



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State of Arizona *ex rel.* Adel v. Hon Hannah, Jr. /Ashley Denise Buckman
CV-19-0280-SA

PARTIES:

Petitioner: State of Arizona *ex rel.* Allister Adel, Maricopa County Attorney
Respondent/real party in interest: Ashley Denise Buckman

FACTS:

While in the care of Ashley Denise Buckman (“defendant”) and her boyfriend, James Edwards, defendant’s four-year-old daughter, T.B., died as a result of multiple serious injuries. Doctors examined the child’s body and found, covering almost her entire body, bruises in various states of healing. The ongoing abuse had occurred over more than a six-month period of time. Defendant admitted to inflicting some injuries to her daughter, as did James Edwards. Both defendant and Edwards were charged with murder and child abuse of T.B.

Defendant’s capital jury trial commenced on March 13, 2017. During the guilt phase, defendant was allowed to present evidence of her diagnoses of PTSD and Battered Woman Syndrome, but she was precluded from using that evidence as it related to her mental state. The jury convicted defendant of felony murder with three counts of predicate child abuse.

The aggravation/death-penalty-eligibility phase began on July 7, 2017. The jury found two aggravators: especially heinous, cruel, etc., and victim under 15 years of age. With regard to the “*Enmund/Tison* inquiry,” five jurors concluded that defendant killed her daughter, and eleven concluded she was a major participant and was recklessly indifferent regarding a person’s life. *Enmund v. Florida*, 458 U.S. 782, 797 (1982) (a defendant convicted of felony murder is eligible for the death penalty only if he himself killed, attempted to kill, or intended that the killing occur); *Tison v. Arizona*, 107 S.Ct. 1676 (1987) (a defendant convicted of felony murder is also eligible for the death penalty if he was a major participant in a felony and acted with reckless indifference to human life).

The penalty phase commenced on July 10, 2017. After two weeks, the jury declared itself unable to reach a verdict on the penalty and a mistrial was declared with respect to the penalty on September 6, 2017. The case was transferred to Judge Viola pending retrial.

On April 10, 2018, the Arizona Supreme Court decided *State v. Miles*, 243 Ariz. 511 (2018), which held that “in determining if a defendant acted with ‘reckless indifference,’ the factfinder may consider evidence of the defendant’s diminished capacity.” 243 Ariz. at 512 ¶ 1.

On June 25, 2018, defendant moved to set aside the jury finding of major participant and to grant her a new aggravation/eligibility phase. Judge Viola ruled that neither Rule 24.1 (motion for a new trial in any phase of trial must be filed no later than 10 days after return of the verdict) nor Rule 24.2 (motion to vacate judgment must be filed no later than 60 days after entry of judgment and

sentence) provided a basis for relief. She ruled that defendant's motion was untimely under Rule 24.1 and premature under Rule 24.2 as no sentence had been entered. Judge Viola relied on *State v. Fitzgerald*, 232 Ariz. 208 (2013) and *State v. Saenz*, 197 Ariz. 487 (App. 2000), in finding that defendant's motion under Rule 24.2 was premature.

Defendant filed a Petition for Special Action in the Court of Appeals, which declined jurisdiction on January 30, 2019. The Arizona Supreme Court denied review.

The case was then transferred to Judge Hannah for the penalty phase retrial. Judge Hannah asked the parties how *Miles* affected this case, and how *Enmund/Tison* should be addressed in the upcoming proceeding in light of *Miles*. After discussion of the issue, Judge Hannah indicated that the language in *Fitzgerald* and *Saenz* regarding Rule 24.2 was dictum, that he had authority to overrule Judge Viola's ruling, and that Rule 24.2 did not bar him from vacating the *Enmund/Tison* verdict and retrying it. Judge Hannah ruled:

Both parties and the Court agree that it is in the interest of justice to address the issue of the application of *State v. Miles* to this case before the penalty phase retrial proceeds. Neither the Court nor either party wants to conduct a penalty phase trial and then have to retry that matter because the *Enmund/Tison* finding is faulty as a result of *Miles*.

The court is of the view that Rule 24.2 allows for a grant of relief prior to entry of judgment, that the language in *State v. Fitzgerald* and *State v. Saenz* suggesting otherwise is dictum, and that in any event this case is distinguishable from prior cases because of its unique equities. The Court and the parties are in agreement that the most expeditious way to proceed while ensuring that the Court does not exceed its authority is for the parties to file another petition for special action, and jointly request that the Supreme Court accept jurisdiction and address the issue, before the penalty phase retrial goes forward.

IT IS THEREFORE ORDERED entering a limited stay of this proceeding to permit the parties to seek special action review of Judge Viola's order holding that the trial court cannot address the *Enmund/Tison* issue as a result of the aggravation phase verdict.

The State filed the instant Petition for Special Action in this Court, which accepted jurisdiction.

ISSUES:

Does [Rule 24.2, Arizona Rules of Criminal Procedure](#), bar the court from retrying the *Enmund/Tison* verdict, lawfully imposed on July 7, 2017, in order to comply with recently decided *State v. Miles*, 243 Ariz. 511 (2018)?

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