



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DAVID PATRICK PARKS,
CR-05-0373-PR**

Parties and Counsel: The petitioner is the State of Arizona, represented by Randall M. Howe, Chief Counsel, Criminal Appeals Section. The respondent is David Patrick Parks, represented by Spencer D. Heffel, Deputy Maricopa County Public Defender.

FACTS:

Neighbors David Parks and Neal Pluguez had a seven-month running dispute over Parks's use of a dirt roadway on Pluguez's property. Although Parks could access his property using a public avenue, he believed the dirt roadway was a public road even though it was within Pluguez's property. Consequently, over Pluguez's objections, Parks and his family used the roadway to access their property.

On September 4, 2002, Parks, his 13-year-old son Cory, and Parks' brother Harold were constructing a dog pen on Parks's property against the property line with Pluguez. When the men broke for lunch, Parks left his truck on the dirt roadway. Shortly thereafter, Pluguez arrived, an argument ensued, and Parks shot Pluguez. Pluguez died before the paramedics arrived.

When the deputies arrived, they ordered Parks, at gunpoint, to go to his knees and then to a prone position. They handcuffed, searched, arrested and secured him in the back of a squad car. The deputies heard Cory and his sister yelling that their dad "was just defending himself." Deputy Sheriff Robert Manor arrived approximately 25 minutes after the shooting. Harold and Cory told Manor they had witnessed the shooting. After separating the two, Manor questioned Harold for approximately 15 to 20 minutes. Manor then questioned Cory for about 15 to 20 minutes. Manor told Cory and Harold that they needed to stay separate from each other until homicide detectives could interview the two of them again. Sheriff's deputies subsequently drove Cory to a sheriff's station where homicide detective Gary McGuire interviewed and videotaped Cory.

Parks was charged with second degree murder. His defense was self-defense. Six months before trial, Cory died in a automobile accident caused by his father. The State stated its intention to introduce Cory's statements to Manor and his taped interview with McGuire. Parks objected on the ground that Cory's statements constituted inadmissible hearsay and that their admission would violate his Sixth Amendment right to confront witnesses against him.

The court found Cory's statements at the crime scene admissible under the excited utterance exception to the hearsay rule, Rule 803(2), Arizona Rules of Evidence. Cory's videotaped interview with McGuire was admitted under the "catchall" or residual exception to the hearsay rule for unavailable witnesses.

At trial, Harold testified that Parks was inside the truck when Pluguez dropped or threw a compressor on the hood of Parks' truck. Harold also testified that, after Parks got out of the truck, he fired the gun at the ground with his elbow in the air above his shoulder. Over Parks' objection, Deputy Manor testified that, at the scene, Cory told him that, when Pluguez was about ten feet from the truck, his father got in the truck to move it. He started the truck and just as it started to move, the motor stalled. As the truck stalled, Pluguez threw the compressor on the hood of the truck. Parks then got out of the truck and said something to Pluguez that Cory could not hear. Parks took a step back as Pluguez advanced toward him. Parks removed his gun from his holster and shot, pointing the gun at a "downward angle." Pluguez continued to walk toward Parks and Parks shot again. After the last shot, Pluguez turned around and started walking toward his property, but then fell to the ground.

Parks, testifying in his own defense, contradicted Harold and Cory's version and claimed that he had exited the truck before Pluguez threw the compressor. Parks testified that he feared Pluguez was going to throw the compressor at him because he had raised it from his chest to his head as if to throw.

Parks was convicted of manslaughter and sentenced to an aggravated sentence of 18 years in prison. He appealed. The court of appeals reversed and remand for a new trial. This court granted the State's petition for review.

Issue Presented:

Did the court of appeals improperly extend the constitutional right of confrontation to excited utterances and informal, unstructured statements to police at crime scenes, when those statements are not "testimonial" statements within the narrow core concerns of the Confrontation Clause?

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.