



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BRIAN WAYNE HULSEY
CR-14-0291-AP**

PARTIES AND COUNSEL:

Appellant: Bryan Wayne Hulsey

Appellee: State of Arizona

FACTS:

Hulsey was a passenger in a vehicle that was pulled over for having no license plate and for speeding. There were two other occupants in the vehicle. The officer who initiated the traffic stop approached the vehicle and asked for identification from all three occupants. Upon discovering that the vehicle driver had a warrant out for her arrest, the officer asked her to get out of the vehicle and initiated an arrest. At around the same time, backup officer Anthony Holly arrived on scene and started talking to the passengers on the passenger side of the vehicle.

After the arresting officer put the arrestee in his police cruiser, he walked over to the front passenger door of the vehicle and asked Hulsey questions about the identification he provided. The officer told Hulsey that he would need to pat him down for weapons for the officers' safety. Hulsey got out and the officer asked him to put his hands on the hood of the vehicle. When the officer began the pat down, Hulsey took a step back, reached into his waistline, and pulled out a gun. Hulsey raised the gun, took aim at the officers, and started firing. The arresting officer immediately ran for cover and then returned fire on Hulsey who was running from the scene. The officer shot Hulsey in the knee, knocking him to the ground. Hulsey then shot back at the officer, and continued to flee. Hulsey made it around a corner but was subsequently surrounded by responding officers and arrested. Officer Holly was killed in the gunfire exchange.

The State charged Hulsey with one count of first-degree murder of a peace officer and one count of attempted murder of a peace officer, and it sought the death penalty. Among other defenses, Hulsey argued that the bullet that killed Holly may have come from the other officer's gun. At the autopsy, the medical examiner found tiny bullet fragments but could not remove them and concluded they did not have forensic value. Officer Holly's body was cremated. Hulsey argued that potentially exculpatory evidence was destroyed in bad faith, but the trial court disagreed.

The jury convicted Hulsey of both counts and found that the State had proven two aggravating factors that justified a death sentence: that the defendant was previously convicted of a serious offense, A.R.S. § 13-751(F)(2), and that Officer Holly was an on-duty peace officer killed in the course of his official duties. A.R.S. § 13-751(F)(10). A jury sentenced Hulsey to death and the trial court sentenced Hulsey to a consecutive 9-year sentence for the attempted murder charge. This Court has jurisdiction for this automatic appeal under article 6, section 5(3) of the Arizona Constitution and A.R.S. § 13-4031.

ISSUES:

1. Whether the trial court erred by failing to grant access to the victim's remains for independent forensic analysis and denying Hulsey's motion to dismiss for the destruction of bullet fragments.
2. Whether the trial court erred by ruling that a witness had reasonable ground to fear prosecution and thus could invoke her Fifth Amendment privilege against self-incrimination.
3. Whether the trial court erred by instructing the jurors that if they chose a life sentence, the trial court would then decide whether to sentence defendant to natural life or life with the possibility of release after twenty-five years and by failing to instruct the jury on parole eligibility.
4. Whether the trial court erred in granting the State's motion to strike Juror 123 where it found Juror 123's views on the death penalty would substantially impair the performance of Juror 123's duties.
5. Whether the admission of other acts evidence under Arizona Rule of Evidence 404(b) was error.
6. Whether the trial court erred in refusing to give jury instructions on any lesser included offenses or causation instructions.
7. Whether the evidence was sufficient to support Hulsey's first-degree murder conviction.
8. Whether it was error to deny the jury the ability to review previously viewed videotapes of witness testimony during jury deliberations.
9. Whether first-degree murder of a peace officer under A.R.S. § 13-1105(A)(3) is constitutional and whether the aggravating factor involving death of a peace officer, A.R.S. § 13-751(F)(10), is constitutional.
10. Whether the Eighth Amendment bars execution of the seriously mentally ill.
11. Whether the prosecutor committed individual acts of misconduct and whether there was cumulative prosecutorial misconduct.
12. Whether a reasonable jury could have concluded that the mitigation was not sufficiently substantial to call for leniency.

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