



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. MARK H. GOUDEAU
CR-11-0406-AP**

PARTIES:

Appellant: Mark Henry Goudeau, represented by David Goldberg

Appellee: State of Arizona, represented by Lacey Stover Gard, Chief Counsel, Capital Litigation Section, and Jeffrey L. Sparks, Assistant Attorney General

FACTS:

Based on DNA evidence, Mark Henry Goudeau was arrested in September 2006 for some sexual assaults committed in 2005. Further investigation led police to suspect Goudeau was involved in a series of murders, kidnappings, sexual assaults, aggravated assaults, armed robberies, and various other crimes against thirty-three different victims in the Phoenix area on twelve separate dates between August 2005 and June 2006.

In a single indictment, the State charged Goudeau with 74 felonies, including nine first degree felony murders for which the State sought the death penalty. The trial court denied Goudeau's pretrial motion to sever the counts for trial. The court granted the State's request to divide the presentation of its guilt-phase evidence into thirteen chronological "chapters" corresponding to the dates on which various offenses were committed.

The primary issue at trial was the identity of the perpetrator. The State presented evidence that two murder victims' DNA was found on items seized from Goudeau's home pursuant to a search warrant; in his residence a ring belonging to another murder victim was found hidden in Goudeau's shoe; and Goudeau's DNA was found on one murder victim and several of the sexual assault victims. At trial, seven victims identified Goudeau as their assailant. One of them testified that he had witnessed Goudeau standing over a murder victim's body pointing his gun at her. An eighth victim identified Goudeau's voice from a voice lineup she previously participated in.

Based on toolmark identification analysis of bullets and shell casings retrieved from the victims and crime scenes, the State's ballistics expert testified that the same .380 caliber handgun was used for all nine murders as well as the other charged crimes in which shell casings were found. The gun, however, was never found.

Evidence at trial also revealed that in many of the chapters the perpetrator's modus operandi was similar, including telling victims that he had just committed a robbery and needed to reunite with his friend; wearing the same disguise in several chapters; and wiping off victims and areas he had touched before leaving the crime scene. Additionally, the perpetrator made all

sexual assault victims walk or drive to a secluded area, asking many of them for directions, threatening to shoot them unless they complied with his demands, and telling them not to look at him.

After a seventy-two day trial that spanned seven-and-a-half-months, the jury returned guilty verdicts on 67 of the counts charged, including all nine of the first degree murder charges. For each murder conviction, the jury found that Goudeau had been previously convicted of both a life-or-death-eligible offense, A.R.S. § 13-751(F)(1), and a serious offense, A.R.S. § 13-751(F)(2), and also that he was on release from prison when he committed the murders, A.R.S. § 13-751(F)(7)(a). The jury further found that Goudeau committed eight of the nine murders in an especially cruel manner, A.R.S. § 13-751(F)(6), and four of them while committing another murder, A.R.S. § 13-751(F)(8).

In the penalty phase, during the testimony of his first mitigation witness, Goudeau decided to waive any further mitigation and thus presented no further evidence. He did, however, make an allocution statement. The jury ultimately returned death verdicts on all nine murder convictions after finding the mitigating evidence insufficiently substantial to call for leniency. This automatic appeal followed.

ISSUES:

1. Did a third search of Goudeau's home pursuant to a search warrant issued a month after his arrest violate the Fourth Amendment?
2. Was Goudeau deprived of his constitutional rights to confrontation and due process when the trial court authorized the State to consume DNA samples without imposing various conditions he requested?
3. Did the trial court fundamentally err in allowing the joinder for trial of all 74 crimes charged in the indictment and denying Goudeau's motion to sever the counts?
4. Did the trial court violate Goudeau's constitutional right to conflict-free counsel by inadequately addressing his complaints about his appointed defense lawyers and not *sua sponte* substituting counsel?
5. Did the trial court abuse its discretion or deprive Goudeau of a fundamentally fair trial by permitting the parties to make 13 opening statements during trial, one before evidence was presented on each specific set of crimes?
6. Did the trial court abuse its discretion or deprive Goudeau of a fundamentally fair trial by allowing the State to present other acts evidence under Arizona Rule of Evidence 404(b) and (c)?

7. Did the trial court abuse its discretion or deprive Goudeau of a fundamentally fair trial by allowing seven victims to identify Goudeau at trial and permitting another victim to identify his voice in a pretrial voice lineup?
8. Did the trial court abuse its discretion or violate Goudeau's constitutional rights to due process, confrontation, or a fundamentally fair trial by admitting the State's ballistics expert's opinion testimony regarding toolmark identification without conducting a *Frye* hearing, and did the court fundamentally err in not excluding part of the expert's testimony as hearsay?
9. Did the trial court abuse its discretion by admitting an autopsy photograph?
10. Did the trial court abuse its discretion or violate Goudeau's constitutional right to present a complete defense by precluding one of Goudeau's third-party culpability defenses?
11. Did substantial evidence support Goudeau's guilt-phase convictions on Counts 19-28, 40, 46, and 67-71?
12. Did the jury abuse its discretion by finding as an aggravating circumstance under A.R.S. § 13-751(F)(6) that eight of the nine murders were "especially cruel"?
13. Did the trial prosecutors engage in misconduct in their opening statements or closing arguments, resulting in fundamental error in this case?
14. Did the trial court fundamentally err in allowing the jury to use the same predicate felony conviction for felony murder to also establish an aggravating factor, allowing the use of contemporaneous felony convictions to prove aggravating factors, or failing to instruct the jury that it could not consider the same fact to prove multiple aggravating factors? Is A.R.S. § 13-751(F)(2)'s contemporaneous prior conviction provision unconstitutional?
15. Did the trial court fundamentally err in the penalty phase by allowing the State to introduce transcripts from interviews with Goudeau's family members and from his 2004 parole hearing to rebut mitigation and Goudeau's statements during allocution?
16. Did Goudeau knowingly, intelligently, and voluntarily waive mitigation, and if so do the Sixth, Eighth, and Fourteenth Amendments preclude capital case defendants from doing so?
17. Did the jury abuse its discretion by finding that any mitigation was not sufficiently substantial to call for leniency and that death sentences are appropriate for all nine murders?

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