



## ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
1501 West Washington - Phoenix Arizona 85007- 3231  
Public Information Office: (602) 542-9310

**Case:** CR-00-0447-AP  
STATE OF ARIZONA, Appellee v. HENRY WILLIAM HALL, Appellant

### **Parties/Counsel:**

The State is represented by the Arizona Attorney General's Office, by Kent E. Cattani, Chief Counsel, Capital Litigation Section, and James P. Beene, Assistant Attorney General.

Henry William Hall is represented by Thomas A. Gorman

### **Facts and Procedural History:**

At trial, the State alleged that sometime after 10 p.m. on April 25, 1997, Henry William Hall and accomplice Lee Mileham kidnaped, robbed, and ultimately murdered Ted Lindberry. The victim's body, which has never been found, was reportedly wrapped in a hotel blanket and left somewhere in the desert near the Palo Verde Power Plant. Following the murder, Hall and Mileham used the victim's car for travel to and from New Mexico and Texas. They used the victim's credit card to purchase gas, food, and items that they could sell to obtain drugs. On May 17, 1997, following their return to Phoenix, both Hall and Mileham were arrested and taken into custody.

The State further alleged that, while incarcerated at the Madison Street Jail, Hall made some incriminating remarks to another prisoner. The prisoner contacted the police and informed them of those statements. After his release and subsequent re-arrest, Hall made additional incriminating statements to that same prisoner, who again contacted the police. Hall contends that the statements he made to the prisoner during his second stay at Madison Street Jail should have been suppressed.

Hall also claims there was juror misconduct based on the presentation of extrinsic evidence to the jury by the court's bailiff. The specific extrinsic evidence was that Hall had tattoos on his wrists similar to bracelets. Hall claims that the jurors considered this additional information to determine whether he was the person seen in a video taken at a New Mexico convenience store while using the victim's credit card. The identity of this person was a contested issue at trial.

Finally, Hall claims the charges should have been dismissed under the *corpus delicti* doctrine, which requires the State to prove, first, that there was a death, and second, that the death was caused by criminal conduct rather than by suicide or accident. Hall argues the lack of a body prevented the State from satisfying this requirement.

**Issues:**

1. Should the statements Defendant made to another inmate during Defendant's second period of incarceration have been suppressed because the informant was acting as an agent of the state and Defendant had not been read his *Miranda* rights prior to that "interrogation"?
2. Did the bailiff's introduction of the extrinsic evidence that Defendant had a barbed-wire bracelet-type tattoo on each wrist violate Defendant's rights and require a new trial?
3. Did the State fail to prove the crime beyond a reasonable doubt because it failed to locate or present evidence regarding the victim's body, injuries, and manner of death?

Note: Hall presented numerous sentencing issues on appeal. This court has consolidated several corporal punishment cases, including Hall's, to hear issues concerning the recent U.S. Supreme Court decision, *Ring v. State*. Accordingly, those sentencing issues will be heard at a later date.

*This summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*

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Thursday, October 31, 2002



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**Case:** STATE OF ARIZONA v. ARMANDO HERNANDEZ , CR-02-0067-PR

**Parties:** The petitioner is Armando M. Hernandez. The respondent is the State of Arizona.

**Counsel:** Mr. Hernandez is represented by Michael L. Freeman. The State is represented by E. Catherine Leisch, Deputy Maricopa County Attorney.

**Facts:** Defendant was charged with first-degree murder following the shooting death of the victim during an altercation that involved alcohol and the victim's use of a broken bottle. Defendant contended he was acting in self-defense. His trial attorney, Michael Roth, decided on an "all or nothing" defense; he objected to the trial court's instructing on the lesser-included offense of second degree murder, and withdrew his request for a manslaughter instruction.

A jury convicted defendant of second degree murder, and the court sentenced him to 16 years in prison. The court of appeals affirmed. Defendant then filed a petition for post-conviction relief, alleging ineffective assistance of counsel because his attorney had not consulted with him about whether to request a manslaughter instruction. The trial court summarily dismissed the petition and defendant sought review. The appeals court granted review, issued a memorandum decision finding that defendant had stated a colorable claim of ineffective assistance, and remanded for an evidentiary hearing.

At the evidentiary hearing, defense counsel testified that, before trial, he and defendant had discussed theories, defenses, and lesser-included offenses, and that a plan for an "all or nothing" strategy developed from those discussions. Defense counsel agreed that he did not consult with defendant either when he objected to the trial court's giving of the second degree murder instruction or when withdrawing his request for the manslaughter instruction. Counsel testified that he and the two other defense attorneys believed that the evidence strongly supported the self-defense claim, and that giving lesser-included instructions would "muddy the waters."

Defendant testified that Roth never talked to him about an “all or nothing” strategy nor did he explain lesser-included offenses. He testified that he would have wanted the jury instructed on manslaughter.

The trial court denied the petition, finding that defense counsel “made a strategic decision not to pursue a manslaughter instruction after the defendant and counsel had decided prior to trial to lodge an ‘all or nothing’ defense.” The court also said that it could not determine whether the ultimate result would have been different had the manslaughter instruction been given, but that there had been so showing of prejudice to defendant because he had not proven to the court that there was a reasonable likelihood that the result would have been different.

Defendant sought relief by way of a petition for review in the court of appeals, which the court declined to accept. This court granted defendant’s petition for review.

**Issues:**

1. Was Trial Counsel Ineffective for Making the Ultimate Decision on the Lesser-Included Charge of Manslaughter Without Consulting Client?
2. Is A Decision on a Lesser-Included Offense Strategic for Counsel or Inherently Personal and Fundamental to the Defendant?
3. Would the Manslaughter Instruction Have Made a Difference by Allowing the Jury to Find Second Degree Murder in a Sudden Quarrel? (Manslaughter)?

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**Case:** Robert Jackson, Jr., v. Donald Chandler, *et. al.*, No. CV-02-0060-PR

**Parties:** Robert Jackson, Jr., Plaintiff/Appellant;  
Donald Frank Chandler and Yvonne Chandler; Purita Z. Sicat and John Doe Sicat; Defendants/Appellees.

**Counsel:** John C. Churchill and Toby Zimbalist represent Jackson; Jan-Georg Roesch of Denise L. Siegenthaler & Associates represents Chandler; and Robert C. Kozak and Anna Young of Boyle, Pecharich, Cline & Whittington represent Sicat.

**Facts:** This suit arises from an automobile accident that occurred on an Arizona highway. None of the parties were Arizona residents. Jackson was in the process of moving from California to Louisiana, and Chandler and Sicat were California residents. This suit was filed approximately two years after the accident, after extended negotiations between the parties. Chandler and Sicat moved for summary judgment, arguing that the applicable statute of limitations should be California's one year statute, rather than Arizona's two-year statute, and that under California law the suit was time-barred. The trial court agreed that the California statute applied, and granted summary judgment for Chandler and Sicat. The court of appeals affirmed. This court accepted review to consider the choice-of-law principles involved, and which state's statute of limitations should apply.

**Issue:** "Whether the grant of summary judgment was based on a misconstruction of Arizona's choice-of-law principles."

**Relevant authority:** Restatement (Second) of Conflict of Law § 142 (Supp. 1988) provides:

Whether a claim will be maintained against the defense of the statute of limitations is determined under the principles stated in § 6. In general, unless the exceptional circumstances of the case make such a result unreasonable:

(1) the forum will apply its own statute of limitations barring the claim.

(2) The forum will apply its own statute of limitations permitting the claim unless:

(a) maintenance of the claim would serve no substantial interest of the forum; and

(b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence.

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