



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. STEVEN RAY NEWELL
CR-04-0074-AP**

PARTIES AND COUNSEL:

Appellant: Defendant/Appellant Steven Ray Newell, represented by Susan M. Sherwin, Maricopa County Legal Advocate, and Ginger Jarvis, Deputy Legal Advocate, Maricopa County Office of the Legal Advocate

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

FACTS:

On Wednesday, May 23, 2001 Elizabeth Byrd left her home for school. Around 7:40 or 7:45 a.m. that morning Elizabeth was seen walking to school. Steven Newell, who Elizabeth knew because he had previously dated her sister, was seen following about five feet behind Elizabeth on a bicycle. Later that day, Elizabeth's mother arrived home to find that Elizabeth was not home from school yet. However, this was not cause for concern because Elizabeth routinely went to a friend's house after school and usually did not return home until around eight in the evening. When Elizabeth was still not home at eight worry began to set in. Elizabeth's sisters went to look for her, but were told that she had not come to her friend's house that day. Still unable to find Elizabeth, the family called the police around 11 p.m.

Two Phoenix Police Officers were dispatched to respond to the call from Elizabeth's family. After the officers spoke with Elizabeth's mother, they went to speak with two of Elizabeth's friends. The officers were told that Elizabeth had not been in school that day. Based on this information a missing persons report was called in and the search for Elizabeth intensified.

The morning of May 24, 2001, two other members of the Phoenix Police Department were dispatched to search a large field near M.C. Cash Elementary School ("the field"). After ten to fifteen minutes of searching, the officers discovered a child's denim shoe, a black knapsack, and a children's book. In the knapsack was a cherub magnet with the name "Elizabeth" across it, a pair of socks and a drawstring coin purse. Suspecting that they had found important evidence, the officers secured the area.

The day before, an equipment operator for the Salt River Project came upon someone, in this same field, whom he later identified as Newell, in a ditch doing something with some indoor/outdoor carpeting. As the worker passed by, Newell looked up at him and then ran off in the other direction. The worker left the indoor/outdoor carpeting rolled up in the canal, deciding that he would come

back to get it later. After seeing a news story about Elizabeth's disappearance the equipment operator contacted the police and told them what he had seen.

In the afternoon of May 24, 2001, members of the Maricopa County Sheriff's Office were dispatched to the field to search for Elizabeth. Around 4:00 p.m., Elizabeth's body was discovered rolled up in a section of green indoor/outdoor carpeting lying in the ditch. The Medical Examiner determined that Elizabeth died from asphyxiation due to ligature strangulation. The autopsy also revealed bruising, abrasions and evidence of a sexual assault. A DNA analysis was done on semen found inside of Elizabeth's underwear. The DNA profile determined that Newell was the likely source of the sperm.

Newell was interviewed on three separate occasions by detectives from the Maricopa County Sheriff's Office. In the third interview, which took place through the late evening of June 4 and into the morning of June 5, 2001, Newell confessed to being with Elizabeth in the field, grabbing her by the legs and the purse strap, and putting her in the canal covered with the indoor/outdoor carpeting. This interview was videotaped and shown to the jury at trial.

On June 14, 2001, a Maricopa County grand jury indicted Appellant on three counts related to the disappearance and death of Elizabeth Byrd: Count I - first degree murder, either premeditated or felony murder; Count II - sexual conduct with a minor; and Count III - kidnapping. On February 12, 2004, the jury returned guilty verdicts on all three counts against Newell. On February 18, 2004, the jury found that the state had proven beyond a reasonable doubt three aggravating factors. On February 25, 2004, the jury reached a unanimous decision that Newell should be sentenced to death for the murder of Elizabeth Byrd. This automatic appeal followed.

ISSUES:

Newell raises five challenges to his convictions and death sentence. In addition to those five issues, 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. Newell raises the following 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 by denying Appellant's *Batson* challenge to one of the State's peremptory strikes?
3. Did the trial court abuse its discretion by denying Appellant's motion for mistrial based on prosecutorial misconduct?
4. Did the trial court abuse its discretion by denying Appellant's motion to preclude the State from presenting rebuttal evidence in the penalty phase that rebutted nothing more than the State's own evidence presented in the guilt phase?

5. Did the trial court abuse its discretion by precluding Appellant's mental expert from the penalty phase as a sanction for Appellant refusing to submit to an examination by the State's mental expert pursuant to court order?

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.