



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. RYAN WESLEY KUHS
CR-07-0301-AP**

PARTIES AND COUNSEL:

Appellant: Ryan Wesley Kuhs is represented by Michael S. Reeves and Stephen M. Johnson.

Appellee: The State of Arizona is represented by Kent E. Cattani, Chief Counsel, and Susanne Bartlett Blomo, Assistant Attorney General, Capital Litigation Section of the Arizona Attorney General's Office.

FACTS AS ALLEGED AT TRIAL:

On a Sunday morning in 2005, Ryan Wesley Kuhs entered Enrique Herrera's apartment in downtown Phoenix and stabbed Herrera in the torso while he slept. Herrera awoke and attempted to fight off Kuhs. After the struggle, however, Kuhs had stabbed Herrera twenty-one times.

Three other residents of the apartment saw Kuhs leave Herrera's apartment with blood on his shirt and arms. They entered Herrera's apartment, discovered Herrera's body, and called 911. Herrera was later pronounced dead at the hospital.

After cleaning himself up and changing clothes, Kuhs left the apartment with the bloody clothes in a bag. When he returned to his apartment, he was apprehended by the police. After receiving his *Miranda* warnings, Kuhs eventually confessed to the crime.

On August 29, 2007, a jury found Kuhs guilty of one count of first degree murder and one count of first degree burglary. The jury found the existence of five aggravating circumstances: (1) Kuhs had previously been convicted of a serious offense – the first degree burglary from this prosecution; (2) he had a previous conviction of a serious offense – a prior second degree burglary charge; (3) he had committed the murder in an especially cruel manner; (4) he committed the murder while he was on release from prison; and (5) Kuhs committed the murder while he was on probation for a prior felony. These findings rendered Kuhs eligible for a capital sentence under Arizona Revised Statute § 13-703. After finding no mitigation sufficiently substantial to call for leniency, the jury determined that the death penalty should be imposed. Maricopa County Superior Court Judge Paul J. McMurdie sentenced Kuhs to death for the first degree murder and to a concurrent term of twenty-eight years for the burglary.

Kuhs asks this Court to review the following issues:

1. Did the trial court coerce the jury into a verdict in the penalty phase when it gave an

impasse instruction to the jury after being told on two occasions that the jury was deadlocked?

2. Did the trial court err when it decided Kuhs's mental competency to stand trial without a hearing when the parties stipulated to competency?
3. Did the trial court err in declining to grant a mistrial after an outburst from the victim's family in the presence of the jury?
4. Did the jury instructions impermissibly prohibit the jury from considering sympathy in the aggravation and penalty phases?
5. Is Arizona's statute providing for execution by lethal injection unconstitutionally vague because it fails to sufficiently specify the means to be used to ensure an execution that is not cruel and unusual?
6. Was sufficient evidence presented at trial to support Kuhs's felony murder charge?
7. Did the trial court commit reversible error by denying Kuhs's motion to strike two jurors for cause?
8. On independent review, should this Court reduce Kuhs's sentence to life imprisonment?

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