



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. FABIO EVELIO GOMEZ
CR-03-0199-AP**

PARTIES AND COUNSEL:

Petitioner: Defendant/Appellant Fabio Evelio Gomez, represented by Terry J. Adams and Susan L. Corey from the office of the Maricopa County Public Defender

Respondent: Plaintiff/Appellee State of Arizona, represented by Terry Goddard, Attorney General, Kent E. Cattani, Chief Counsel, and J.D. Nielson, Assistant Attorney General, Capital Litigation Section

FACTS:

On the afternoon of December 2, 1999, Joan Morane called her boyfriend and made plans to attend a party that evening. Later that afternoon, however, when a friend stopped by to check on Joan, she was gone. Joan's apartment was unlocked, a chair was out of place and the glass top of a table was knocked over. Joan's purse and keys were there and two outfits were laid out on her bed.

The friend asked neighbors if they had seen or heard from Joan. Fabio Gomez, who lived across the landing from Joan, said he knew nothing about Joan's disappearance. The friend called Joan's ex-husband, who arrived on scene and discovered two red buttons outside of Gomez's apartment.

At about 5:00 p.m., Chandler police received a 911 call from a neighbor reporting what sounded like a struggle coming from Gomez's apartment. After a number of visits to the apartment complex, a police officer saw Gomez carrying a deflated yellow raft to his car at 4:30 a.m. the next morning. Gomez explained that he and his girlfriend were moving that day and were packing up their apartment. The officer returned an hour later, looked into the car and noticed two small bloodstains on the yellow raft.

After calling for back-up, several officer asked to interview Gomez. Gomez invited them into his home and the officers questioned him about what appeared to be blood on the carpet. Gomez explained that his girlfriend had cut her foot. After the officers confirmed with his girlfriend that she had not cut her foot, Gomez told the officers that he had killed a cat that had come into his apartment and scratched his baby. Gomez claimed to have put the cat's body in the dumpster at a nearby restaurant. Police searched the dumpster but did not find the cat. Upon further search of the apartment, the officers found more bloodstains on the carpet, blood in the entryway and bathroom and recently washed throw rugs hanging from a wall fixture.

Not long after, an officer saw blood on a nearby dumpster and found Joan's body inside. Joan was wearing a red nightshirt that was missing two buttons similar to those found outside of Gomez's apartment. Joan's body was extensively bruised and she had numerous lacerations and contusions on her head.

Testing matched the bloodstains in Gomez's apartment to Joan. DNA testing revealed that Gomez's semen was in Joan's body. No cat blood was ever found in the apartment.

On June 5, 2003, Gomez was convicted of first degree murder, kidnapping and sexual assault. Prior to sentencing, the United States Supreme Court decided *Ring v. Arizona*, 536 U.S. 584 (2002), requiring jurors to find aggravators in sentencing. A second jury was then empanelled and Gomez was given a sentence of death.

ISSUES:

Gomez raises seventeen challenges to his death sentence. In addition to those seventeen issues, Arizona Revised Statutes § 13-703.04 requires the Supreme Court to independently reweigh the aggravating and mitigating circumstances to determine if the death penalty is appropriate. Gomez raises the following issues on appeal:

1. Did the trial court commit reversible error when it instructed the jury that it need not find actual reflection to convict Gomez of first degree premeditated murder?
2. Did the trial court err in failing to instruct the jury on the lesser included offense of manslaughter?
3. Did the trial court impermissibly limit the mitigating evidence presented to the jury?
4. Did the trial court violate Gomez's right to confront a witness when the court allowed a criminalist to testify on the basis of another criminalist's notes?
5. Was Gomez's waiver of his right to counsel in the penalty phase knowing and intelligent?
6. Did the trial court commit reversible error by permitting Gomez to represent himself in the penalty phase?
7. Did the trial court err in failing to appoint a second mitigation specialist?
8. Was it a denial of due process rights to deny Gomez a right to allocution?
9. Was the admission of the victim impact statements unduly prejudicial?
10. Are Arizona's death penalty statutes vague and do they shift the burden and create a presumption of death?

11. Does Arizona's capital punishment statute create an unconstitutional presumption of death?
12. Are the (F)(6) aggravators of cruel, heinous and depraved unconstitutionally vague and overbroad?
13. Was there sufficient evidence of the (F)(6) aggravators presented to the jury?
14. Did the trial court err in failing to conduct a hearing on Gomez's Motion for a Change of Judge?
15. Did the trial court commit reversible error by sentencing Gomez to aggravating terms for the non-capital offenses?
16. Did the court abuse its discretion and undercut the presumption of innocence by requiring Gomez to wear shackles?
17. Is Arizona's death penalty unconstitutional?

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