



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. GILBERT MARTINEZ, SR.
CR-10-0177-AP**

PARTIES:

Appellant: Gilbert Martinez, Sr.

Appellee: State of Arizona

FACTS:

In March 2006, Gilbert Martinez, Sr. and an accomplice burglarized the home of an elderly couple in Sun City, Arizona. During the burglary, Martinez shot and killed one of the six people at the house. He and his accomplice fled the home, taking various items belonging to the occupants. After investigation, police linked Martinez to this burglary, as well as six other burglaries and robberies that occurred in the same area.

Martinez was charged with twenty-three criminal counts, including first-degree felony murder. Six separate trials were held on these counts and in the first five trials, Martinez was found guilty of three counts of burglary in the first degree, one count of burglary in the second degree, three counts of armed robbery, two counts of kidnapping, and one count of theft. He was acquitted on one of the burglary charges, and the State agreed to dismiss another burglary charge. He was sentenced to ninety-nine years' imprisonment on these charges.

His final trial, the one at issue in this appeal, concerned eleven of the original twenty-three counts, including first-degree felony murder. A jury found him guilty of all charges. That same jury found as aggravating circumstances that Martinez was previously convicted of a serious offense, A.R.S. § 13-751(F)(2), and that he committed the murder for pecuniary gain, A.R.S. § 13-751(F)(5). That jury also determined that Martinez actually killed the victim. The jury could not agree on an appropriate sentence, so a second jury was impaneled for a second penalty phase trial. That jury found no mitigating circumstances sufficiently substantial to call for leniency and agreed upon a sentence of death for the murder charge. The trial court then sentenced Martinez to death and to an additional one hundred twenty-four years' imprisonment for the other offenses for which he was found guilty.

ISSUES:

1. Did the trial court err in denying Martinez's motion to strike various potential jurors?
2. Did the trial court err when it admitted as an exhibit a bag found in Martinez's

garage at his home, which contained different types of ammunition, because the probative value of the evidence was substantially outweighed by unfair prejudice?

3. Did the State's use of nineteen prior serious convictions to prove the (F)(2) aggravator, that Martinez was previously convicted of a serious offense, unduly prejudice him or violate his constitutional rights?
4. Did repeated occurrences of prosecutorial misconduct occur and should the trial court have granted a mistrial based on the misconduct?
5. Did the trial court err in admitting four photographs of stolen items found at Martinez's sister's house connected to other burglaries and testimony regarding Martinez's visit to a topless bar after the murder in the penalty phase?
6. Did it violate Martinez's right to confrontation when the trial court allowed a detective to testify in the penalty phase about what Martinez's accomplice said to the detective and denied Martinez's request to impeach those statements?
7. Did sentencing by a newly impaneled penalty phase jury that did not also determine Martinez's eligibility for the death penalty violate Martinez's constitutional rights?
8. Did the trial court err when it denied Martinez's motion to disqualify the Maricopa County Attorney's Office?
9. Did the jury abuse its discretion in sentencing Martinez to death?

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