



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JOSE ALEJANDRO ACUNA  
VALENZUELA  
CR-14-0351-AP**

**PARTIES:**

*Appellant:* Jose Alejandro Acuna Valenzuela (“Acuna”)

*Appellee:* State of Arizona

**FACTS:**

In August 2011, E.S. and his girlfriend P.M. went to a local Baskin Robbins to get ice cream. There they saw Acuna, who had previously been a good friend of E.S.’s. In 2008, E.S. had testified against Acuna during a criminal proceeding in which Acuna had been sentenced to prison. Sometime thereafter their relationship had soured.

Upon seeing the couple inside the Baskin Robbins, Acuna stated that he had already told E.S. that he did not want to see him again, and Acuna left the store. When E.S. and P.M. were starting P.M.’s car to leave Baskin Robbins, P.M. saw Acuna running toward them and shooting at the car. After shooting multiple times at E.S., Acuna ran around the car and continued to shoot at P.M. E.S. was shot several times and P.M. was shot in her upper back. Acuna left the scene in a friend’s car. P.M. survived, undergoing two surgeries, but E.S. died from his injuries.

Acuna was indicted on one count each of first-degree murder, attempted first-degree murder, discharge of a firearm at a structure, and misconduct involving weapons. The State sought the death penalty. The jury found Acuna guilty on all charges and later found two aggravating factors: (1) Acuna had been convicted earlier of another serious offense (the attempted first-degree murder of P.M.), *see* A.R.S. § 13-751(F)(2); and (2) Acuna had committed the murder in retaliation for testimony in a court proceeding, *see* A.R.S. § 13-751(F)(12). After considering mitigation evidence, the jury determined that he should receive the death penalty.

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 committed fundamental error when it failed to sua sponte sever the misconduct-involving-weapons charge and permitted the State to admit evidence that Acuna was a convicted felon.
2. Whether the trial court violated Acuna’s rights to a fair and impartial jury, to

due process, to heightened reliability, and to be free from cruel and unusual punishment, by arbitrarily limiting voir dire, failing to adequately rehabilitate questionably biased prospective jurors, and by erroneously failing to strike several jurors for cause.

3. Whether the trial court violated Acuna's right to due process and his right to be free from cruel and unusual punishment by providing the jury with an unconstitutionally vague and overbroad instruction on the (F)(12) retaliation aggravator.
4. Whether the trial court committed fundamental error when it commented on the truthfulness of Ariana Herrera's testimony.
5. Whether the trial court abused its discretion when it denied Acuna's motion to vacate judgment because of Juror 16's pro-State bias. Alternatively, whether the trial court abused its discretion by failing to conduct an evidentiary hearing on Acuna's motion to vacate judgment.
6. Whether the cumulative effect of the prosecutor's pervasive misconduct so infected Acuna's trial with unfairness, that the resulting convictions and death sentence are a denial of due process.
7. Whether the Arizona death penalty scheme is unconstitutional because its failure to adequately narrow the class of persons eligible for the death penalty is arbitrary and capricious and because its application exposes similarly situated defendants within the same state to vastly different sentences.

**Definitions:**

The (F)(12) statutory aggravating circumstance is:

**F.** The trier of fact shall consider the following aggravating circumstances in determining whether to impose a sentence of death:

\* \* \*

12. The defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding.

A.R.S. § 13-751(F)(12).

*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.*