



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. THOMAS RILEY,
CR-15-0411-AP**

PARTIES:

Appellant: Thomas Riley

Appellee: State of Arizona

FACTS: This direct appeal arises from Appellant Thomas Riley’s convictions and resulting sentences for one count each of first-degree murder and assisting a criminal street gang.

In June 2008, Riley and the victim Sean Kelly were inmates at the prison complex in Buckeye. The prison unit in which they were housed is divided into four pods. Inmates are not permitted to enter a pod in which they do not live. Riley was housed in Pod A, and Kelly was housed in Pod C. On the evening of June 29, Riley and his cellmate entered Pod C and attacked Kelly in his cell, stabbing him 114 times with prison-made shanks. After the attack, Riley changed clothes in Kelly’s cell, leaving behind a bloody pair of pants with his inmate card inside its pocket and a bloody shirt imprinted with his inmate number.

The corrections officer in the Pod C control room observed Riley and his cellmate standing at the outer doors of Pod C and directed them to leave the pod. She testified at trial that Riley looked happy and had his hand on his cellmate’s shoulder in a congratulatory manner. Shortly thereafter, corrections officers discovered Kelly’s body and quickly identified Riley and his cellmate as suspects. When the officers arrived at Riley’s cell, they found blood on both Riley and his cellmate, a pair of socks with blood and Riley’s inmate number on them, and more blood on the sink, toilet, and the inmates’ personal items. Later DNA testing confirmed the blood was Kelly’s.

Nearly two years after Kelly’s murder, another inmate gave investigators a letter he had received from Riley. A document examiner confirmed through handwriting analysis that Riley had written the letter, and a fingerprint examiner found Riley’s fingerprints on it. In the letter, Riley chronicled his journey to full Aryan Brotherhood membership and his involvement in Kelly’s murder, including numerous graphic details of the crime.

The State alleged five aggravating circumstances under Arizona Revised Statutes (“A.R.S.”) section 13-751: (1) Riley was previously convicted of a serious offense, A.R.S. § 13-751(F)(2); (2) Riley committed the offense in an especially heinous, cruel, or depraved manner, § 13-751(F)(6); (3) Riley committed the offense while in the custody of the Arizona Department of Corrections, § 13-751(F)(7)(a); (4) Riley committed the offense to promote, further or assist a criminal street gang, § 13-751(F)(11); and (5) Riley committed the offense in a cold and calculated manner without pretense of moral or legal justification, § 13-751(F)(13). The jury found the State

proved all five aggravating factors beyond a reasonable doubt. Riley waived the presentation of mitigation evidence, and the jury sentenced him to death.

ISSUES: Riley raises seventeen challenges to his death sentence. In addition to those issues, A.R.S. 13-756(A) requires the Arizona Supreme Court to review the sentencing portion of Riley's case to determine whether the trier of fact abused its discretion in finding aggravating circumstances and imposing a sentence of death.

Riley raises the following issues on appeal:

1. Did the trial court violate Riley's right to counsel when it denied his motion for new counsel?
2. Did the trial court err when it gave the potential jurors a questionnaire describing Arizona's statutory aggravating factors as "few and very specific"?
3. Did the trial court err when it did not *sua sponte* question two jurors based on their questionnaire answers?
4. Did the trial court err when it admitted evidence that the victim had spent time in protective custody and was of a docile personality?
5. Did the trial court err by admitting testimony from a correctional officer who testified that she saw Riley congratulating his accomplice right after killing the victim?
6. Did the trial court's instruction on duress constitute an improper comment on the evidence?
7. Were the trial court's instructions regarding A.R.S. § 13-751(F)(13) accurate and legally sufficient?
8. Is the especially cruel, heinous, or depraved aggravator under A.R.S. § 13-751(F)(6) unconstitutionally vague?
9. Did the trial court err when it allowed the prosecutor to refer in the aggravation phase to the guilt-phase instruction defining accomplice liability?
10. Was Riley's conviction tainted by prosecutorial misconduct?
11. Riley was not eligible for parole. Did the trial court err by instructing jurors Riley could be released after a term of years?
12. Did the trial court abuse its discretion when it denied Riley's motion to strike the notice of intent to seek the death penalty because Arizona's capital statutory scheme is unconstitutional?
13. Did the trial court abuse its discretion by failing to conduct an evidentiary hearing on the

facts supporting the claim in Issue 12?

14. Is A.R.S. § 13-752(G) unconstitutional because it does not provide a mechanism for a jury to consider mitigation over a defendant's objections?
15. Did the trial court err by permitting Riley to waive the presentation of mitigating evidence?
16. Did the jurors abuse their discretion by sentencing Riley to death?
17. Issues preserved for federal review.

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