



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE V. JOHN MONTENEGRO CRUZ
CR-05-0163-AP**

PARTIES AND COUNSEL:

Appellant: John Montenegro Cruz is represented by David Alan Darby

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

FACTS:

A jury found that John Montenegro Cruz murdered Tucson Police Officer Patrick Hardesty on May 26, 2003 by shooting him five times with a .38 caliber revolver. Cruz was attempting to evade officers investigating a hit and run motor vehicle accident.

The jury found Cruz guilty of one count of first degree murder in violation of A.R.S. § 13-1105(A)(3). The same day, the jury found that the State had proven the existence of one aggravating circumstance: "The murdered person was an on duty peace officer who was killed in the course of performing the officer's official duties and the defendant knew, or should have known, that the murdered person was a peace officer," in violation of A.R.S. § 13-703(F)(10). 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 March 10, 2005, the trial court sentenced Cruz to death by lethal injection. This automatic appeal followed.

ISSUES:

Cruz raises the following twenty-two issues on appeal:

1. Did the trial court abuse its discretion in refusing to change venue?
2. Did the trial court abuse its discretion in refusing to sequester the jury?
3. Did the trial court err by not striking jurors 136, 150, 169, and 178 for cause?
4. Did the trial court err by not striking juror 62 for his views on the death penalty?
5. Is Rule 20 unconstitutional in light of *Apprendi*, *Ring*, and *Blakely*?
6. Did the trial court err by refusing to make a pretrial determination of whether it would sentence Defendant to life or natural life?

7. Did the trial court err by admitting certain statements made by Defendant before he was taken into custody?
8. Did the trial court err by refusing to admit a statement by Lisa Laguna?
9. Did the trial court err by refusing to admit the testimony of Rand Tavel?
10. Did the trial court err by refusing to give Defendant additional peremptory strikes?
11. Did the trial court abuse its discretion by refusing to grant a mistrial based on alleged jury misconduct and courtroom interaction between a witness and the victim's family?
12. Did the trial court abuse its discretion by refusing to grant a mistrial based on possible changes to the State's DNA expert's testimony?
13. Did the trial court abuse its discretion by refusing to grant a mistrial based on alleged jury misconduct involving newspapers?
14. Did the trial court abuse its discretion by refusing to grant a mistrial based on the testimony of Tara White?
15. Did the trial court abuse its discretion by refusing to grant a mistrial based on the testimony of expert Frank Powell?
16. Did the trial court abuse its discretion by refusing to grant a mistrial after the verdict was read?
17. Did the trial court err by permitting Myra Moore to testify while intoxicated?
18. Did the trial court coerce the jury's verdict?
19. Was Defendant denied his Right to Counsel by being required to wear a "shock belt" during the trial?
20. Did the trial court abuse its discretion by admitting a photograph of the victim's head wound?
21. Does A.R.S. § 13-703(F)(10) unconstitutionally "double count" a factual element to establish first degree murder and to render Defendant death eligible?
22. Did the trial court abuse its discretion by refusing to give a jury instruction on residual doubt?

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