



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. ALFREDO LUCERO GARCIA  
CR-07-0438-AP**

**PARTIES AND COUNSEL:**

*Appellant:* Alfredo Lucero Garcia is represented by David Goldberg.

*Appellee:* The State of Arizona is represented by Kent E. Cattani, Chief Counsel, and Amy Pignatella Cain, Assistant Attorney General, Capital Litigation Section of the Arizona Attorney General's Office.

**FACTS:**

On the afternoon of May 21, 2002, Steven Johnson was shot to death at Harley's 155, a bar that he owned. Bartender Daniel Anderson said that Alfredo Garcia and James Sheffield entered through the back door of the bar as Johnson was fixing the ATM machine, and that Sheffield was holding a gun. Anderson escaped but heard two shots fired before he left the bar. Johnson's body was found on the back patio of Harley's. Garcia was arrested on June 1, 2002; Sheffield was arrested on June 6, 2002.

A grand jury indicted both Garcia and Sheffield on one count of first degree murder and one count of armed robbery. Their trials were later severed. On November 13, 2007, the guilt (first) phase of Garcia's trial concluded and the jury found him guilty on both counts.

On the first day of the aggravation (second) phase, the trial court declared a mistrial as to the remaining phases and released the original jury. The court then empanelled a new jury for the remainder of Garcia's trial. The new jury found that Garcia was a major participant in the felonies and had acted with reckless indifference to human life. The jury also found that Garcia had previously been convicted of a serious offense, and that the murder was committed in the expectation of pecuniary gain. After finding no mitigating circumstances sufficiently substantial to call for leniency, the jury determined that Garcia should be sentenced to death for the murder.

**ISSUES:**

1. Did the trial court err in denying Garcia's motion to suppress Daniel Anderson's pre-trial and in-court identification of the defendant?
2. Did the trial court deny Garcia his right to a fair and impartial jury by: (1) permitting case-specific questioning during jury selection, or (2) improperly dismissing a juror based on his general objections to the death penalty?
3. Did the trial court err in denying Garcia's *Batson* challenge after the State struck a Hispanic juror?
4. Did the trial court deny Garcia his right to a fair and impartial jury by failing to sua sponte declare a mistrial of the entire trial after an incident of possible juror intimidation?

- and juror misconduct?
5. Did the trial court abuse its discretion by admitting evidence of another robbery that Garcia was involved in during the aggravation (second) phase of the trial?
  6. Did the trial court abuse its discretion by reversing a prior judge's ruling that the jury would make its *Enmund/Tison* finding during the guilt (first) phase of the trial?
  7. Did the trial court err in refusing to bifurcate the *Enmund/Tison* finding from the determination of aggravating circumstances?
  8. Did the *Enmund/Tison* jury instructions reduce the State's burden of proof and thus amount to structural error?
  9. Does sufficient evidence support the jury's *Enmund/Tison* finding that Garcia was a major participant in the crimes and acted with reckless indifference to human life?
  10. Does sufficient evidence support the jury's finding that Garcia committed the murder in expectation of pecuniary gain?
  11. Is Arizona's death penalty scheme unconstitutional because it does not require, once a defendant proves mitigating circumstances exist, the State to prove beyond a reasonable doubt that the mitigation is not sufficiently substantial to call for leniency and that death is the appropriate sentence?
  12. Did the trial court commit fundamental error by releasing a juror after completion of the aggravation phase and replacing him with an alternate juror?
  13. Did the jury instructions for the penalty (third) phase of the trial violate Garcia's constitutional rights?
  14. Does Garcia's death sentence constitute cruel and unusual punishment under the specific facts and circumstances of his case?
  15. Did the trial court commit fundamental error by denying the jury's request to see an exhibit during its penalty phase deliberations?
  16. On independent review, should the Supreme Court reduce Garcia's sentence to life imprisonment?

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