Roseberry used his motorhome to transport marijuana from Arizona to Michigan for a drug cartel. In October, 2000, Roseberry picked up a large load of marijuana in Phoenix for transportation. The cartel sent along Fred L. Fottler to watch over the shipment. On the highway in Yavapai County, Roseberry pulled the motorhome over and shot the sleeping Fottler three times in the back of the head. He then dumped the body on the side of the road, tossed the gun out of the window of the motorhome, and drove the marijuana back to his home near Las Vegas, Nevada.

From his home in Nevada, Roseberry elicited the help of others to transport portions of the marijuana to Indiana, where Roseberry had arranged drug sales.

Fottler's body was soon discovered. The Yavapai County Sheriff's Office arrested Roseberry and, following a jury trial, he was convicted of Fottler's murder, as well as two drug charges stemming from the marijuana transportation. The jury found the aggravating factor of pecuniary gain and returned a verdict of death for the murder. He was later sentenced to two consecutive ten-year sentences for his drug convictions.

ISSUES:

Roseberry raises the following issues on appeal:

1. Whether retroactive application of the new death penalty statute to Appellant's case violated the ex post facto clauses of the state and federal constitutions, as well as A.R.S. § 1-244.
2. Whether the trial court abused its discretion by refusing to strike the State's notice of aggravating factors, denying Appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

3. Whether the trial court abused its discretion and denied Appellant a fair jury trial and due process under the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4 and 24 of the Arizona Constitution, by improperly excluding for cause persons who had general objections to the death penalty.

4. Whether the evidence was sufficient that Appellant committed the offense for pecuniary gain, A.R.S. § 13-703(F)(5), denying Appellant's right to a fair trial and due process under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

5. Whether jurors were properly instructed on "impairment" as a statutory and non-statutory mitigator, denying Appellant's right to due process and a fair sentencing hearing under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

6. Whether the trial court misstated the law in its definition of "aggravating factor," violating Appellant's right to due process and fair sentencing under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

7. Whether A.R.S. § 13-703.05(A) violates the separation of powers doctrine.

8. Whether the trial court erred in ordering that some of Appellant's sentences be served consecutively, in violation of A.R.S. § 13-116.

9. Whether the standard of review of A.R.S. § 13-703.05 violates the Eighth and Fourteenth Amendments to the United States Constitution.

10. Whether the reasonable doubt instruction lowered the State's burden of proof, deprived Appellant of his right to due process under the Fourteenth Amendment to the United States Constitution and Article 2, § 4 of the Arizona Constitution, and his right to trial by jury under the Sixth and Fourteenth Amendments to the United States Constitution and Article 2, §§ 23 and 24 of the Arizona Constitution.

11. Whether the trial court abused its discretion in excusing a juror who had deliberated and reached a verdict during the Appellant's trial and special verdict phase, but before that juror deliberated in the penalty phase of the Appellant's matter, denying Appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

12. Whether the State violated Appellant's rights by failing to provide timely pretrial notice of the aggravating factors upon which the State would rely, denying Appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution, A.R.S. § 13-703(C), and Rule 15.1(g), Arizona Rules of Criminal Procedure.

13. Whether the jury failed to consider mitigating circumstances that were proven by the preponderance of the evidence and were sufficiently substantial to call for leniency and whether the jury's failure to consider mitigating circumstances violated Appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, §§ 4, 15, and 24 of the Arizona Constitution.

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