



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JASON EUGENE BUSH
CR-11-0107-AP**

PARTIES:

Appellant: Jason Eugene Bush

Appellee: State of Arizona

FACTS:

This automatic appeal arises from Defendant Jason Eugene Bush's convictions and resulting death sentences for two counts of first-degree murder for killing nine-year-old Brisenia Flores and her father, Raul "Junior" Flores, in their Arivaca home.

On the evening of May 29, 2009, Junior, his wife, Gina, and their daughter, Brisenia, were at their home, and the couple's other daughter was spending the night with a relative. After Junior and Gina went to bed and as Brisenia slept on the living room couch., Junior woke Gina to tell her law enforcement officers were at their door. Gina rose from bed and joined Brisenia, who was still asleep on the couch, while Junior answered the door.

Gina heard two voices, a male and female, order Junior to open the door so they could come inside and "take a look." Junior complied, and a man and woman entered the Flores' home. The man was tall, wore black face paint, and carried two tape-covered firearms. After yelling and questioning ensued, Junior pressed the intruders for identification and asked the man why his guns were covered in tape. The man responded, "Don't take this personally but this bullet has your name on it," and shot Junior in the chest. The man then turned the gun on Gina and shot her in the shoulder and thigh. After Gina fell to the ground, the man returned his focus to Junior, who was yelling, "Stop shooting my wife," and killed him with additional shots.

Laying on the ground feigning death, Gina heard more people enter the home. Brisenia woke, began crying, and asked the man why he shot her father. The man told Brisenia everything would be okay, that nobody would hurt her, and asked about her sister's whereabouts. Brisenia explained that her sister was spending the night with a relative. Gina then heard the man load his gun while Brisenia begged, "Please don't shoot me," multiple times. Despite her pleas, the man shot Brisenia twice in the face at point-blank range, ultimately killing her.

After hearing the female intruder tell the group to leave, Gina called 911 and attempted to render first-aid to Brisenia, who was shaking and struggling to breathe. The female intruder then returned, saw that Gina was still alive, and ordered someone to "go back and finish her off." Gina immediately rushed to the kitchen where Junior kept a gun. While doing so, her injured femur

broke and she collapsed on the kitchen floor. Meanwhile, the tall man with black face paint reentered the home and began shooting at Gina, who returned fire. Gina heard the man cry out in pain before exiting the home. When another man entered, Gina yelled, "Get the hell out," and "that is enough," which prompted the man to leave. Gina returned to the phone, which was still connected to the 911 dispatcher, and waited for police to arrive.

Law enforcement officers identified Albert Gaxiola as a suspect in the murders and discovered Jason Eugene Bush's DNA, fingerprints, and other incriminating items at Gaxiola's home. Officers located Bush ten days later in Meadview, where he lived with his girlfriend. Bush, who had been wounded by Gina's gunfire, told his girlfriend that he had been shot in the leg while working for the military as an undercover immigration operative.

Officers took Bush into custody on June 11, 2009 and questioned him at the Mohave County Sheriff's Department for approximately four hours. Bush initially denied any involvement in the murders, but he eventually confessed to shooting and killing Junior and Brisenia. Bush claimed that his accomplices threatened to kill him if he did not carry out the murders. In addition to making numerous incriminating statements, Bush drew a diagram of the Flores home and marked where each victim was when he shot them. The State charged Bush with two counts of first-degree murder, A.R.S. § 13-1105, attempted first-degree murder, A.R.S. § 13-1001, two counts of aggravated assault, A.R.S. § 13-1203, first-degree burglary, A.R.S. § 13-1204, and aggravated robbery, A.R.S. § 13-1903.

After a twelve-day trial, the jury returned guilty verdicts on all counts. For the murder convictions, the jury found that Bush committed Junior's and Brisenia's murders under aggravating circumstances. *See* A.R.S. § 13-751(F)(2), (8), (9). During the penalty phase, Bush offered mitigation testimony suggesting that he suffered from mental illness and had a troubled childhood. The jury found Bush's mitigation evidence insufficient to warrant leniency and sentenced him to death. This automatic appeal followed.

ISSUES:

1. Was Bush deprived of his constitutional rights to due process and a fair trial when the trial court failed to hold, on its own volition, a voluntariness hearing regarding his confession?
2. Did the State use a coerced confession against Bush in violation of his constitutional privilege against self-incrimination and rights to due process and a fair trial?
3. Did the trial court violate Bush's constitutional rights to due process and to a fair trial by an impartial jury when the trial court failed to strike, on its own volition, four allegedly death-presumptive jurors?
4. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it denied Bush's motion for a change of venue based on allegedly prejudicial pretrial publicity?

5. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it denied Bush's motion for a continuance based on allegedly prejudicial pretrial publicity?
6. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it precluded him from using a 911 recording and crime-scene photographs during jury selection?
7. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it allowed the State to inject allegedly improper and non-statutory aggravating factors into the jury-selection questionnaire?
8. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it denied his requests to question each juror individually?
9. Did the trial court violate Bush's constitutional rights to due process and a fair trial when it allowed the State to introduce allegedly prejudicial victim impact evidence?
10. Does Bush's sentences for his non-capital convictions violate his constitutional right to be free from double punishment?
11. Did the trial court commit *Simmons/Lynch* error in violation of Bush's constitutional rights to due process and a fair trial?
12. Did prosecutors commit misconduct in violation of Bush's constitutional right to due process?

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