



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JOHN VINCENT FITZGERALD  
CR-10-0307-AP**

**PARTIES:**

*Appellant:* John Vincent Fitzgerald

*Appellee:* The State of Arizona

**FACTS:**

On April 15, 2005, after traveling to Arizona that day from Hawaii, John Vincent Fitzgerald killed his mother, Margaret Larkin (“Peggy”) in her Sun City West home, striking her multiple times with a samurai sword and shooting her twice in the head. Peggy’s fiancé had driven Fitzgerald to the house and witnessed the murder. Fitzgerald was arrested a few blocks from the home and later confessed during a police interview.

Fitzgerald was charged with first-degree murder and first-degree burglary. He was tried before a jury in Maricopa County Superior Court. The jury rejected Fitzgerald’s insanity defense, found him guilty on both counts. It also found the crimes to be dangerous offenses. The jury found three aggravating circumstances proven beyond a reasonable doubt: Fitzgerald had a prior conviction for a serious offense, A.R.S. § 13-751(F)(2); the murder was especially cruel, *id.* § 13-751(F)(6); and the victim was seventy years of age or older, *id.* § 13-751(F)(9). After a mistrial was declared during the first penalty-phase trial, a different jury sentenced Fitzgerald to death for the murder, finding his mitigation not sufficiently substantial to call for leniency. The trial court sentenced Fitzgerald to a presumptive term of 10.5 years’ imprisonment for the first-degree burglary conviction, to run concurrently with the death sentence.

**ISSUES:**

1. Did the trial court err in denying Fitzgerald’s motion for a new trial as untimely under Rule 24.1 of the Arizona Rules of Criminal Procedure?
2. Did the trial court err in finding that Fitzgerald voluntarily absented himself from portions of the second penalty-phase trial?
3. Did the trial court err by admitting in the second penalty-phase trial certain statements Fitzgerald had made during Rule 11 competency proceedings?
4. Did the jury abuse its discretion in sentencing Fitzgerald to death?

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