



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**State of Arizona v. Steve Alan Boggs
CR-05-0174-AP**

PARTIES AND COUNSEL:

Appellant: Steve Alan Boggs is represented by Thomas J. Dennis, Deputy Legal Advocate

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

FACTS:

On May 19, 2002, Alvarado, Brown, and Jimenez were working at the Jack in the Box on Main and Lindsay in Mesa, Arizona. At the 24-hour store, the employees locked the doors after ten o'clock so that only the drive through window was open. Between 11:15 and 11:30, all three employees were shot inside the Jack in the Box freezer. Brown died in the freezer almost immediately. Alvarado and Jimenez escaped from the freezer—Jimenez dialed 911 on the telephone shortly before dying, while Alvarado lived long enough to make her way to the store's back door.

Between 11:30 and 11:45 p.m., Luis Vargas pulled up to the Jack in the Box drive through window and heard Alvarado moaning. When Vargas approached her, she spoke with him briefly. Police Officer Beutal arrived at the Jack in the Box and also communicated with Alvarado, who stated that she was injured and "made reference to two" people still in the store. From outside the store Beutal could see Jimenez lying on the ground. Upon entering the store, the police found Jimenez and Brown deceased.

The night and morning following the murders, police officers documented the crime scene. The police found shell casings, as well as bullet projectiles and fragments inside the freezer, leading to the conclusion that all three victims were shot in the freezer. Cash registers appeared as though someone had pried them open, though less than \$300 was taken from the store, with no money missing from the safe.

Steve Boggs' friend and former co-defendant, Christopher Hargrave, worked at Jack in the Box from April to May of 2002. Hargrave was fired after Jimenez, an assistant manager in training, reported Hargrave for twice having a short register. On May 21, 2002, Boggs pawned a Taurus handgun at a shop owned by the Drivers. Mr. Driver cleaned the gun and placed it in his safe, finding the transaction suspicious. Mrs. Driver later called the police and informed the sheriff of the Taurus that Boggs pawned a few days earlier. On June 3, Boggs called the pawn shop and unsuccessfully requested to buy back the Taurus, which the police later retrieved from the Drivers.

Mesa Police took Boggs to the station on June 5, 2002 and interviewed him, leading to the apprehension of Christopher Hargrave. During the June 5 interview, Detective Vogel interrogated Boggs about the Jack in the Box murders for approximately three hours. Boggs waived his *Miranda* rights and agreed to voluntarily answer questions. Through the course of the interview, Boggs told several versions of what happened on the day of, and the days following, the murders. The next day, two detectives took Boggs to secure physical evidence and transport him to his initial appearance. Boggs asked both detectives how to go about changing the story he told Vogel the previous day. At the initial appearance Boggs was appointed counsel. Afterwards, Boggs again asked one of the detectives to whom he needed to speak to change his story. The detectives arranged to bring Boggs to the interrogation room for further questioning.

During the June 6 interview, Boggs provided Detective Vogel with several varying explanations of how the murders occurred. At one point in the interview, after Vogel asked about Boggs' son, Boggs told Vogel three times to leave him alone. Vogel did not leave the interrogation room, but asked Boggs if he wanted Vogel to leave for a few minutes. In response, Boggs began talking about how they were going to kill an innocent man and mentioned suicide.

Boggs submitted a pre-trial request to proceed pro per, which the superior court granted. While pro per, Boggs made several complaints to the trial judge regarding the Maricopa County Sheriff's Office's (MSCO) interference with his self-representation. Specifically, Boggs claimed that MSCO seized legal documents from his cell and refused to provide him with discovery items sent to the jail by his advisory counsel. Meanwhile, Vogel and a state prosecutor received threatening letters allegedly from Boggs. In response, the MSCO searched Boggs' cell and confiscated several items. Non-relevant or privileged items were returned to Boggs. Several days later, but before the start of the guilt proceeding, Boggs relinquished his right to proceed pro per.

At trial, the State called Vargas to testify to Alvarado's statements. The court did not redact any of Vogel's statements from the tapes. The police criminalist also testified that the casings found at the scene, bullet fragments from the scene, and bullet fragments removed from the bodies all matched the Taurus. The DNA expert testified that DNA from the Taurus matched Hargrave at 14 locations but did not match Boggs, though the DNA expert could not eliminate Boggs as a source. The jury found Boggs guilty of three counts of first degree murder. During the testimony of Detective Vogel, the prosecution's chief witness, the prosecution played videotapes of the June 5 and 6 interrogations for the jury.

At the aggravation phase, the jury found three aggravating factors for each murder: the expectation of pecuniary gain; especially heinous, cruel, or deprived manner; and, multiple homicides during commission of the offense. After the jury returned its verdict, Boggs moved to represent himself in the penalty phase. The judge denied his motion, reasoning that it was not a "wise move" and that Boggs can't "be changing horses in the mid-stream."

At the penalty phase, the defense presented mitigation evidence concerning Boggs' troubled childhood and mental health evidence demonstrating Boggs' history of hearing voices, suicidal tendencies and grand delusions. Boggs' expert witnesses diagnosed Boggs as suffering from post traumatic stress syndrome and bipolar disorder. At trial, the State rebutted Boggs' mitigating evidence by presenting evidence of the threatening letters sent to Detective Vogel and the state prosecutor. Boggs also argues on appeal that his cooperation with the police, leading to the

apprehension of Hargrave is a substantial mitigating factor. The jury found that the mitigating evidence was not sufficiently substantial to call for leniency and the judge sentenced Boggs to death.

ISSUES:

Boggs raises eight 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 June 6 interview violate Boggs' constitutional right to counsel?
2. Did the admission of Hargrave's accusatory statements, via the June 6 interview, violate Boggs' right to confrontation and a fair trial?
3. Did the admission of detective Vogel's statements regarding Boggs' guilt, via the June 6 interview, violate Boggs' right to a fair trial?
4. Did Detective Vogel engage in coercive behavior such that Boggs' will was overborne and the statements made during the June 6 interview were involuntary?
5. Did the pre-trial search of Boggs' cell and the confiscation of several items therein, violate Boggs' right to counsel as a pro per pre-trial detainee?
6. Did the admission of statements made by Alvarado violate Boggs' right to confront witnesses against him?
7. Did the trial court err by denying Boggs' motion to represent himself at the penalty phase of the sentencing proceeding?
8. Did the trial court abuse its discretion and violate Boggs' due process rights by admitting threatening letters into evidence during the State's rebuttal of Boggs' mitigation?

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