



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. SHAWN RYAN GRELL
CR-09-0199-AP**

PARTIES:

Appellant: Shawn Ryan Grell

Appellee: The State of Arizona

FACTS:

In December 1999, Shawn Ryan Grell drove to a remote location in Apache Junction, laid his two-year-old daughter, Kristen, on the ground, doused her with gasoline, and lit her on fire. Kristen died from her injuries. Grell turned himself into police the following morning and admitted that he committed the crime. He was tried and convicted of first degree murder. At his 2001 sentencing hearing, he presented evidence that he had mental retardation and argued that his mental condition and other factors provided grounds for leniency. The trial court disagreed and imposed a death sentence.

Grell's death sentence was automatically appealed to this Court. While the appeal was pending, the United States Supreme Court issued its opinion in *Atkins v. Virginia*, which held that defendants with mental retardation are not subject to execution. In light of *Atkins*, this Court sent Grell's case back to the trial court to decide whether Grell had mental retardation. The trial court determined that Grell did not prove by clear and convincing evidence that he had mental retardation, and that decision was appealed to this Court.

In its second opinion in this case, this Court upheld the trial court's finding that Grell had not proved that he had mental retardation, but the Court determined that Grell had reserved his right to have a jury determine his sentence, so Grell's case was once again sent back to the trial court. After an extensive hearing in which Grell presented substantial evidence that he had mental retardation, the jury determined that the State had proved three aggravating factors, and that Grell did not present evidence sufficient to call for leniency. The jury sentenced Grell to death. The case before the Court today is Grell's automatic appeal from that sentence.

ISSUES:

1. Do capital defendants have a legal right to have a jury, rather than a judge, consider evidence of mental retardation as a bar to execution?
2. Did Grell have a right to a directed verdict for a life sentence at the close of evidence

in the sentencing trial?

3. Did the prosecutor commit misconduct by (a) implying that the jury must consider the relevance of the defendant's mitigating evidence; (b) implying that the jury must find a causal link between the defendant's evidence and the murder before considering any such evidence as a mitigating factor; and (c) confusing legal and moral culpability?
4. Did the trial court err by failing to instruct the jury that it may not impose the death penalty if it found that the defendant proved he had mental retardation?
5. Was the trial court required to instruct the jury that it must "consider and give effect to" all mitigating evidence?
6. Did the trial court incorrectly instruct the jury that it may not consider "sympathy" in determining the defendant's sentence?
7. Did the trial court err in its response to the jury's question about the legality of executing defendants with mental retardation?
8. Did the trial court respond incorrectly to the jury's question about the meaning of "moral culpability"?
9. Does the defendant's mitigating evidence outweigh the aggravating factors in this case, such that this Court should grant the defendant leniency?

DEFINITIONS:

1. "Mental retardation" means "a condition based on a mental deficit that involves significantly subaverage general intellectual functioning, existing concurrently with significant impairment in adaptive behavior, where the onset of the foregoing conditions occurred before the defendant reached the age of eighteen." A.R.S. § 13-753(K)(3).
2. "Significantly subaverage general intellectual functioning" means "a full scale intelligence quotient of seventy or lower." A.R.S. § 13-753(K)(5).
3. "Adaptive behavior" means "the effectiveness or degree to which the defendant meets the standards of personal independence and social responsibility expected of the defendant's age and cultural group." A.R.S. § 13-753(K)(1).

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