



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ROBERT FISCHER
CR-15-0380-PR
238 Ariz. 309, 360 P.3d 105 (App. 2015)**

PARTIES:

Petitioner: Robert Fischer (“defendant”)

Respondent: The State of Arizona

Amici curiae: Arizona Attorneys for Criminal Justice
Mark Brnovich, Arizona Attorney General

FACTS:

On December 29, 2010, defendant, a California attorney and former police officer, arrived in Arizona to visit his step-daughter, Belinda, her husband Lee Radder (“Radder), and the couple’s two young children. Defendant brought with him a pistol for which he had a concealed carry permit. Upon his arrival at the house, he disassembled the pistol and hid it in his bag in the guest bedroom so that his grandchildren could not access it.

Shortly after defendant’s arrival, the family went out to dinner. When they returned home, defendant, Belinda, and Radder, sat at the kitchen table and had a few drinks. Belinda went to bed while defendant and Radder stayed up and continued drinking. Shortly after 5:00 o’clock the next morning, officers responded to a 911 call from defendant. Defendant told the operator that “he shot himself.” When asked who, he answered, “I don’t know who he is, he’s . . . (unintelligible) wife’s cousin.” He also said “he is my daughter-in-law’s cousin.” When asked a third time by the 911 operator, he said “he is my daughter-in-law’s friend.” When asked whether “you think [he] did this to himself?” defendant answered “well he had to. We’re all asleep and we heard a gunshot.”

Officers arrived from the Maricopa County Sheriff’s office. The first officer to arrive found defendant kneeling over Radder’s body in a large pool of blood. Radder was dead, having suffered a close-contact gunshot wound to his right eye. Radder was holding defendant’s pistol in his right hand. The officer told defendant to step away from the body. When defendant asked to wash the blood off his hands, the officer said no. A few minutes later, the officer heard water running in the kitchen. A second officer found defendant washing his hands in the kitchen.

In May 2013, defendant was charged with Radder’s murder. At trial, the issue was whether Radder committed suicide or was murdered by defendant. After the presentation of all the evidence, including expert analysis of physical evidence from the crime scene, the defense

conceded in closing argument that, when the fatal shot was fired, defendant had been seated in the chair next to Radder, not asleep in the guest bedroom as he had claimed.

The jury found defendant guilty of second degree murder. After the verdict, defendant filed a motion for judgment of acquittal. The trial court denied the motion, finding there was sufficient evidence to support the verdict. Defendant also filed a motion for new trial, alleging that the verdict was contrary to the weight of the evidence.

The trial court granted defendant's motion for new trial on the grounds the jury's guilty verdict was contrary to the weight of the evidence, relying principally upon an extensive analysis of the credibility of the expert analysis of physical evidence at the crime scene. Accordingly, the trial court set aside the verdict and granted defendant a new trial.

On appeal by the State, the Court of Appeals issued an opinion that first addressed the prevailing Arizona standard for granting a motion for new trial, which vests broad discretion in the trial court to weigh the evidence and make credibility determinations. The Court of Appeals noted that, given this broad discretion, some Arizona cases had described the judge's role as "the thirteenth juror." The Court of Appeals held, however, that this description "overstates the judge's role," and that a judge may not set aside a verdict merely because, if he had acted as trier of fact, he would have reached a different result.

The Court of Appeals then concluded after extensive analysis of the evidence that the trial court had abused its discretion by making factual findings not supported by the record, and by failing to consider all the evidence in reaching its conclusions. The guilty verdict was reinstated, and the case remanded for sentencing of defendant.

Defendant filed a Petition for Review. The Arizona Supreme Court granted review and requested the parties to "address whether this Court should reconsider its prior characterization that a trial court sits as a 'thirteenth juror' in ruling on a motion for a new trial."

ISSUE:

"This Court has described the role of the superior court in reviewing a new trial motion based on weight of the evidence as that of a 'thirteenth juror.' This Court has further held the superior court does not abuse its discretion in granting such a motion unless the record shows the defendant's guilt has been clearly proved beyond a reasonable doubt. Did the court of appeals err in prescribing the narrower standard than this Court has articulated for the superior court's review of a new trial motion based on weight of the evidence, and in applying a less deferential standard than this Court has prescribed for an appellate court's review of a superior court order granting such a motion?"

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