



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE v. RUSHING  
CR-15-0268-AP**

**PARTIES:** *State of Arizona v. Jasper Phillip Rushing*

*Appellee:* State of Arizona

*Appellant:* Jasper Phillip Rushing

**FACTS:** This automatic appeal arises from Defendant Jasper Phillip Rushing's conviction and resulting sentence for first-degree premeditated murder.

In 2010, Rushing and his victim, Shannon Palmer, were imprisoned in the Lewis Prison Complex. They were temporarily housed together in an isolation cell after each expressed safety concerns with his prior assigned housing. In September, Rushing killed Palmer using a razor blade and a bludgeoning weapon while in their cell. There were no witnesses.

The State indicted Rushing on one count of first-degree premeditated murder and sought the death penalty. The jury found three aggravating factors: (1) Rushing had been previously convicted of another offense for which life imprisonment or death could be or was imposed, *see* A.R.S. § 13-751(F)(1); (2) Rushing committed the offense in an especially heinous or depraved manner, *see id.* § 13-751(F)(6); and (3) Rushing committed the offense while in custody of the state department of corrections, *see id.* § 13-751(F)(7)(a). After considering mitigation evidence, the jury determined that Rushing should receive the death penalty.

**ISSUES:** On appeal, Rushing raises the following issues:

1. Whether admission of Appellant's statements to law enforcement at trial was in violation of the Fifth and Fourteenth Amendments.
2. Was the admission of numerous irrelevant gruesome photographs in violation of Appellant's right to due process under the Fourteenth Amendment?
3. Whether the trial court's refusal to substitute appointed counsel or alternatively permit Appellant to waive counsel and proceed pro se absent his acceptance of then appointed counsel as advisory counsel in violation of the Sixth and Fourteenth Amendments.
4. Did the trial court violate Appellant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments by requiring that he discuss the facts of the murder with

the State's retained mental health expert or face sanctions, including preclusion of all defense expert testimony?

5. Did the State prove the (F)(6) aggravator beyond a reasonable doubt, consistent with the Sixth and Fourteenth Amendments?

6. Whether the admission of extensive irrelevant and inflammatory rebuttal evidence regarding Appellant's religious and white supremacist beliefs, former membership in a Skinhead gang and affiliations with the Aryan Brotherhood and related tattoos deprive Appellant of his rights under the First, Eighth, and Fourteenth Amendments.

7. Was the trial court's refusal to instruct the jury and admit evidence and argument that the only alternative to a death sentence was life without parole reversible error in violation of the Sixth, Eighth, and Fourteenth Amendments and *Lynch v. Arizona*, \_\_\_ U.S. \_\_\_, [136 S.Ct. 1818,] 2016 WL 3041088 (May 31, 2016)?

8. Did the jury abuse its discretion by sentencing Appellant to death?

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