



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State v. Tracy Allen Hampton
CR-03-0033-AP

PARTIES AND COUNSEL:

Appellant: Tracy Allen Hampton, represented by Michael S. Reeves, Deputy Public Defender, Office of the Maricopa County Public Defender

Appellee: State of Arizona, represented by Patricia A. Nigro, Assistant Attorney General, Capital Litigation Section

FACTS:

On May 16, 2001, two Department of Public Safety officers attempted to serve a traffic ticket on Tracy Allen Hampton. The officers went to the home where Hampton had been staying with Charles Findley and Findley's girlfriend, Tanya Ramsdell, who was five months pregnant. Hampton was not there, but Findley and two women were. To demonstrate that he was not the man they were looking for, Findley showed the officers a photograph of Hampton, and the officers left.

At around 7:30 a.m. on May 17, Misty Ross and a man named Shaun Geeslin went to the home where Hampton was staying. Hampton answered the door and let them in. Hampton told Geeslin that police officers had come to the home the previous day and that Findley had given the police information about Hampton. Hampton said he planned to confront Findley about the incident. When Findley awoke, Hampton had an argument with him in a back room of the house. During the course of the morning, Hampton, Findley, Ross, Geeslin, and two others named Tim Wallace and Stephanie smoked methamphetamine. About 10:30 a.m., Wallace and Stephanie left the house. Hampton later left with Geeslin, leaving Ross behind with Findley. Ramsdell was asleep in a bedroom at the house.

Around noon, Hampton and Geeslin returned to the home. Hampton and Geeslin entered a room at the back of the house where Findley was kneeling on the floor. Hampton turned on a CD player to a loud volume, walked in front of Findley, and called out his name. As Findley looked up, Hampton shot him in the forehead, killing him. Hampton then went to the bedroom where Ramsdell was sleeping, slammed open the door, walked to the bed and shot her in the head. Ramsdell and her unborn daughter died as a result. Hampton then joined Ross and Geeslin in Geeslin's truck and, after asking whether he had any blood on his face, said he was hungry and asked to be taken to get some food.

Hampton was arrested on May 31, 2001. While in the Maricopa County jail in August 2001 awaiting trial, Hampton shared a cell with George Ridley. In exchange for a plea bargain, Ridley testified at Hampton's trial. He said that Hampton admitted to committing the murders and told Ridley the story of the murders every night for the two weeks that the men were cellmates.

Hampton reportedly told Ridley that he killed Findley because “he was a rat” and he killed Ramsdell because Hampton was affiliated with the Aryan Brotherhood and thought that Ramsdell was a “nigger lover” who was pregnant with a Black man’s child. Hampton allegedly told Ridley that he “thought it was funny” that Ramsdell had slept through the shooting of her boyfriend, and bragged that he was able to shoot Ramsdell in pretty much the same place he shot Findley. Before leaving the house, according to Ridley, Hampton knelt down next to Findley’s body and whispered in his ear, “I want to let you know I took care of your nigger loving old lady and her little coon baby, too. Don’t worry, they didn’t feel a thing.”

The State charged Hampton by complaint with two counts of first degree murder for the deaths of Findley and Ramsdell, and one count of manslaughter for the death of Ramsdell’s unborn child. On May 2, 2002, the jury found Hampton guilty of two counts of first degree murder and one count of manslaughter. The State filed a Notice of Aggravating Factors on May 7, 2002, specifying two factors: (1) A.R.S. § 13-703(F)(8) (2002) (multiple homicides), and (2) A.R.S. § 13-703 (F)(6) (especially heinous or depraved).

On June 24, 2002, the United States Supreme Court decided *Ring v. Arizona* (“*Ring II*”), 536 U.S. 584 (2002), holding that the Sixth Amendment requires a jury finding of aggravating circumstances necessary for the imposition of the death penalty. The aggravation and penalty phases of the trial were therefore conducted before a new jury. That jury found both murders to have been committed during the commission of one or more other homicides. The murder of Ramsdell also was found to have been committed in an especially heinous or depraved manner. In the penalty phase, the jury unanimously determined that any mitigation proven was not sufficiently substantial to call for leniency. The superior court imposed separate death sentences for each of the two murder convictions. For the manslaughter conviction, the court sentenced Hampton to an aggravated term of twelve and one-half years, to run consecutively to the death penalties. A direct appeal of the capital convictions and sentences was filed with this Court pursuant to Arizona Rules of Criminal Procedure 31.2(b) and 26.15. Hampton also appealed the manslaughter conviction and sentence.

ISSUES:

Hampton raises eighteen challenges to his conviction and death sentence. In addition to those eighteen 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. Hampton raises the following issues on appeal:

1. The trial court abused its discretion by not granting appellant’s motion to preclude death qualification of the jury prior to the guilt phase of the trial in violation of appellant’s right to a fair trial and due process under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and Article 2, Sections 4 and 24 of the Arizona Constitution.
2. Admission of unduly gruesome photographs resulted in the denial of a fair trial as guaranteed by the Sixth and Fourteenth Amendments, violated due process under the Fifth and Fourteenth Amendments and rendered the death sentence unreliable under the Eighth Amendment.

3. The trial court abused its discretion for not dismissing the offense of fetal manslaughter in violation of appellant's right to a fair trial and due process under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article 2, Sections 4 and 24 of the Arizona Constitution.
4. Retroactive application of the new death penalty statute to appellant violated the *Ex Post Facto* clauses of the state and federal constitutions, and A.R.S. § 1-244.
5. The trial court abused its discretion by refusing to dismiss the State's notice of aggravating factors denying appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, Sections 4, 15, and 24 of the Arizona Constitution.
6. Appellant did not receive pretrial notice of aggravating elements per A.R.S. § 13-703.01(B) in violation of his Sixth and Fourteenth Amendment rights to notice, his Sixth Amendment right to effective assistance of counsel, and his Eighth Amendment right to a fair capital sentencing proceeding and heightened reliability.
7. A.R.S. § 13-703.01(E) was not complied with because the sentencing jury was not the trial jury. This violated appellant's Sixth Amendment right to trial by jury, his Eighth Amendment right to have the sentencer consider all relevant evidence and his Fifth and Fourteenth Amendment rights to due process.
8. Subjecting appellant to a second trial on the issue of aggravation and punishment before a new jury violated the state and federal double jeopardy clauses.
9. The standard of review called for in A.R.S. § 13-703.05(A) violates the separation of powers doctrine and is in violation of appellant's Eighth and Fourteenth Amendment constitutional rights under the United States Constitution and Article 2, Sections 4, 15, and 24 of the Arizona Constitution.
10. The court's use of the "especially heinous, cruel or depraved" aggravator is unconstitutionally vague in light of *Ring v. Arizona* in violation of appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article 2, Sections 4, 15, and 24 of the Arizona Constitution.
11. The trial court abused its discretion by refusing to permit appellant's expert to present mitigation evidence denying appellant's right to due process and a fair sentencing hearing under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, Sections 4, 15 and 24 of the Arizona Constitution.
12. The trial court abused its discretion in allowing Monica Majors to testify regarding past acts of violence in violation of Rule 403/404 and appellant's due process and fair trial rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States

Constitution and Article 2, Sections 4, 15, and 24 of the Arizona Constitution.

13. The statutes A.R.S. § 13-703(E) and § 13-703.01(H) created an unconstitutional presumption of death and placed an unconstitutional burden on appellant to prove mitigation was sufficiently substantial to call for leniency.
14. The court improperly instructed on sympathy in the aggravation and penalty phases violating appellant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and Article 2, Sections 1, 4, 15, 23, and 24, of the Arizona Constitution.
15. The admission of the victim impact statement was unduly prejudicial in violation of appellant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, Sections 4, 15, and 24 of the Arizona Constitution.
16. The trial court erred in ordering one of appellant's sentences be served consecutively in violation of A.R.S. § 13-116.
17. The trial court reversibly erred by sentencing appellant to an aggravated term based upon factual findings that were not found by the jury nor admitted by appellant, contrary to the Sixth Amendment of the United States Constitution and Article 2, Section 23 and 24 of the Arizona Constitution.
18. Arizona's death penalty is unconstitutional.

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