



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. SHAWNA FORDE
CR-11-0043-AP**

PARTIES:

Appellant: Shawna Forde

Appellee: State of Arizona

FACTS:

This automatic appeal arises from Defendant Shawna Forde's convictions and resulting sentences for two counts of first-degree felony murder and one count each of first-degree burglary, attempted first-degree murder, aggravated assault resulting in serious physical injury, aggravated assault with a deadly weapon, armed robbery, and aggravated robbery.

In May 2009, Forde and three other persons conducted a home invasion and robbery in Arivaca, Arizona, which Forde had planned in advance. During the crime, one of Forde's companions shot and killed two victims, including a young girl; a third victim survived. When Forde was arrested, she was found in possession of one of the victims' jewelry.

A jury found Forde guilty of all offenses. The jury found three aggravating factors for each of the two murders: prior conviction of a serious offense, A.R.S. § 13-751(F)(2), commission of the murders for pecuniary gain, A.R.S. § 13-751(F)(5), and multiple homicides, A.R.S. § 13-751(F)(8). The jury found a fourth aggravating factor for the murder of the young girl — that the victim was under the age of 15, A.R.S. § 13-751(F)(9). The jury sentenced Forde to death after finding that the mitigating evidence was not sufficiently substantial to call for leniency. Forde also received a sentence of 65 years' imprisonment on the remaining counts.

ISSUES:

1. Did the trial court err in denying Forde's motion for change of venue?
2. Did the trial court err in denying Forde's motion to continue after the shooting of Gabrielle Giffords occurred?
3. Did the trial court err in denying Forde's motion to continue for time to investigate the disclosed FBI reports?
4. Did the trial court err in refusing to preclude the surviving victim's eyewitness identification of Forde?
5. Did the trial court err in excluding the testimony of the victim advocate?
6. Did the trial court err in denying the motion of Forde's defense counsel to withdraw?

7. Did the trial court err in refusing to compel the State to disclose FBI reports not in its possession and in denying Forde's motion to preclude the testimony of an FBI confidential source at trial?
8. Did voir dire fail to identify those jurors who were mitigation-impaired?
9. Did the trial court err in conducting voir dire in groups larger than five?
10. Should the trial court have struck jurors #2 and #3 because they indicated they would not hold the state to its burden of proof?
11. Did the trial court err by failing to ensure Forde validly waived her Sixth Amendment right to be present at pretrial hearings?
12. Did the trial court err in admitting DNA evidence?
13. Did the trial court improperly preclude the testimony of Forde's memory reliability expert?
14. Did the prosecutor improperly vouch for the victim's testimony during closing argument?
15. Did the trial court err in admitting into evidence a text message sent to Forde's phone on the night of the murders?
16. Were the jury instructions constitutional?
17. Did substantial evidence support the jury's death eligibility finding?
18. Did the trial court err in combining the death eligibility and aggravation in a single trial phase?
19. Did the victim impact statement violate Forde's Fifth Amendment rights?
20. Did the prosecutor commit misconduct when he misspoke in closing arguments?
21. Is the (F)(2) aggravator constitutional?
22. Is the (F)(9) aggravator constitutional?
23. Did the trial court err in denying Forde's motion to preclude rebuttal mitigation evidence or alternatively to continue for time to investigate that evidence?
24. Did the trial court err in failing to provide the jury with a special verdict mitigation form?
25. Did the trial court fail to consider Forde's mitigation as to her non-capital counts?
26. Did the trial court err in sentencing Forde to consecutive sentences for armed robbery and aggravated robbery?
27. Is Forde's sentence unconstitutionally disproportionate to that of her cohorts?

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