



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. RUBEN MYRAN JOHNSON  
CR-03-0420-AP**

**PARTIES AND COUNSEL:**

*Appellant:* Ruben Myran Johnson is represented by Kerrie M. Droban of the Law Offices of Kerrie M. Droban.

*Appellee:* State of Arizona is represented by Robert J. Gorman, Assistant Attorney General, Capital Litigation Section.

**FACTS:**

On November 7, 2000, Ruben Johnson and Jarvis Ross, both members of the Lindo Park Crips Gang, robbed the Affordable Massage business located at 1124 East Indian School Road in Phoenix. Entering the massage parlor through a back door, Johnson and Ross confronted Stephanie Smith and Russell Biondo. They stole Biondo's wallet and pager and Smith's cell phone and left the massage parlor separately. Johnson escaped, but police officers captured Ross after a short chase. Smith and Biondo both identified Ross as one of the robbers.

Soon after the robbery, Johnson learned from his friend Phyllis Hansen, a clerk at the Maryvale Justice Court, that Ross's preliminary hearing date was scheduled for November 15, 2000, and that the victims of the robbery at Affordable Massage were going to testify at the preliminary hearing.

Johnson and Quindell Carter allegedly arrived at Smith's home shortly after 1 a.m. on November 15, 2000. Smith was in a bedroom reading a story to her four-year-old son, Jordan. Leonard Justice and Mike Solo were also at her home visiting. Solo heard a dog barking behind the house and went into the backyard to investigate. When he got outside, a black male put the barrel of a gun to Solo's head, threatened to kill him, and asked who else was in the house. Leonard Justice looked out the back window, saw what was happening, and called 9-1-1 on his cell phone. He then handed the phone to Smith so she could give the dispatcher the address. Justice ran into the bathroom while Smith ran into Jordan's bedroom. Johnson walked into Jordan's bedroom and shot Smith in the head, killing her. Arriving officers apprehended Quindell Carter after a short chase, but Johnson evaded the officers by exiting through the front door.

A grand jury indicted Johnson on four counts: first degree murder, assisting a criminal syndicate/street gang, burglary in the first degree, and armed robbery. On November 28, 2001, a jury convicted him on all charges. On November 12, 2003, the court began selection of another jury to determine the sentence on the murder count. That jury found three aggravating factors: (1) that Johnson was previously convicted of a serious offense; (2) that Johnson had knowingly created a

grave risk of death to another person in addition to the person murdered during the commission of the offense; and (3) that Johnson had committed the offense in an especially heinous or depraved manner. The jury sentenced him to death on December 22, 2003.

## **ISSUES:**

Johnson raises six challenges to his death sentence. In addition to these six 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. Johnson raises the following issues on appeal:

1. Did the trial court's failure to sever Count II, assisting a criminal street syndicate/criminal street gang, from Johnson's remaining counts deprive him of a fair trial?
2. Did the trial court's instructions concerning the F.3 and F.6 aggravating circumstances provide sufficient guidance or place unfettered discretion in the jury?
3. Did the trial court abuse its discretion when it permitted the State to introduce gang evidence during the Aggravation Phase to support the aggravating circumstance of witness elimination?
4. Did the trial court err in failing to permit Johnson to *voir dire* jurors concerning specific mitigating factors?
5. Did the trial court abuse its discretion when it permitted the State to introduce a tape recording of Johnson's interview with a detective of the Phoenix Police Department?
6. Did the trial court's failure to instruct jurors on specific mitigation to be considered during the Penalty Phase deprive Johnson of a fair sentencing?

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