



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE V. WENDI ELIZABETH ANDRIANO
CR-05-0005-AP**

PARTIES AND COUNSEL:

Appellant: Wendi Elizabeth Andriano is represented by Brent E. Graham and Peg Green, Deputy Public Defenders, Maricopa County Public Defender's Office

Appellee: The State of Arizona is represented by Terry Goddard, Attorney General, Kent E. Cattani, Chief Counsel, and Robert J. Gorman, Assistant Attorney General, Capital Litigation Section, Arizona Attorney General's Office

FACTS:

A jury found that Wendi Andriano murdered her terminally ill husband, Joseph ("Joe"), on October 8, 2000, by first poisoning him with sodium azide that she had acquired under an assumed name, then striking him at least twenty-three times in the back of the head with a bar stool and slitting his throat.

On November 18, 2004, a jury found Andriano guilty of one count of first degree murder, a dangerous offense. The same jury found the existence of one aggravating circumstance: The murder was committed in an especially cruel manner, in violation of A.R.S. § 13-703(F)(6). After finding that the mitigating circumstances were not sufficiently substantial to call for leniency, the jury determined that the death penalty should be imposed. On December 22, 2004, the trial court sentenced Andriano to death by lethal injection. This automatic appeal followed.

ISSUES:

Andriano raises eleven issues on appeal. In addition to these issues, A.R.S. § 13-703.04 requires the Supreme Court to independently review the aggravating and mitigating circumstances and the propriety of the death sentence.

Andriano raises the following issues on appeal:

1. Did the trial court abuse its discretion when it admitted evidence of Andriano's extramarital affairs and her attempts to obtain insurance policies on Joe's life?
2. Did the trial court commit fundamental error by failing to instruct the jury on the lesser-included offenses of second degree murder and manslaughter?

3. Is the A.R.S. § 13-703(F)(6) aggravating factor unconstitutionally vague?
4. Did the trial court improperly instruct the jury in the aggravation phase to engage in proportionality review?
5. Was the trial court's instruction defining the (F)(6) aggravating factor unconstitutionally vague?
6. Was there sufficient evidence from which the jury could find that Andriano committed the murder in an "especially cruel" manner?
7. Was the trial court constitutionally required to allow Andriano to present evidence of residual doubt as a mitigating circumstance?
8. Was the trial court constitutionally required to allow Andriano to present evidence of mercy as a mitigating circumstance?
9. Did the trial court improperly instruct the jury in the penalty phase to require jury unanimity regarding the existence of mitigating circumstances?
10. Did the trial court coerce the jury's death verdict when it gave an impasse instruction during penalty phase deliberations?
11. Is Arizona's lethal injection statute, A.R.S. § 13-704(A), unconstitutionally vague?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' 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.