



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. KENNETH WAYNE THOMPSON, II
CR-19-0141-AP**

PARTIES:

Appellant: Kenneth Wayne Thompson, Jr.

Appellee: State of Arizona

FACTS:

This direct appeal arises from Thompson’s convictions and resulting sentences for two counts of first-degree murder and felony murder, and one count of burglary, arson of an occupied structure, criminal damage and tampering with physical evidence.

In 2012, Thompson drove from Missouri to Prescott Valley, Arizona to the home of his sister-in-law and her fiancé to confront them about allegations of abuse of Thompson’s niece and nephew. When Thompson arrived in Prescott Valley, he checked into a hotel. The next morning, Thompson took a taxi to Walmart, where he purchased new clothing, a camping axe, a knife with sheath, and a hydro-backpack. The taxi returned Thompson to the hotel briefly. Thompson then asked the taxi driver to take him to the victims’ home, telling him he intended to visit his sister. Upon arriving at the home, Thompson asked the taxi driver to wait in case it was a “short visit” and then went inside. After approximately five minutes, Thompson returned and told the taxi driver he was free to leave.

Approximately two hours later, the same taxi driver picked up Thompson at the victims’ residence and returned to the hotel, where Thompson checked out a short while later. Thompson drove to a hardware store and bought two one-gallon containers of drain acid. Afterward he went to Kmart and bought bath towels, a new shirt, and a watering can. He returned to the victims’ home for a third time but left after approximately ten minutes. Thompson went to a gas station where he filled his vehicle’s gas tank. Next, he went to a home improvement store to purchase two gas cans and then to an auto-parts store to buy some flares. He made his last purchase at another gas station where he filled the two gas cans with diesel fuel. His final return to the residence lasted approximately fifteen minutes, in which he used the diesel and the flares to set fire to the home.

Emergency personnel found one of the victims just inside the doorway with significant head trauma that included skull fractures that were caused by “chop-type” wounds. The second victim was further in the home with injuries on her head, arms, and torso, likely caused by “an axe . . . or something like a hatchet.” Both had chemical burns from an acid-based drain cleaner.

A police officer stopped Thompson’s vehicle after he failed to change lanes for an emergency vehicle. Thompson refused the trooper’s request to search the car but did allow a drug-detecting dog to walk around the vehicle. The dog alerted at the trunk of the car. Thompson

agreed that the trooper could look inside the trunk, but the trooper told Thompson that he would be searching the entire car. Thompson repeatedly asked for his backpack, claiming it contained his water bottle. The trooper was concerned for his own safety and told Thompson that he would retrieve the water bottle for him. Inside of the backpack, the trooper found a gun and a bloody hatchet with long hair stuck to the blade. A complete search of the vehicle revealed bloody clothing, road flares, gas cans, a watering can with acid residue, a cell phone belonging to one of the victims in addition to various receipts showing these items were recently purchased.

After a ten-day trial, a jury found Thompson guilty of first-degree murder of both victims under both premeditated and felony murder theories, burglary, arson of an occupied structure, criminal damage and tampering with physical evidence as well as five aggravating factors:

- Thompson was previously convicted of a serious offense, either preparatory or completed;
- Thompson committed the offense in an especially cruel, heinous or depraved manner;
- Thompson committed first-degree murder, burglary, arson, criminal damage, and tampering with physical evidence while on probation for a felony offense;
- Thompson was convicted of one or more other homicides, and those homicides were committed during the commission of the offense; and
- Thompson committed the offense in a cold, calculated manner without pretense of moral or legal justification.

The jury returned the death penalty for both murders. The court sentenced Thompson to fifteen years imprisonment for burglary, fifteen years imprisonment for burglary and arson of an occupied structure, six years' imprisonment for criminal damage, and two and one-quarter years' imprisonment for tampering with physical evidence.

ISSUES:

Thompson raises ten issues on direct appeal:

1. Did the trial court abuse its discretion by failing to require the State to prove the aggravating circumstances of the (F)(13) aggravator beyond a reasonable doubt before submitting it to the jury in violation of Appellant's Eighth Amendment rights?
2. Did the trial court abuse its discretion by limiting the form, length, and scope of *voir dire* in violation of Appellant's right to an impartial jury under the Sixth Amendment?
3. Was Appellant's conviction tainted by prosecutorial misconduct in violation of his Fifth, Sixth, and Fourteenth Amendment rights?
4. Did the trial court err in allowing the death penalty with Counts 3 and 4 charged so that the predicate felony for the burglary was the murder itself in violation of Appellant's due process rights under the Fifth Amendment and Article II, § 4 of the Arizona Constitution as well as the Eighth Amendment and Article II, § 15 of the Arizona Constitution?
5. Did the trial court abuse its discretion pursuant to State and Federal Rules of Evidence by keeping out information regarding [one of the victims]?
6. Did the trial court abuse its discretion by denying Appellant's motion to suppress evidence and violate his Fourteenth and Sixteenth Amendment Rights?

7. Was it fundamental error for the trial court to allow the State to solicit expert opinion testimony, through leading questions, from lay witnesses?
8. Did the trial court abuse its discretion by admitting “in-life” photo of the victims in violation of Appellant’s Fifth, Sixth, Eighth, and Fourteenth Amendment rights pursuant to the United States Constitution, and Article 2, §§ 4 and 24 of the Arizona Constitution?
9. Did allowing for the death penalty with the counts charged without premeditation violate Appellant’s rights to due process under the Fifth Amendment and Article II, § 4 of the Arizona Constitution as well as the Eighth Amendment and Article II, § 15 of the Arizona Constitution?
10. Is Arizona’s death penalty scheme constitutional?

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