



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**State of Arizona v. David Lamar Anthony
CR-04-0098-AP**

PARTIES AND COUNSEL:

Appellant: David Lamar Anthony is represented by Tennie B. Martin and Stephen Whelihan, Deputy Maricopa County Public Defenders.

Appellee: The State of Arizona is represented by Kent Cattani, Chief Counsel, and Amy P. Cain, Assistant Attorney General, Capital Litigation Section of the Arizona Attorney General's Office

FACTS:

On July 7, 2001, Donna Anthony and her two minor children, Danielle and Richard Romero, did not arrive on their scheduled flight to Columbus, Ohio. The investigation of their disappearance ultimately led to the conviction of Donna's husband, David Lamar Anthony, for the first-degree murder of his wife and his two step-children. At the time of his trial and conviction, the bodies of the victims had not been discovered.

Anthony was convicted on April 1, 2002. The decision in *Ring v. Arizona*, 536 U.S. 584 (2002), came down shortly after the guilt-phase jury was discharged. Sentencing proceedings began before a new jury on February 18, 2004. At the conclusion of the aggravation phase, the jury found three aggravating circumstances: that Anthony had committed the murders for pecuniary gain, A.R.S. § 13-703(F)(4), that multiple homicides had taken place during the commission of the offense, A.R.S. § 13-703(F)(8), and that two of the victims were under the age of fifteen, A.R.S. § 13-703(F)(9). After the penalty phase, the jury returned verdicts calling for a death sentence for each of the three murders.

ISSUES:

Anthony raises nine issues in his direct appeal. Additionally, the Court performs an independent review of the aggravating and mitigating factors, as well as the propriety of the death sentence, pursuant to A.R.S. § 13-703.04 (Supp. 2007).

(1) Did the trial court deny Anthony's rights to effective assistance of counsel and to due process when, on the sixth day and on all subsequent days of trial, one of Anthony's two retained attorneys stopped appearing and the trial court allowed the trial to proceed in her absence?

(2) Did the trial court erroneously admit evidence of semen in a mattress and condoms in a septic tank to show that Anthony was sexually molesting Danielle?

- (3) Did the trial court err by precluding evidence of third-party culpability?
- (4) Did the trial court err by excluding certain testimony and evidence offered by Anthony?
- (5) Did the trial court err by excusing two of the potential penalty-phase jurors for cause based on their objections to the death penalty?
- (6) Did the jury erroneously find two of the three aggravators: multiple murders (A.R.S. § 13-703(F)(4)) and pecuniary gain (A.R.S. § 13-703(F)(8)).
- (7) Did the trial court violate A.R.S. § 13-703(G) and the U.S. Constitution by (1) precluding evidence of residual doubt, (2) prohibiting argument regarding it, and (3) instructing the jury not to consider it?
- (8) Did the jury instructions in the penalty phase impermissibly limit the jury's consideration of mitigating factors to the two factors listed?
- (9) Is Arizona's statute providing for execution by lethal injection vague because it fails to sufficiently specify the means to be used to ensure an execution by lethal injection that is not cruel and unusual?

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