



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. JUAN VELASQUEZ  
CR -04-0361-AP**

**PARTIES AND COUNSEL:**

*Appellant:* Juan Velasquez is represented by Richard D. Gierloff.

*Appellee:* The State of Arizona is represented by Terry Goddard, Attorney General; Kent E. Cattani, Chief Counsel; and Patricia A. Nigro, Assistant Attorney General, Capital Litigation Section.

**FACTS:**

In September of 2001, Juan Velasquez was living with his girlfriend, Virginia Venegas, and her two daughters, Isabella and Liana Sandoval. Isabella was three years old and Liana was twenty months old. The four had been living together for approximately one month.

On the evening of September 24, 2001, Velasquez severely beat Isabella. Isabella suffered numerous injuries as a result of the assault, the most serious of which was a fractured skull. The next morning, while Venegas was at a job interview, Velasquez also assaulted Liana. As a result, Liana suffered extensive injuries including, but not limited to, a "full thickness" skull fracture in the occipital region, intracranial hemorrhaging and swelling of the brain. This swelling ultimately caused Liana's death, though the head wounds were not instantly fatal. The cause of death was listed as blunt force trauma. Velasquez admits to repeatedly sweeping Liana's feet out from under her, causing her to fall backwards and hit her head on the floor, until she could no longer get up. The medical examiner testified that Liana also suffered at least six separate blows before her death.

In an attempt to conceal his crime, Velasquez attached a large cement rock to Liana's body with a piece of bailing wire, and with the help of Venegas, dumped her body in the canal. The following morning, he and Venegas reported Liana missing. A search ensued, and nearly two days later, on September 27, 2001, both Venegas and Velasquez confessed. Liana's body was recovered from the water in the early morning hours of September 28, 2001.

Velasquez was indicted for the felony murder of Liana, three counts of child abuse for injuries suffered by Liana, and four counts of child abuse for injuries suffered by Isabella. He was convicted by a jury on all counts. With regard to the murder count, the jury found three aggravating circumstances: Velasquez had committed a prior serious offense, he committed the murder in an especially cruel manner, and he was an adult at the time of the murder and Liana was under the age of fifteen. The jury did not find the mitigating evidence presented sufficiently substantial to warrant leniency, and therefore sentenced him to death on October 11, 2004.

## ISSUES:

Velasquez raises nine issues: three involving jury selection, four involving the aggravation phase of the trial, and two involving the penalty phase of the trial:

### A. Jury Selection Issues

1. The “death qualification” voir dire constituted structural error.
2. The voir dire mischaracterized the basis for, application of and nature of mitigation evidence, resulting in structural error.
3. The conviction must be reversed because two death presumptive jurors were seated on the jury.

### B. Aggravation Phase Issues

1. The victim’s age was “double counted” as an aggravator requiring resentencing.
2. A finding of probable cause is required prior to presenting and instructing the jury on specific aggravating circumstances.
3. The aggravating fact “especially cruel” is vague and overbroad, thereby violating the Eighth Amendment.
4. Presenting the aggravating factor of “previously convicted of a serious offense,” to the jury was fundamental error.

### C. Penalty Phase Issues

1. The jury was misinstructed in the penalty phase requiring resentencing.
2. The prosecutor’s argument in the penalty phase constituted misconduct.

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