



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. JOSEPH JAVIER ROMERO  
CR-15-0039-PR**

**PARTIES:**

*Petitioner:* Joseph Javier Romero

*Respondent:* The State of Arizona

*Amicus Curiae:* Arizona Attorneys for Criminal Justice

**FACTS:**

In June 2000, S.M. was killed by two gunshot wounds to his face and back. Among the items near S.M.'s body, police discovered a cellular telephone and six .40-caliber shell casings. Nearly one month later, police stopped Romero in an unrelated matter and found him to be in possession of a .40-caliber Glock magazine. Police also found a .40-caliber Glock handgun without its magazine along the path Romero was just then traveling. This gun would later be linked to the shell casings discovered near S.M.'s body.

Seven years later, information from the cell phone found next to S.M.'s body led investigators to Romero. Based on this connection, firearms expert Powell conducted a ballistics test of Romero's Glock. The expert fired the gun and concluded the indentations the gun left on the shell casings matched those on the shell casings found near the body.

The State charged Romero with first-degree murder. After a mistrial during which Powell, the State's firearm expert, testified, Romero moved to exclude Powell's testimony in the retrial. The trial court held a *Daubert* hearing (*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)) in which it reviewed the transcript of Powell's testimony and heard the testimony of Dr. Ralph Haber, an expert in research methodology and the reliability of forensic science. The trial court ruled Powell's testimony was admissible at retrial, but precluded testimony by Haber because he was not qualified to challenge either Powell's testimony or the trial court's ruling that it was admissible.

A jury acquitted Romero of first-degree murder but convicted him of second-degree murder. The court sentenced Romero to sixteen years of imprisonment.

A majority of the court of appeals' panel affirmed the conviction and the exclusion of Haber's testimony.

Relying on several federal court decisions, the court of appeals concluded the methodology governing firearms identification is sufficiently reliable under *Daubert* and Rule 702, Arizona Rules of Evidence, to permit a qualified expert to provide testimony on the topic.

Romero argued the court should not have precluded his expert, Haber, from testifying. The court found Haber was not qualified to challenge or to rebut Powell's testimony. A person offering an expert opinion must have the requisite qualifications on the particular matter. Trial courts have broad discretion to exclude expert testimony, and will not be reversed absent a clear abuse of discretion.

The majority noted that Romero's proof of Haber's qualifications consisted of general background statements. He offered no résumé, bibliography of published articles, or record of Haber's experience and training. Haber's education and professional background are in experimental psychology. His firearms experience consists solely of reviewing relevant literature and writing an article for the California Bar Association on evidence.

Judge Eckerstrom concurred specially in the result. He reasoned that the trial court abused its discretion and should not have precluded Haber's testimony as an expert. Judge Eckerstrom wrote that the majority applied an elevated standard for the admission of expert testimony, in contrast to Rule 702 and the controlling law interpreting the rule.

Judge Eckerstrom wrote that the majority's assessment of Haber's qualifications contradicts the controlling authority. Haber's testimony was not a critique on Powell's execution of the toolmark test, but rather aimed to question the scientific method underlying such tests. Haber would testify that toolmark testing falls short of the scientific standards for experimental design.

The question, Judge Eckerstrom continued, is whether Haber is qualified to testify on the general scientific limitations of toolmark testing, not whether he is qualified to testify on the mechanics of conducting a toolmark comparison. Haber testified that he has a Ph.D. in experimental psychology from Stanford, where he learned experimental design, i.e., the design of experiments. He taught experimental design at several respected universities; has conducted peer review of articles in multiple scientific fields as to their experimental design; has worked in forensic science research for nearly twenty years; and has analyzed grant applications for the study of handgun identification for the U.S. Department of Justice. Haber has published on the subject of toolmark identification.

#### **ISSUE:**

Did the COA err in affirming the trial court's grant of the State's motion to preclude the testimony of Joe's experimental design expert on the ground that Joe's expert was unqualified to testify regarding the unreliability of the methodology used by the State's expert?

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*