



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. FRANK SILVA ROQUE
CR-03-0355-AP**

PARTIES AND COUNSEL:

Petitioner: Defendant/Appellant Frank Silva Roque, represented by Stephen R. Collins and Anna M. Unterberger, Deputy Public Defenders, Office of the Maricopa County Public Defender

Respondent: Plaintiff/Appellee State of Arizona, represented by Terry Goddard, Attorney General, Kent Cattani, Chief Counsel, and Vincent Rabago, Assistant Attorney General, Capital Litigation Section

FACTS:

On September 11, 2001, Roque was at work at Boeing when he and his coworkers heard the news on the radio of the terrorist attacks on New York, Washington, D.C., and Pennsylvania. Roque's brother Howard testified that Roque called him later that day, carrying on and crying.

Although Roque normally never missed a day of work, he stayed home on September 12. Either that evening or the next, a colleague from Boeing called Roque, and Roque told him that he wanted to go shoot some "rag heads," referring to people Roque perceived to be of Arab descent.

Roque reported that, as he was going to bed on the evening of September 13, he heard a voice that he thought was God, "just like someone was talking to me." It said, "Kill the devils." He thought for a moment that it came from the television, but when he looked up to check, the television was off.

On September 15, Roque consumed approximately three 25-ounce cans of beer. As he drove around in his truck, he again thought he heard the voice of God saying, "Kill the devils." At around 2:40 P.M., Roque pulled his truck up to the Chevron gas station on University Avenue in Mesa. A block before arriving, Roque again thought he heard a voice that said, "Kill the devils," which he thought was an instruction. The owner of the gas station, Balbir Sodhi, who was a Sikh and a citizen of India and wore a turban, was standing outside talking to a landscape worker, Louis Ledesma, who was down on his knees. Roque fired five or six shots, killing Sodhi, and then sped off in his truck.

Roque next drove to a home that he had previously owned and had sold to an Afghan couple, the Sahaks. He fired at least three shots at the house from his truck. Although family members were home, nobody was injured. Then Roque drove to a Mobil gas station, where he fired seven shots from his truck through the convenience store window at the store clerk, Anwar Khalil, a man of Lebanese descent. Five bullets struck below the store counter, and two bullets struck above it, but Khalil was not hit. Roque again sped off in his truck.

The police investigation of the shootings soon led to Roque, and he was arrested at his home on the evening of September 15. When the police arrived, Roque immediately put his hands in the air and said, “I’m a patriot and American. I’m American. I’m a damn American.” In the patrol car on the way to the police station, Roque yelled at the arresting officers, stating, “How can you arrest me and let the terrorists run wild?” Roque told the officers, “I wish that my punishment would be sending me to Afghanistan with a lot of [expletive] weapons.” Upon searching Roque’s residence, the police found the two guns wrapped in a blanket and lying on the dresser.

In August 2003, nearly two years after the shootings, Roque was brought to trial on one charge of first degree murder, one charge of attempted first degree murder, one charge of reckless endangerment, and three charges of drive-by shooting. Having filed a notice of intent to seek the death penalty, the State asserted two aggravating circumstances:

(F)(2) The defendant was previously convicted of a serious offense, whether preparatory or completed.

(F)(3) In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the person murdered during the commission of the offense.

A.R.S. §§ 13-703(F)(2), (3). The State’s theory of the case was that the shootings were intentional acts of racism by Roque.

The theory of the defense was mental illness. Roque did not deny the shootings, but pursued a guilty-except-insane verdict. Six experts - three psychiatrists and three psychologists - testified at trial regarding Roque’s mental health. The same jury was used for all three phases of the trial, the guilt/insanity phase, the aggravation phase, and the sentencing phase. The jury found Roque guilty of all charges and sentenced him to death.

ISSUES:

Roque now appeals his convictions and sentences before this Court. In his Opening Brief, Roque raises 29 issues, and ten additional issues to avoid preclusion. Roque’s claims cover all phases of the trial and include a claim of prosecutorial misconduct.

The State raises one issue on cross appeal, challenging the trial court’s dismissal of one of the State’s alleged aggravating circumstances. After the United States Supreme Court granted certiorari in *Clark v. Arizona*, 126 S. Ct. 797 (Mem. 2005), this Court also granted review of related issues.

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.