



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. MCGILL,
CR-04-0405-AP**

PARTIES AND COUNSEL:

Appellant:

MARICOPA COUNTY OFFICE OF THE LEGAL ADVOCATE
By Susan M Sherwin, Legal Advocate
Thomas J Dennis
Attorneys for Leroy Dean McGill

Appellee:

TERRY GODDARD, ARIZONA ATTORNEY GENERAL
By Terry Goddard, Attorney General
Kent Cattani, Assistant Attorney General
J.D. Nielsen, Assistant Attorney General
Attorneys for State of Arizona

FACTS:

On July 13, 2002, Leroy McGill entered the apartment of Jack Yates, where Charles Perez and Nova Banta were staying. McGill threw gasoline on Charles and Nova and then set them on fire. The duplex containing Yates' apartment and one other was quickly engulfed in flames. Yates and Jeffrey Uhl escaped the Yates apartment; Mary Near escaped from the other apartment. Nova was horribly burned, but survived the fire. Charles Perez died as a result of the attack.

On October 27, 2004, a jury found Leroy McGill guilty of the first degree premeditated murder of Charles Perez, the attempted first degree murder of Nova Banta, two counts of arson, and the endangerment of Jack Yates, Jeffrey Uhl, and Mary Near. The jury also found that McGill had been convicted of prior serious offenses, created a grave risk to others in murdering Perez, and murdered Perez in a manner that was especially cruel and especially heinous or depraved. The jury did not find that McGill's mitigation evidence of an abusive childhood, mental impairment, and psychological immaturity, was sufficiently substantial to call for leniency, and therefore made a binding recommendation that McGill be sentenced to death.

ISSUES:

1. Did the trial court error in allowing the jury to see pictures of the victim's burned bodies during trial and during the sentencing phase?
2. Should the trial court have directed a not guilty verdict on the three counts of

endangerment?

3. Did the trial court make a mistake in instructing the jury on helplessness, a component of finding the murder to be heinous, cruel, or depraved?
4. Did the trial court make a mistake in instructing the jury to specifically decide whether the murder was “cruel,” and whether it was “heinous and depraved,” but not asking it to distinguish between “heinous” and “depraved”?
5. Does it violate the United States Constitution for the same conduct to be used for a crime, endangerment, and as a basis for making the defendant eligible for the death penalty?
6. Does it violate the United States Constitution to allow the jury to consider testimony that the Defendant could not cross-examine when the testimony is given during the penalty phase of the trial?
7. Did the trial court error in dismissing a juror who claimed to have a religious objection to the death penalty?
8. Does it violate the United States Constitution to require the Defendant to prove mitigating factors, those factors suggesting he should not receive the death penalty, by a preponderance of the evidence?
9. Considering the evidence of aggravating factors and mitigating factors, should the Court uphold Leroy McGill’s death sentence?

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.