



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE OF ARIZONA v. MIKE GALLARDO
CR-09-0171-AP

PARTIES:

Appellant: Michael Peter Gallardo

Appellee: State of Arizona

FACTS:

Rudy Padilla, a twenty-year old college student, lived with his parents in a residential neighborhood in Phoenix. On the morning of December 9, 2005, Rudy slept-in while both parents went to work. His father, Rodolfo Padilla, returned home at 1:45 p.m. and found Rudy murdered in the master bedroom.

Still in pajamas, Rudy was bound at his wrists with a curling iron cord and a drawstring attached to a pair of shorts. His ankles were bound with an electrical cord cut from a blow dryer. A pillowcase was over his head and tied down by a cord still attached to a blow dryer. Rudy had been shot once in the back of the head.

The Padilla household had been burglarized: jewelry was missing, Rudy's wallet had been taken, and a .357 caliber revolver that Rodolfo normally kept under his pillow was gone. The arcadia door from the back patio into the house was shattered. In the backyard, a trash can had been pushed up against a locked gate as if someone had used it to climb over the fence. On the ground nearby was a recently smoked cigarette butt.

Telephone records showed that Michael Gallardo had called the Padilla home from his cell phone at 12:23 p.m. on December 9, 2005, and DNA profiles developed from evidence at the crime scene matched Gallardo's profile. Neither Rudy nor his parents knew Michael Gallardo.

Gallardo was indicted for first degree murder, burglary, and kidnapping. A jury returned guilty verdicts on all counts and determined that death was the appropriate sentence. This Court has jurisdiction over this automatic appeal pursuant to Article 6, Section 5(3) of the Arizona Constitution and A.R.S. § 13-4031 (2001).

ISSUES:

1. Whether the trial court abused its discretion when it *sua sponte* declared a mistrial based on manifest necessity after learning that jurors discussed the case prior to deliberations in violation of the court's admonition?
2. Whether the trial court clearly erred when it denied Gallardo's *Batson* challenges to the State's preemptory strikes of three minority jurors?

3. Whether the trial court's jury instruction on the (F)(6) aggravator was unconstitutionally vague and improperly reduced the State's burden of proof?
4. Whether the admission of victim impact evidence was unduly prejudicial and a denial of due process?
5. Whether Gallardo was deprived of his right to due process as a result of cumulative prosecutorial misconduct?

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