



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. PATRICK WADE BEARUP**  
CR-07-0048-AP

**PARTIES AND COUNSEL:**

*Appellant:* Patrick Wade Bearup is represented by Michael J. Dew

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

**FACTS:**

On the evening of February 25, 2002, Patrick Bearup, Sean Gaines, and Jeremy Johnson went to the Phoenix home where Mark Mathes, the victim, was living to confront Mark about some missing money that belonged to Jessica Nelson, another resident of the house. The three men drove to the Mathes's home and parked in an alley behind the house. All three were armed as they exited their vehicles and approached the house: Gaines carried a shotgun, Johnson had an aluminum baseball bat, and Bearup had a buck knife with a long blade. The men entered the property through the rear gate and encircled Mark, who was sitting on the rear patio with Nelson.

Johnson proceeded to severely beat Mark with the baseball bat. After the attack ended, Johnson and Bearup dragged Mark from the patio and put him in the trunk of a car.

The four perpetrators then drove to an isolated area near Crown King in Yavapai County. Mark was pulled from the trunk of the car and stripped. Nelson was unsuccessfully attempting to remove Mark's ring when Bearup approached and cut off Mark's finger with a pair of wire clippers. Mark was then thrown over the guardrail and, as his body lay in the ravine below, Gaines shot him twice.

Afterwards, Bearup drove Nelson home. Bearup then told Mark's sister-in-law that she did not have to file a missing person's report because Mark would never be found. Bearup later confessed to his ex-wife and an ex-girlfriend that he participated in the killing.

Bearup was indicted on one count of first degree murder and one count of kidnapping. At trial, Bearup argued alibi and mistaken identity defenses. The jury found him guilty on both counts and also found that the State had proven two aggravating factors: a previous conviction of a serious offense, A.R.S. § 13-703(F)(2), and the commission of the offense in an especially heinous, cruel, or depraved manner, *id.* § 13-703(F)(6). Bearup elected not to present any mitigation evidence during the penalty phase of his trial. After finding that the mitigation was not sufficient to call for leniency, the jury determined that the death sentence should be imposed.

Johnson and Nelson, who both pled guilty to second degree murder and kidnapping and testified against Bearup, were later sentenced to fourteen years in prison for second degree murder.

ISSUES:

Bearup raises four issues on appeal:

1. Was there sufficient evidence to support the conviction on the predicate offense of kidnapping?
2. Did the trial court fundamentally err by failing to instruct the jury on the lesser-included offense of unlawful imprisonment?
3. Does sufficient evidence support the jury's *Enmund/Tison* finding that Bearup intended to kill, intended to use deadly force, or was a major participant in the kidnapping and recklessly indifferent to human life?
4. On independent review, should the Court find that a gross disparity in sentencing exists between the actual killer and Bearup that warrants vacating the death penalty?

He also lists several issues raised to avoid preclusion. He has not asked this Court to revisit those issues.

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