

## ***State v. McKinney***

**Full Citation:** State v. McKinney, No. CR-93-0362-AP, 2018 WL 4623150 (Ariz. Sept. 27, 2018).

**Date Filed:** September 27, 2018

**Opinion's Author:** Justice Gould

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, Justices Pelander, Timmer, Bolick, and Judge Vasquez. (Justice Lopez recused himself).

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** Charles McKinney suffered from Post-Traumatic Stress Disorder ("PTSD") caused by abuse and neglect during his childhood. His stepmother verbally and physically abused him. She also regularly deprived him of food, forced him to live in filthy conditions, made him wear soiled clothes, and locked him out of the home in extreme temperatures.

In March 1991, when McKinney was 23, he and his half-brother, Charles Michael Hedlund, planned and executed two burglaries and murders with the goal of monetary profit. They targeted two individuals: Christine Mertens and Jim McClain.

The brothers first burglarized the home of Christine Mertens. Because Mertens' car was parked outside, McKinney knew that she was at home. McKinney entered her home armed with a gun. While inside Mertens' home, McKinney beat and stabbed her. Mertens struggled to stay alive and suffered several defensive wounds, including numerous stabbings and a broken finger. Finally, McKinney held her face-down on the floor and shot her in the back of the head.

Two weeks later, the brothers burglarized the home of Jim McClain. Again, McKinney entered the home armed with a gun. While McClain was sleeping in his bed, the brothers shot McClain in the back of his head. McKinney was the leader in planning and completing both burglaries.

**Procedural History:** The case is currently before the Arizona Supreme Court. Previously, McKinney was convicted of first degree murder of both victims in a consolidated trial. During the sentencing phase, the trial court found several aggravating and mitigating circumstances. After deciding that the mitigating circumstances were not sufficiently substantial to grant leniency, the court sentenced McKinney to death for both murders.

The Arizona Supreme Court affirmed McKinney's two death sentences on independent review.<sup>1</sup> The federal district court denied McKinney's subsequent petition for habeas corpus.<sup>2</sup> However, the Ninth Circuit Court of Appeals held that *McKinney I* applied an unconstitutional "causal nexus" test to McKinney's mitigation evidence.<sup>3</sup> The Ninth Circuit reversed and remanded the case to the federal district court with instructions to grant

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<sup>1</sup> State v. McKinney (*McKinney I*), 917 P.2d 1214, 1234 (1996).

<sup>2</sup> McKinney v. Ryan, No. CV 03-774-PHX-DGC, 2009 WL 2432738 (D. Ariz. Aug. 10, 2009).

<sup>3</sup> McKinney v. Ryan (*McKinney V*), 813 F.3d 798, 804, 823-24 (9th Cir. 2015) (en banc).

McKinney's writ of habeas corpus, "unless the [S]tate, within a reasonable period, either corrects the constitutional error in his death sentence or vacates the sentence and imposes a lesser sentence consistent with law."<sup>4</sup>

After the Ninth Circuit's reversal in *McKinney V*, the State requested that the Arizona Supreme Court conduct a new independent review, but McKinney opposed that motion. Based on *Ring v. Arizona*,<sup>5</sup> McKinney argued that he was entitled to a new sentencing trial before a jury. The Arizona Supreme Court found that independent review was appropriate "because McKinney's case was 'final' before the decision in *Ring*."<sup>6</sup> The Arizona Supreme Court granted the State's motion to conduct a new independent review of McKinney's death sentences.

**Issue:** Based on the Ninth Circuit's reversal in *McKinney V*, when conducting an independent review of capital punishment cases, the court must consider all mitigating evidence, regardless of whether that evidence bears a causal nexus to the underlying murders. Will McKinney's mitigating evidence, including abuse and severe neglect suffered during his childhood and PTSD as an adult, outweigh the aggravating factors, including F(1) (committing multiple homicides), F(5) (murder with expectation of pecuniary gain), and F(6) (killing in an especially heinous, cruel, or depraved manner)?

**Holding:** The court found that the aggravating circumstances found by the trial court in both murders outweighed the mitigating evidence. Although the court considered all mitigating evidence, it gave that evidence little weight because it was unrelated to McKinney's behavior during the murders. On the other hand, the court found that the aggravating factors were particularly strong. Thus, the aggravating factors still outweighed the mitigating evidence.

**Disposition:** The court affirmed the death penalty in both cases.

**Rule:** When conducting an independent review of a death sentence, the court will consider all mitigating evidence, regardless of causal connection to the murder in question. However, the court may consider the lack of a causal connection when evaluating the quality and strength of the mitigating evidence.

**Reasoning:**

- **Weighing aggravating factors and mitigating circumstances in Mertens' murder:** The court found that there was no reasonable doubt about the aggravating factors found by the trial court.<sup>7</sup> Additionally, the court found that the mitigating circumstances did not warrant leniency.<sup>8</sup>

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<sup>4</sup> *Id.* at 827.

<sup>5</sup> 536 U.S. 584 (2002).

<sup>6</sup> *State v. McKinney*, No. CR-93-0362-AP, 2018 WL 4623150, at \*1 (Ariz. Sept. 27, 2018) (citing *State v. Styers*, 254 P.3d 1132, 1133–34 (Ariz. 2011) (holding that his case was final and would not be reconsidered in light of *Ring* because the mandate had issued nearly eight years before *Ring* was decided)).

<sup>7</sup> *McKinney*, 2018 WL 4623150, at \*2.

<sup>8</sup> *Id.*

- **Mitigating Circumstances:** The court found that McKinney showed several mitigating circumstances. McKinney’s stepmother severely neglected him and verbally and physically abused him.<sup>9</sup> Additionally, McKinney suffered from PTSD due to the abuse and trauma he suffered as a child.<sup>10</sup> However, in considering the strength of this mitigating evidence, the court considered testimony from the expert clinical psychologist. The expert testified that based on McKinney’s PTSD, McKinney would probably withdraw from a situation in which he might experience violence and would not likely “murder someone in cold blood.”<sup>11</sup> The court noted that McKinney acted contrary to these predictions by planning the murder, intentionally entering a situation which might involve violence, and murdering someone in cold blood.<sup>12</sup> Because McKinney’s behavior during the murder bore no relation to the mitigating evidence, the court found that the mitigating evidence deserved little weight.<sup>13</sup>
- **Aggravating Factors:** The court considered both the F(5) factor (committing the murder with the expectation of pecuniary gain)<sup>14</sup> and the F(6) factor (committing murder in an especially heinous, cruel, or depraved manner).<sup>15</sup> McKinney planned the burglary for pecuniary gain, and discussed, recognized, and accepted the possibility of murder. The court found that McKinney’s action of entering the home armed with a gun expressed a willingness to kill to make the burglary successful.<sup>16</sup> In this case, the murder was especially cruel because Mertens experienced numerous injuries during the struggle preceding her death.<sup>17</sup> Thus, the court found that both aggravating factors weighed heavily in favor of a death sentence.
- **Age as a mitigating factor:** The court rejected McKinney’s argument that his age at the time of the murders was a mitigating factor that warranted leniency. When evaluating age as a mitigating factor, the court considers the “defendant’s level of intelligence, maturity, involvement in the crime, and past experience.”<sup>18</sup> Because McKinney led the planning and execution of the burglaries and expressed a willingness to kill to make them successful, the court gave little weight to McKinney’s age.<sup>19</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> ARIZ. REV. STAT. ANN. § 13-751(F)(5) (2018) (formerly § 13-703(F)(5)).

<sup>15</sup> ARIZ. REV. STAT. ANN. § 13-751(F)(6) (2018).

<sup>16</sup> See *McKinney*, 2018 WL 4623150, at \*5.

<sup>17</sup> *Id.* at \*3.

<sup>18</sup> *Id.* at \*2 (quoting *State v. Jackson*, 918 P.2d 1038, 1040 (Ariz. 1996)).

<sup>19</sup> *Id.*

- **Leniency because of residual doubt about guilt:** The court also rejected McKinney’s argument that he deserved leniency because of residual doubt about his guilt. For sentencing purposes, claims of innocence or residual doubt do not constitute mitigation after a person is found guilty beyond a reasonable doubt.<sup>20</sup>
- **Weighing aggravating factors and mitigating circumstances in McClain’s murder:** The court also found that there was no reasonable doubt about the aggravating factors found by the trial court in McClain’s murder.<sup>21</sup> Additionally, the court found that the mitigating circumstances did not warrant leniency.<sup>22</sup>
  - **Mitigating Circumstances:** The court considered the same mitigating circumstances as it did in regard to Mertens’ murder. In weighing the strength of this evidence, the court noted the weak connection between McKinney’s mitigating evidence and his behavior during the murder.<sup>23</sup> The expert believed that McKinney’s actions—burglarizing a home and shooting a sleeping man—would be “the exact opposite” of how he would expect McKinney to act when affected by his PTSD.<sup>24</sup> The court found that the mitigating evidence was not persuasive because it bore little connection to McKinney’s behavior during the murders.<sup>25</sup>
  - **Aggravating Factors:** The court considered both the F(1) factor (committing multiple homicides)<sup>26</sup> and the F(5) factor (murder with the expectation of pecuniary gain).<sup>27</sup> The court gives extraordinary weight to the F(1) factor, and it applied in this case because McKinney had previously killed Mertens.<sup>28</sup> In considering the F(5) factor, the court noted that McKinney recognized the possibility of murder and deliberately moved forward with the burglary.<sup>29</sup> The court weighed this factor heavily because McKinney planned to rob McClain with the expectation of pecuniary gain.<sup>30</sup> Because both factors weighed heavily in favor of the death sentence, the court affirmed the death sentences.<sup>31</sup>

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<sup>20</sup> *Id.* (citing *State v. Moore*, 213 P.3d 150, 171 (Ariz. 2009)).

<sup>21</sup> *Id.* at \*3.

<sup>22</sup> *Id.* at \*2.

<sup>23</sup> *Id.* at \*3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> ARIZ. REV. STAT. ANN. § 13-751(F)(1) (2018).

<sup>27</sup> ARIZ. REV. STAT. ANN. § 13-751(F)(5) (2018).

<sup>28</sup> *See McKinney*, 2018 WL 4623150, at \*3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at \*3–4.