



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**State v. Scott Lehr, CR-09-0095-AP**

**PARTIES:**

*Appellant:* Scott Alan Lehr

*Appellee:* State of Arizona

**FACTS:**

This case is an appeal from a criminal trial in which the appellant, Scott Alan Lehr, was retried for the sexual assault of one woman and for the murder and sexual assault of two other women:

- On February 13, 1991, W.C. was walking by herself in Phoenix when she accepted a ride from a man she did not know. Rather than take her home, he drove her into the desert and sexually assaulted her, pushed her down a ravine, and then drove away leaving her naked in the desert. The police found W.C. walking naked along the road back into town, wrapped in an old rug. Testing of semen samples collected from W.C. matched Lehr's DNA. W.C. picked Lehr out of a photo lineup during the police investigation, but at the first trial she misidentified a man at the back of the courtroom as her attacker, rather than Lehr.
- M.C. was last seen on November 8, 1991 at about 2:30 a.m. at a convenience store in Phoenix. Her dead body, which was partially naked, was found around 8 a.m. on a dirt road in an orchard. Her death was caused by blunt force trauma to the head. There were two blood-stained rocks close by, one with hair stuck to it, and her skull was fractured on both sides. Testing on semen samples collected from her body matched Lehr's DNA.
- On February 7, 1992, M.M.'s roommate dropped her off at a convenience store in Phoenix. A convenience store employee later saw her getting into a black truck with a man. M.M.'s partially naked body was discovered in the desert on February 19, 1992. The cause of death was blunt force trauma to the head. Police investigators discovered a bloody rock at the scene with hair on it consistent with M.M.'s hair. Lab tests on swabs from her anus indicated the presence of semen. DNA tests on the swabs performed in 1992 were inconclusive. Extraction of the DNA for testing in 1992 consumed the cotton portion of the swabs, but not the sticks, which were retained. In 2002 the State used a new testing technique on the remaining sticks, and found that the DNA on the stick matched Lehr's DNA.

During the sentencing phase of the trial, Lehr was also resentenced for the murder and sexual assault of another woman, for whose murder and sexual assault he had already been found guilty:

- On January 20, 1992 B.C. left her apartment in Phoenix intending to hitchhike to a friend's house. B.C.'s remains were found almost six months later in the desert. The body was severely decomposed. Her skull was fractured in several places. The cause of death was blunt force trauma to the head. A forensic anthropologist estimated that she had been dead from three to six months. Her clothes were discovered at the scene, and absence of body fluid on the clothes indicated that they were not on the body while it decomposed. A ring, later identified as belonging to the victim, was found in Lehr's home.

On July 6, 1992, the State charged Lehr for the murders of M.C., M.M., and B.C. He was also charged for the sexual assault of W.C. and six other women and girls. Lehr was found guilty of all offenses presented to the juries. Because the trial court had incorrectly limited Lehr's cross-examination about the validity of the State's DNA evidence, in 2002 the Arizona Supreme Court reversed Lehr's convictions for the murders of M.C. and M.M., and for the sexual assault of B.C. The Court affirmed Lehr's other convictions. In a second decision in 2003, the Arizona Supreme Court also remanded for resentencing Lehr's conviction for the murder of B.C. because the trial judge, rather than the jury, had evaluated the mitigating circumstances weighing against the imposition of the death penalty.

At the retrial, the jury found Lehr guilty of first degree murder and sexual assault for the murders of M.C. and M.M. and for sexual assault and kidnapping of W.C. The jury sentenced Lehr to death for the murders of M.C. and M.M. The jury was unable to reach a unanimous sentence for the murder of B.C., and Lehr was sentenced to life imprisonment for her murder.

## **ISSUES:**

On appeal, Lehr argues the following issues:

1. At his request, Lehr was not present during the retrial and resentencing. Lehr claims that he waived his right to be present because he did not want to wear a stun belt under his clothing and the court erred by not conducting an inquiry to discover this. Lehr argues that his waiver was not voluntary because it was prompted by a stun belt policy that he argues is unconstitutional.
2. Before trial, Lehr moved to sever the cases and try each of them separately and to resentence him for B.C.'s murder separately from the other trials. Lehr argues that trying and sentencing all of the cases together denied him a fair trial.
3. The prosecution called Lehr's prior victims to testify against him. Prior victim T.H. had strong religious beliefs against the death penalty and refused to testify against Lehr in a trial which could result in him being put to death. The trial court ruled that T.H. was unavailable as a witness and allowed the State to read transcripts from testimony she gave at Lehr's previous trial. Lehr argues that allowing T.H.'s previous testimony to be read into the record deprived him of his constitutional right to confront witnesses against him.
4. The State authorized DNA testing on samples taken from M. M.'s body which would

consume the samples. Lehr argues that he was denied his right to due process because his lawyers did not receive prior notice of the testing or an opportunity to arrange for independent testing of the sample.

5. At the conclusion of the State's DNA expert's testimony, several members of the jury stood and applauded. Lehr argues that he was denied his right to a fair and impartial jury.
6. Lehr argues that the court's instruction to the jury defining the meaning of "premeditation," together with the prosecutor's closing statement discussing premeditation violated Lehr's constitutional rights.
7. The State's Notice of Aggravating Factors and Witnesses listed some of Lehr's previous convictions under the incorrect aggravating factor. Following the guilt phase, the court allowed the state to amend its notice to correctly list the convictions under the proper aggravator. Lehr argues that the amendment of the State's Notice violated Lehr's constitutional rights.
8. During the penalty phase, the court precluded Lehr from offering testimony from one of his victims, T.H., about her opposition to the death penalty. Lehr argues that the court's preclusion of this testimony denied his constitutional right to present all available mitigating circumstances to the jury.

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