



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**State of Arizona v. Richard Glassel
CR-03-0022-AP**

PARTIES/COUNSEL:

Defendant/Appellant Richard Jock Glassel, represented by James R. Ramage and Garrett W. Simpson from the office of the Maricopa County Public Defender.

Plaintiff/Appellee State of Arizona, represented by Kent E. Cattani, Chief Counsel, and Robert L. Ellman, Assistant Attorney General, Capital Litigation Section.

FACTS AS ALLEGED AT TRIAL:

Richard Glassel, who once owned a home at Ventana Lakes, had several disputes with the Ventana Lakes Homeowners Association before his house was foreclosed and he moved to California.

On April 19, 2000, the Homeowners Association held its regularly scheduled meeting at the Yacht Club. Duane Lynn, a member of the Board, was seated at the head table along with Esther LaPlante, who was attending her first meeting as a Board member after having been elected to the position the month before. Nila Lynn, Duane Lynn's wife, was sitting in the "audience."

Glassel had returned to Arizona from California on April 18, 2000. He drove to the Yacht Club during the meeting and walked into the building armed with an AR-15 assault rifle, fully loaded with 30 rounds of ammunition, two fully-loaded 9-millimeter pistols, strapped and holstered to his chest, and a ten round .22 caliber pistol in his hand. He carried 384 rounds of ammunition into the Yacht Club and had another 359 rounds in his truck.

When Glassel walked into the meeting, and he said that he was going to kill everyone in the room. Glassel then fired eight shots in rapid succession with his .22 caliber pistol, paused for a short moment, and then fired the last two rounds.

One bullet struck Nila Lynn in the back and she died in her husband's arms. She was sixty-nine. One bullet struck Esther LaPlante in the arm and another in the head. Esther also died. She was fifty-eight. Paul Ettinger, Vice President of the Homeowners Association, was shot in the abdomen. Ken Yankowski was shot in the thigh.

When Glassel's pistol ran out of ammunition, he reached for the AR15 rifle but was tackled. During the ensuing struggle, Glassel managed to fire one round from the rifle, which struck Gilbert McCurdy in the foot, fracturing it and causing him to lose a toe.

ISSUES:

Glassel raises thirteen challenges to his death sentence. In addition to those thirteen issues, Arizona Revised Statutes (“A.R.S.”) section 13-703.04 (Supp. 2004) requires the Arizona Supreme Court independently to reweigh the aggravating and mitigating circumstances to determine if the death penalty is appropriate. Glassel raises the following issues on appeal:

1. Did the retroactive application of the new death penalty statute to Glassel violate the *ex post facto* clauses of the state and federal constitutions, as well as A.R.S. § 1-244?
2. Did the trial court abuse its discretion by finding Glassel competent to stand trial?
3. Did the trial court wrongly restrict Glassel’s *voir dire* about the standard that mitigation must be “sufficiently substantial to call for leniency”?
4. Did the trial court wrongly restrict Glassel’s *voir dire* of potential jurors about mitigation?
5. Did the trial court wrongly strike for cause jurors who merely had general objections to the death penalty, while refusing to remove other jurors who should have been struck?
6. Was the instruction on reasonable doubt, given by the trial court in this case, unconstitutional?
7. Was Glassel denied his right to counsel?
8. Are Arizona’s death penalty statutes requiring Glassel to prove that his mitigation was “sufficiently substantial to call for leniency” vague, do they shift the burden of proof, and do they create an unconstitutional presumption of death?
9. Did the trial court err by refusing to instruct the jury that if it had a reasonable doubt whether to impose the death penalty, it should impose a life sentence?
10. Did the State commit prosecutorial misconduct when the prosecutor told jury panelists during *voir dire* that the State could put on mitigating evidence, but failed to put on mitigating evidence in its possession of Glassel’s alleged mental illness?
11. Was the admission of victim impact statements prejudicial?
12. Did the trial court err by precluding Glassel from presenting, as mitigation, Duane Lynn’s recommendation of a life sentence?
13. Is Arizona’s death penalty unconstitutional?

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