



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. RUBEN GARZA  
CR -04-0343-AP**

**PARTIES AND COUNSEL:**

*Defendant/Appellant:* Ruben Garza, Jr., represented by Richard D. Gierloff

*Plaintiff/Appellee:* State of Arizona, represented by Patricia A. Nigro, Assistant Attorney General, Capital Litigation Section, on behalf of Terry Goddard, Attorney General and Kent E. Cattani, Chief Counsel, Capital Litigation Section

**FACTS:**

On December 1, 1999, Jennifer Farley heard a knock at the door on the east side of the house she shared with her boyfriend, Lance Rush, and their friend Ellen Franco. She and Franco opened the door and saw a Hispanic male who Farley later identified as Ruben Garza. Franco was the estranged wife of Garza's uncle, Larry Franco.

Franco and Garza went outside to talk and Farley went back to the bedroom she shared with Rush. Shortly afterwards she heard Franco exclaim "Get out, get out," followed by a gunshot. She then heard Franco say something like "Oh, God" or "Oh, no," and a second gunshot. The intruder then came down the hall to the bedroom and confronted Rush, shooting him three times. Both Rush and Ellen died approximately an hour later of their gunshot wounds.

Garza was treated for a gunshot wound to his left forearm later that evening, and police arrested him at work the next morning. In interviews with police he confessed to shooting Franco after arguing with her before "blacking out." Drops of his blood were later found on the walls of the hallway in the victims' home. The gun used in the shootings was discovered in his belongings, and ammunition of the same type used in the shootings was found in his car. Two associates of Garza testified at trial that in the weeks before the murders he had asked if they wanted to help him with a "dirty job" to "deal with some family problems."

Garza was indicted for two counts of first degree murder and one count of burglary, and in 2004 was convicted in Maricopa County Superior Court on all counts. In the aggravation phase of the sentencing proceedings the jury found the aggravating circumstance that Garza had committed multiple murders in the course of the offense, making him eligible for the death penalty. *See* Ariz. Rev. Stat. ("A.R.S.") § 13-703(F)(8) (Supp. 2004). In the penalty phase, Garza presented mitigation evidence that he was only nineteen at the time of the murders and had no prior criminal record, and twenty-five witnesses testified that Garza was a peaceful, caring, loving person. The jury imposed life imprisonment for the murder of Franco but death for the murder of Rush. This automatic appeal followed.

## ISSUES:

Garza raises twenty-six issues: five involve jury selection, five involve the guilt phase of his trial, and the rest relate to the sentencing proceedings. His arguments are as follows:

### A. Jury Selection Issues

1. Structural error pervaded the constitutionally deficient voir dire.
2. A qualified juror was impermissibly struck for cause.
3. Three death presumptive jurors were seated on the jury.
4. The State used its peremptory strikes in violation of the jurors' First Amendment right to the free exercise of religion, Garza's Sixth and Fourteenth Amendment rights to a trial by jury and Fifth Amendment right to due process.
5. Challenges for cause against biased jurors were denied in violation of the Fifth, Sixth and Fourteenth Amendments and Article 2, Sections 4 and 24 of the Arizona Constitution.

### B. Guilt Phase Issues

1. The State unlawfully withheld exculpatory material in violation of *Brady v. Maryland* and due process pursuant to the Fourteenth Amendment and Article 2, Section 4 of the Arizona Constitution.
2. The trial court abused its discretion by admitting character evidence in violation of Garza's right to due process under the Fourteenth Amendment and Article 2, Section 4 of the Arizona Constitution.
3. The trial court erred in instructing the jury on accomplice liability and absence of another participant and erred by refusing to instruct the jury on mere presence.
4. The reasonable doubt instruction lowered the State's burden of proof, shifted the burden of proof to Garza, deprived Garza of his right to due process under the Fourteenth Amendment and Article 2, Section 4 of the Arizona Constitution and his right to trial by jury under the Sixth and Fourteenth Amendments and Article 2, Sections 23-24 of the Arizona Constitution.
5. The absence of *Enmund/Tison* findings by the jury was in violation of the Sixth, Eighth and Fourteenth Amendments and Article 2, Sections 4, 15 and 23 of the Arizona Constitution.

### C. Sentencing Issues

1. The State's failure to allege specific aggravating factors with its notice of intent to seek the death penalty violates Arizona Rules of Criminal Procedure 15.1(i) and 16, the Sixth and Fourteenth Amendments, and Article 2, Sections 4, 24, and 30 of the Arizona Constitution.
  - a. A finding of probable cause is required prior to presentencing and instructing the jury on specific aggravating circumstances.
  - b. The jury was instructed on the statutory aggravators of multiple homicides and pecuniary gain in violation of Garza's Fourteenth Amendment right to

due process and Article 2, Section 4 of the Arizona Constitution because no reasonable jury could find the State proved the aggravators beyond a reasonable doubt.

2. The prosecutor improperly and adversely commented on Garza's Fifth Amendment right to remain silent.
3. It was error to allow the State to proffer the 911 tape recordings at the penalty phase because the evidence was irrelevant, prejudicial and not offered in rebuttal to evidence presented by the defense.
4. It was error to deny a jury instruction on residual doubt as a mitigating circumstance in violation of the Eighth and Fourteenth Amendments and Article 2, Sections 4 and 15 of the Arizona Constitution.
5. The court erred in denying an instruction allowing the jury to consider the role of a third-party to show Garza's level of non-statutory culpability for purposes of mitigation in violation of the Eighth and Fourteenth Amendments and Article 2, Sections 4 and 15 of the Arizona Constitution.
6. The prosecutor improperly argued the victims' rights during his closing in the penalty phase in violation of the Sixth and Fourteenth Amendments and Article 2, Sections 4 and 24 of the Arizona Constitution.
  - a. It was structural error to allow victim impact evidence at the beginning of the penalty phase in violation of the Eight and Fourteenth Amendments and Article 2, Sections 4 and 15 of the Arizona Constitution.
  - b. The victim impact statements and accompanying photos were unduly prejudicial so that they rendered the penalty phase fundamentally unfair in violation of Garza's Eighth and Fourteenth Amendment rights.
7. Garza was denied his right to allocution in violation of his Sixth Amendment right to trial by jury, Eighth Amendment right to a fair sentencing and his right to due process under the Fifth and Fourteenth Amendments; Article 2, Section 24 of the Arizona Constitution; and Arizona Rules of Criminal Procedure 19.1(d)(7) and 26.10(b)(1).
8. The instruction prohibiting the jury from considering sympathy or sentiment violated the Eighth Amendment.
9. It was error to deny the jury instruction that "life is the presumption" at sentencing in violation of the Sixth, Eighth and Fourteenth Amendments and Article 2, Sections 4 and 15 of the Arizona Constitution.
10. The instruction that the jury had to unanimously determine that mitigation was sufficiently substantial to call for leniency violated the Sixth and Eighth Amendments.
11. A.R.S. § 13-703 creates an unconstitutional presumption of death and places an unconstitutional burden on Garza to prove mitigation was sufficiently substantial to call for leniency.

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