



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BRIAN ALLEN WOMBLE
CR-07-0139-AP**

PARTIES:

Appellant: Brian Allen Womble is represented by Peg Green and Tennie B. Martin, Maricopa County Public Defenders.

Appellee: The State of Arizona is represented by Kent E. Cattani, Chief Counsel, and John Pressley Todd, Assistant Attorney General, Criminal Appeals/Capital Litigation Section of the Arizona Attorney General's Office.

FACTS:

On May 25, 2002, Brian Womble entered the apartment of Adan and Enriqueta Soto and shot Mr. Soto to death and seriously wounded Mrs. Soto while they were sleeping. At the time of the murder, Womble's half-brother, Paul Bradley Speer, was in jail awaiting trial on charges of burglarizing the Sotos' apartment a few months earlier. Speer conspired with Womble to murder the Sotos so they could not testify at Speer's burglary trial.

A grand jury indicted Womble and Speer for first degree murder, conspiracy to commit first degree murder, attempted first degree murder and burglary. Womble was also indicted on the charge of misconduct involving weapons and two counts of aggravated assault. Their trials were later severed. The jury found Womble guilty on all charges.

During the aggravation phase the jury unanimously found the following aggravating circumstances proven: (1) that Womble committed the offense while on probation for a felony offense; (2) that in the commission of the offense, Womble knowingly created a grave risk of death to the Sotos' infant son; and (3) that the murder was committed in an especially heinous or depraved manner. Finding no mitigating circumstances sufficiently substantial to call for leniency, the jury sentenced Womble to death on May 7, 2007.

ISSUES:

1. Did the trial court violate Womble's right to confrontation when it permitted a detective to testify concerning information obtained from an informant?
2. Did the trial court abuse its discretion in denying Womble's motion to suppress recorded jail telephone calls?
3. Did the trial court abuse its discretion by refusing to instruct the jury on the lesser-included offense of second-degree murder and attempted second-degree murder?

4. Did the trial court commit fundamental error when it instructed the jury that a finding that the murder was committed for the purpose of witness elimination establishes the (F)(6) aggravator, which requires a showing of heinousness or depravity?
5. Did the trial court commit fundamental error when it instructed the jury that the (F)(6) factor is established based on a finding that the murder was “especially heinous or depraved, *or a combination thereof*”?
6. Did the trial court commit fundamental error by not requiring the jury to specify whether it had unanimously found the murder “especially heinous,” “especially depraved” or both “especially heinous and depraved”?
7. Did the trial court deny Womble his right to a fair trial, fair sentencing and due process of law by instructing the jury on the (F)(6) aggravator, which Womble claims is facially vague and vague as applied?
8. Did the trial court commit fundamental error when it instructed the jury on Womble’s possibility of release if he received a life sentence?
9. Did the trial court substantially interfere with Womble’s right to allocution?
10. On independent review, should the Supreme Court uphold the jury’s finding that Womble knowingly created a grave risk of death to another?
11. On independent review, should the Supreme Court uphold the jury’s finding that the murder was committed in an especially heinous or depraved manner?
12. Did the trial court abuse its discretion in deciding that the State would be permitted to present evidence of Womble’s criminal history as rebuttal if Womble presented evidence of his age as mitigation?
13. On independent review, should the Supreme Court reduce Womble’s sentence to life imprisonment?

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