



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. RONNIE LOVELLE JOSEPH
CR-10-0138-AP**

PARTIES:

Appellant: Ronnie L. Joseph

Appellee: State of Arizona

FACTS:

On the afternoon of April 1, 2004, Ronnie L. Joseph went to the apartment of his wife, Darlene Brown. Darlene lived in the apartment with her nephew, fourteen-year-old Tommar Brown, and an acquaintance, Jerry Roundtree.

Joseph went into Darlene's bedroom and closed and locked the bedroom door. A quarrel between Joseph and Darlene ensued. They exchanged words and began to wrestle. Shortly thereafter, Joseph pulled a gun from his pocket and shot Darlene. Jerry kicked down the bedroom door to try to help Darlene. When the door opened, Jerry saw Joseph holding a gun. Jerry turned and tried to escape, but Joseph shot at him, hitting him in the hand.

As he fled, Jerry saw Tommar go into the bathroom. Joseph then turned and walked a few steps toward the bathroom, pushed open the bathroom door, and fired two or three shots. Two of the bullets hit Tommar, one in his left buttock and the other in his left upper chest. Tommar died from the shot to his upper left chest, which passed through his heart.

Joseph saw Jerry near the front door of the apartment and shot him again, this time in the chest, before moving back toward Darlene's bedroom and firing a few more shots. At least two more bullets hit Darlene. Joseph then fled the scene.

After Joseph left, Darlene found Tommar dead on the bathroom floor. She followed a trail of blood to a neighboring apartment where she found Jerry. She waited with Jerry at the apartment for help to arrive. When police and paramedics arrived, Darlene and Jerry identified Joseph as the assailant. Three days later Joseph was apprehended at a friend's apartment.

On March 30, 2010, the jury convicted Joseph of first degree murder (Tommar); attempted second degree murder (Darlene Brown); attempted first degree murder (Jerry Roundtree); first degree burglary; and misconduct involving weapons. In the aggravation phase, the jury found two aggravating factors: (1) previous conviction for a serious offense, A.R.S. § 13-751(F)(2), and (2) age of the victim, A.R.S. § 13-751(F)(9). Against the advice of his counsel, Joseph did not present any mitigating evidence. In the penalty phase, the jury returned a

death sentence for the murder of Tommar Brown.

ISSUES:

1. Whether the trial court abused its discretion in refusing to grant defendant's motion to preclude Dr. Keen's testimony, or to limit Dr. Keen's testimony to opinion and not recitation of the underlying facts findings [from the autopsy report written by Dr. Kohlmeier].
2. Whether the trial court abused its discretion in refusing *Enmund/Tison* instructions during the aggravation phase.
3. Whether defendant knowingly, voluntarily, and intelligently waived mitigation.
4. Whether this Court in its review of the propriety of death sentence should conclude the errors necessitate remand for a new sentencing proceeding.

DEFINITIONS:

Enmund/Tison Instruction:

An *Enmund/Tison* instruction is based on *Enmund v. Florida*, 458 U.S. 782, 797 (1982), and *Tison v. Arizona*, 481 U.S. 137, 158 (1987), which together establish that the death penalty cannot be imposed unless the defendant either: (1) actually killed, (2) attempted to kill, (3) intended a killing to take place, or (4) was a major participant in the felony committed and acted with reckless indifference to human life.

Mitigating Circumstances:

Pursuant to A.R.S. § 13-751, each death sentence must rest on two findings: proof beyond a reasonable doubt of at least one aggravating circumstance set forth in A.R.S. § 13-751(F), and a finding "that there are no mitigating circumstances sufficiently substantial to call for leniency." A.R.S. § 13-751(E). Mitigation is defined by our statute as evidence relevant to "any aspect of the defendant's character, propensities or record and any of the circumstances of the offense."

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