



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. CHARLES DAVID ELLISON  
CR-04-0073-AP**

**PARTIES AND COUNSEL:**

*Petitioner:* Defendant/Appellant Charles David Ellison, represented by David Golberg

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

**FACTS:**

On the night of February 24, 1999, Charles Ellison and Richard Finch entered the Kingman home of Joseph Boucher and Lillian Boucher, ages 79 and 73, bound and asphyxiated them, and burglarized the house. Within days, Finch and Ellison were separately arrested. They each gave statements admitting their presence at the crimes but each claimed that he had acted under duress from the other with respect to the murders. Ellison told the police he did not intend to kill anyone, it was Finch's idea to "hit" the house, and he did not know how Finch had picked the Bouchers' house; however, he admitted being somewhat familiar with the area because his parents lived around there. With Finch's cooperation, the police recovered several items stolen from the Bouchers' residence.

On March 4, 1999, Ellison and Finch were indicted for the murders and first-degree burglary. The State sought the death penalty for each defendant. Judge Robert R. Moon severed their trials. In September 2000, a jury convicted Finch on the murder and burglary charges. In March 2001, Judge Moon sentenced Finch to natural life imprisonment due to mitigating factors.

Ellison was not tried until January 2002, with Judge Moon presiding over his trial. During the trial, the Bouchers' daughter testified that Ellison had worked on her parents' house and another house two doors down from her parents. Ellison did not testify; however, defense counsel argued that Ellison had intended only to commit burglary and that he had tied up the victims and held a pillow over Mr. Boucher only after Finch threatened him with a gun. The jury convicted Ellison on the murder and burglary charges, specifically finding him guilty of both premeditated and felony murder of the Bouchers and that he had either killed, intended to kill, or acted with reckless indifference.

Before Ellison was sentenced, the Supreme Court decided *Ring v. Arizona*, 526 U.S. 584 (2002) (*Ring II*). The legislature then amended Arizona's statutes to provide for jury findings of aggravating and mitigating circumstances and jury sentencing. 2002 Ariz. Sess. Laws, 5th Spec. Sess., ch. 1, § 3 (codified at Ariz. Rev. Stat. ("A.R.S.") § 13-703.01 (Supp. 2003)).

A newly-impaneled jury heard the sentencing phase of Ellison's trial in January and

February, 2004. This jury sentenced Ellison to death for each murder, after finding six aggravators: 1) previous serious felony conviction; 2) pecuniary gain; 3) especially cruel; 4) murder committed while on parole; 5) multiple homicides; and 6) victims more than 70 years old. Judge Moon imposed an aggravated sentence of twelve and one-half years for the burglary conviction. This automatic appeal followed.

## **ISSUES:**

Ellison raises twelve guilt phase issues and seventeen sentencing phase issues, plus fifteen issues to preserve them for federal review. In addition to the issues raised, Arizona Revised Statutes § 13-703.04 requires the Supreme Court to independently review the aggravating and mitigating circumstances to determine if the death penalty is appropriate.

Ellison raises the following guilt phase issues on appeal:

1. Did the trial court abuse its discretion by denying Appellant's motion to suppress his statements to police because the statements were obtained in violation of his *Miranda* rights and/or were involuntary? Was any error harmless?
2. Did the trial court abuse its discretion in denying Appellant's oral request for the judge to remove himself due to alleged bias or prejudice against Appellant?
3. Did the selection of a death qualified jury deprive Appellant of a fair and impartial jury, a fair trial and due process under the Sixth, Eighth and Fourteenth Amendments?
4. Did the trial court abuse its discretion by conditioning Appellant's use of statements against interest on Appellee being able to introduce the remaining inconsistent statements?
5. Did the trial court abuse its discretion in precluding certain hearsay statements by Finch to another inmate?
6. Did the trial court impermissibly limit Appellant's use of extrinsic evidence to cross-examine a witness?
7. Did the trial court abuse its discretion in rejecting Appellant's hearsay objection and allowing testimony regarding Finch's physical and emotional reactions when discussing "Slinger"?
8. Did the trial court abuse its discretion in allowing testimony regarding a handgun found at the home of Appellant's girlfriend?
9. Did the trial court commit fundamental error when it failed to sua sponte grant a mistrial after the investigating officer testified to Finch's hearsay statements regarding the gun found at the home of Appellant's girlfriend?

10. Did the cumulative effect of all of the alleged evidentiary errors violate Appellant's right to a fair trial, warranting a new trial?
11. Did the reasonable doubt instruction impermissibly lower Appellee's burden of proof and deprive Appellant of his rights to a jury trial and due process?
12. Did the trial court abuse its discretion in denying Appellant's motion for a judgment of acquittal due to insufficient evidence to support a premeditated murder conviction?

Ellison raises the following sentencing phase issues on appeal:

1. Did the trial court abuse its discretion in denying Appellant's motion for a judgment of acquittal due to insufficient evidence to support the *Enmund/Tison* findings?
2. Does the standard of review under A.R.S. § 13-703.05 violate the Eighth and Fourteenth Amendments?
3. Does the failure to indict Appellant for a capital crime violate his due process, notice and jury rights?
4. Does the absence of pretrial notice of aggravation factors deprive Appellant of his rights to notice, effective counsel and a reliable sentencing hearing?
5. Did the trial court abuse its discretion in ruling on two motions to strike potential sentencing jurors for cause?
6. Do separate juries for the guilt and aggravation/penalty phases deprive Appellant of his rights to a trial by jury, to have his sentencer consider all relevant evidence, and to due process?
7. Does a second trial on the issue of aggravation and punishment before a new jury violate Appellant's right against double jeopardy?
8. Does the retroactivity of the death penalty amendments violate Appellant's due process rights?
9. Is the "especially cruel" aggravating circumstance unconstitutionally vague in light of *Ring v. Arizona*?
10. Did the jury instructions unconstitutionally allow the jury to impute aggravating circumstances to Appellant based upon Finch's conduct?
11. Did the State fail to prove the especially cruel aggravating factor beyond a

reasonable doubt?

12. Did the State fail to prove the pecuniary gain aggravating factor beyond a reasonable doubt?
13. Did the State fail to prove the multiple murders aggravating factor beyond a reasonable doubt?
14. Does Arizona's death statute create an unconstitutional presumption of death and place an unconstitutional burden on Appellant to prove mitigation as "sufficiently substantial to call for leniency"?
15. Does the jury instruction under A.R.S. § 13-703.01(H), which requires the jury to unanimously determine that mitigation is sufficiently substantial to call for leniency, violate the Eighth Amendment?
16. Did the trial court's limitation on evidence regarding Finch's sentence, as a mitigating circumstance, violate the Eighth Amendment?
17. Did the admission of victim impact evidence, including allowing the sentencing jury to take one photo of the victims into deliberations, violate Appellant's rights under the Eighth Amendment?

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