



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. JAMES CORNELL HARROD
CR-05-0461-AP**

PARTIES AND COUNSEL:

Appellant: James Cornell Harrod is represented by Michael J. Dew

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

FACTS:

Ed Tovrea Sr. married Jeanne Tovrea in 1973. Jeanne had an adult daughter from a previous marriage, Debbie Luster. Ed had three children, Ed Jr., Georgia, and Priscilla. When Ed Sr. died in 1983 his estate was worth approximately \$8 million. His will provided that each of his children would receive \$200,000, which would be distributed in monthly payments of \$1,500. Jeanne received certain real estate, and various outright gifts of stock and personal property listed in the will. The remainder of Ed Sr.'s estate was put into a Qualified Terminable Interest Property, or Q-tip, trust. Jeanne was entitled to all of the income from the trust during her lifetime and the trustees were permitted to invade the corpus of the trust for her benefit; upon her death the trust would pass to Ed Sr.'s three children.

Just before 1:00 a.m. on the morning of April 1st, 1988, Phoenix Police Officers responded to an alarm call at Jeanne Tovrea's home. A kitchen window and its weather-stripping had been completely removed and was sitting on a chair on the patio; an arcadia door was open. Jeanne was found dead in her bed with the comforter covering her body. She had been shot five times in the head with a .22 caliber gun; twice through a pillow and three times at close range. Several drawers from a jewelry case had been removed and set on furniture and Jeanne's purse had been dumped out on the kitchen counter. The rest of the house appeared undisturbed. At the time of Jeanne's death, the Q-tip trust was worth approximately \$4 million.

James Harrod was arrested for his involvement in the murder of Jeanne Tovrea on September 14th, 1995. At this point, police investigators had developed the following evidence: bank records showing large money transfers from Ed Tovrea Jr. to Harrod; telephone records showing calls between Ed Jr. and James Harrod; and statements to friends regarding the jewelry and credit cards which were missing. In addition, after being offered immunity, Anne Costello, Harrod's ex-wife, told police that: Harrod told her that he had been hired by Ed Jr. to coordinate a hit on Jeanne for \$100,000; Harrod told her that he had posed as Gordon Phillips to interview Jeanne before her death; when Harrod left their house on March 31st, he said he was going to supervise the murder and told her that it was done when he returned on the morning of April 1st; Harrod spoke to Ed Jr. on the telephone the morning of April 1st; Harrod and Anne suddenly had large sums of money that were

unaccounted for; Harrod received Fed Ex boxes full of cash from Ed Jr.; and Harrod kept Jeanne's jewelry and credit cards in their house for a time before burying them in the desert. Latent fingerprints from Jeanne's kitchen counter, the outside of the window pane, the inside of the window pane, and a gate on her property were all matched to inked prints of James Harrod on the date of his arrest.

A jury convicted Harrod of both premeditated murder and felony murder of Jeanne Tovrea on November 18, 1997. A judge sentenced Harrod to death on May 27, 1998. This Court affirmed his conviction and death sentence in 2001. *State v. Harrod*, 200 Ariz. 309, 26 P.3d 492 (2001) (*Harrod I*). In 2002, the United States Supreme Court remanded the case for further consideration in light of *Ring v. Arizona*, 536 U.S. 584 (2002) (*Ring II*). *Harrod v. Arizona*, 536 U.S. 953 (2002). This Court vacated the judgment and remanded for resentencing in 2003. *State v. Harrod*, 204 Ariz. 567, 65 P.3d 948 (2003) (*Harrod II*).

The latest sentencing proceeding began on September 13, 2005. During the penalty phase, Harrod provided evidence, and the jury was instructed on the following mitigating circumstances: uncharged co-perpetrator; impact of execution on defendant's family and friends; lack of criminal history; mental abuse by father during childhood; alcoholic father; past good conduct and character; absence of other violent acts; commission of the offense was out-of-character; educational accomplishments; good behavior during pre-trial incarceration; good behavior during post-sentencing incarceration; good conduct during trial; love for and of family; and divorced parents. On October 12, 2005, the jury found that the State had proved beyond a reasonable doubt the pecuniary gain aggravating factor. The jury found that the mitigation evidence was not substantial enough to call for leniency and determined that Harrod should be sentenced to death. The trial judge subsequently sentenced Harrod to death by lethal injection on October 26, 2005.

ISSUES:

Harrod raises seven issues on appeal. In addition to these issues, A.R.S. § 13-703.05 (Supp. 2007) governs the Court's review of sentencing.

Harrod raises the following issues on appeal:

1. Did the trial court err in allowing Harrod's ex-wife to testify to confidential communications under the authority of a statute abolishing their confidentiality ten years after the communications were made?
2. Did the trial court err in refusing to require Ed Tovrea Jr. to answer non-incriminating questions concerning legitimate business operations and lawful payments to Harrod?
3. Did the trial court err in refusing to order a prescreening evaluation of Harrod's competency?
4. Did the prosecutor commit misconduct by intentionally presenting a false argument to the sentencing jury?

5. Did the trial court err in refusing to allow Harrod to present evidence of “residual doubt” during the penalty phase?
6. Did the jury instructions and verdict form at the penalty phase, taken as a whole, impermissibly create and shift a burden of proof, resulting in a “presumption of death”?
7. If this Court concludes that the trial court improperly excluded relevant mitigating evidence, should this Court remand rather than conduct an independent review of the aggravating and mitigating circumstances and the propriety of the death sentence?

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