

## *State v. Sanders*

**Full Citation:** State v. Sanders, No. CR-14-0302-AP, 2018 WL 4354906 (Ariz. Sept. 13, 2018).

**Date Filed:** September 13, 2018

**Opinion's Author:** Justice Gould

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

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

**Facts:** Sanders called 911 to report that his girlfriend's child, three-year-old Schala Vera was not breathing. Police went to the home and found Schala not breathing and heavily bruised. Paramedics arrived and Schala was pronounced dead at the hospital. At the hospital, Sanders told a Police Detective that Schala had been left at home with his girlfriend and could not explain why Schala stopped breathing. He admitted that Schala's bruises were from "spankings" with a belt. Sanders later admitted that he and his girlfriend beat Schala almost daily and that Sanders had beat her on the day of her death by hitting her head with the bathroom door and striking her on the back.

An autopsy revealed significant injury to Schala's body and her cause of death was determined to be "multiple blunt force injuries." Sanders and his girlfriend were charged with first degree murder (Sanders' girlfriend's case was severed from Sanders' case).

**Procedural History:** The case is currently before the Arizona Supreme Court. At the trial level, the jury found Sanders guilty of first degree murder and two counts of child abuse.<sup>1</sup> In making its decision, the trial jury found three aggravating factors: (1) Sanders was previously convicted of child abuse;<sup>2</sup> (2) the offense was committed in an especially heinous, cruel or depraved manner;<sup>3</sup> and (3) Sanders murdered a child under fifteen years of age.<sup>4</sup> The trial court later granted the State's motion to dismiss two counts of child abuse. The jury also made an *Enmund-Tison* finding that Sanders killed Schala.<sup>5</sup> Sanders was sentenced to death.

**Issue:** *Simmons v. South Carolina* holds that if "the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible."<sup>6</sup> Did the trial court reversibly err and violate Sanders' due process rights by instructing the jurors, over his objection, that a life sentence includes the "possibility of release from prison after serving thirty-five years?"<sup>7</sup>

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<sup>1</sup> State v. Sanders, No. CR-14-0302-AP, 2018 WL 4354906, at \*1 (Ariz. Sept. 13, 2018).

<sup>2</sup> A.R.S. § 13-751(F)(2).

<sup>3</sup> *Id.* § 13-751(F)(6).

<sup>4</sup> *Id.* § 13-751(F)(9).

<sup>5</sup> *Enmund v. Florida*, 458 U.S. 782, 788 (1982); *Tison v. Arizona*, 431 U.S. 137, 157-58 (1986).

<sup>6</sup> 512 U.S. 154, 156 (1994).

<sup>7</sup> See A.R.S. § 13-751(A).

**Holding:** No, the trial court’s instructions did not violate Sanders’ due process rights. Here, there are significant factual differences between Sanders’ case and those cases where a defendant’s future dangerousness was at issue.

**Disposition:** The trial court’s convictions and sentences are affirmed.

**Rule:** A strong inference that the defendant poses a danger to society is required in order to warrant a *Simmons* error. Where future dangerousness is not at issue, *Simmons* does not come into play.

**Reasoning:**

- **Simmons Instruction.** The court explained that a defendant’s future dangerousness is at issue if it is “a logical inference from the evidence,’ or was ‘injected into the case through the State’s closing argument.’”<sup>8</sup> The court noted that if Sanders’ future dangerousness had been at issue, the trial court would have erred by failing to instruct the jury, pursuant to *Simmons*, that Sanders was ineligible for release or parole.<sup>9</sup>
- **Future Dangerousness.** The court explained that, in a capital case, placing future dangerousness at issue invites the jury to assess whether the defendant’s propensity for violence is so great that imposing death is the only means to protect society.<sup>10</sup> In this case, the fact that Sanders had no prior arrests or convictions for violent acts, in addition to the fact that he had no history of violent or assaultive behavior, suggests that future dangerousness was not at issue.<sup>11</sup> The court reasoned that this murder was an isolated incident, and, unlike this case, many cases involving future dangerousness have entailed a random murder involving a stranger who had the “misfortune of crossing the defendant’s path.”<sup>12</sup> The court was not convinced by Sanders’ claims that there was evidence extrinsic to Schala’s murder showing his propensity for violence.<sup>13</sup>
- **Eligibility of Juror 19.** Reviewing Sanders’ claim that he was deprived of a qualified jury because Juror 19 was convicted of a felony, the court found no error because, by operation of law, Juror 19’s civil right to serve on a jury had been restored in 2008, well before Sanders’ 2014 trial.<sup>14</sup>

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<sup>8</sup> State v. Sanders, No. CR-14-0302-AP, 2018 WL 4354906, at \*3 (Ariz. Sept. 13, 2018) (quoting Kelly v. South Carolina, 534 U.S. 246, 252 (2002)).

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

<sup>10</sup> *Id.* (citing California v. Ramos, 463 U.S. 992, 1003 (1983)).

<sup>11</sup> *Id.* at \*4.

<sup>12</sup> *Id.* (citing as an example State v. Hulsey, 408 P.3d 408, 416 (2018) (following a traffic stop, the defendant, who was a passenger in the car and had an outstanding warrant, opened fire and killed a police officer when the officer asked him to step out of the car)).

<sup>13</sup> *Id.* at \*4–5.

<sup>14</sup> *Id.* at \*7 (citing A.R.S. § 13-912(A)).

- **Aggravating Factors.** Sanders’ challenged each of the aggravating factors found by the jury.<sup>15</sup> Evaluating the Conviction for a Serious Offense (A.R.S. section 13-751(F)(2)) factor, the court noted that it had previously rejected the argument that double jeopardy prohibits the use of predicate felonies as “capital sentencing aggravators.”<sup>16</sup> The court also found that this aggravator did not violate the Eight Amendment, as it had held in previous cases, because the aggravator channels and limits the sentencer’s discretion by explicitly identifying which offenses qualify as “serious offenses.”<sup>17</sup> Turning next to the Especially Cruel (A.R.S. section 13-751(F)(6)) factor, the court decided that the instructions given to the jury at trial were not unconstitutionally vague, thus eviscerating his argument.<sup>18</sup> The next factor addressed by the court was Murder of a Child Under Fifteen (A.R.S. section 13-751(F)(9)). The court rejected that the factor was overbroad, as recognized in previous cases.<sup>19</sup>
- **Time Limits on Voir Dire.** The court next evaluated Sanders’ argument that the court violated his constitutional right to an impartial jury by imposing a five-minute limit (per side) for individual voir dire. Pointing to Ariz. R. Crim. P. 18.5(d), the court explained that a court is permitted to “impose reasonable limitations” on voir dire.<sup>20</sup> The court determined that Sanders was not prejudiced by the time limits.<sup>21</sup>
- **Failure to Strike Jurors 10, 31, and 72.** The court found that there was no error in the refusal to strike Jurors 10, 31, and 72 because none of the challenged jurors were seated on Sanders’ trial jury.<sup>22</sup>
- **Autopsy Photographs.** In reviewing whether the autopsy photographs of Schala introduced by the State were irrelevant, the court disagreed, finding that they were relevant “to show the nature and location of the fatal injur[ies], to help determine the degree or atrociousness of the crime, to corroborate state witnesses, to illustrate or explain testimony, and to corroborate the state’s theory of how and why the homicide was committed.”<sup>23</sup>
- **Apology Letters.** Sanders argued the trial court violated his right to a fair trial by precluding two “apology letters” he wrote during his police interview.<sup>24</sup> The court noted that the letters were in fact admitted and thus there was no error.<sup>25</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (quoting *State v. Goudeau*, 372 P.3d 946 (Ariz. 2016)).

<sup>17</sup> *Id.* (referencing *State v. Forde*, 315 P.3d 1200 (Ariz. 2014)).

<sup>18</sup> *Id.* at \*8.

<sup>19</sup> *Id.* (citing *State v. Nelson*, 273 P.3d 632, 639 (Ariz. 2012)).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at \*9 (referencing *State v. Garza*, 163 P.3d 1006, 1015 (Ariz. 2007)).

<sup>23</sup> *Id.* (quoting *State v. Morris*, 160 P.3d 203, 218 (Ariz. 2007)).

<sup>24</sup> *Id.* at \*10.

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

- **Testimony Regarding “Worst Case of Child Abuse.”** The court reviewed for an abuse of discretion whether Sanders’ due process rights were violated in the denial of a motion for mistrial after multiple witnesses testified that this was the “worst case of child abuse” they had seen.<sup>26</sup> The court disagreed with Sanders, finding that any prejudice Sanders may have suffered from the witnesses’ “worst case” comments was remedied by the court’s curative instruction.<sup>27</sup>
- **Jury Instructions.** The court disagreed that the “voluntary act” instructions given to the jury were improper because Sanders requested this instruction.<sup>28</sup> Reviewing the trial court’s instruction on felony murder, the court found that the trial court properly instructed the jury that the only intent the State had to prove for felony murder was that Sanders intentionally or knowingly hit Schala with a belt and that action resulted in Schala’s death.<sup>29</sup>
- **Sufficiency of Evidence—Count III (Child Abuse).** Sanders argued that the trial court erred by denying his motion for judgment of acquittal on Count III, Child Abuse, after the close of the State’s evidence.<sup>30</sup> The court rejected this argument, finding that substantial evidence supported Sanders’ conviction.<sup>31</sup>
- **Duplicitous Charge.** The court disagreed with Sanders’ contention that Count III was duplicitous because the indictment clearly informed Sanders that Count III was based on his ongoing course of conduct.<sup>32</sup> The court opined that “where numerous transactions are merely parts of a larger scheme, a single count encompassing the entire scheme is proper.”<sup>33</sup>
- **Mitigation Standard.** The court found that the prosecutor did not misstate the law on mitigation during her penalty phase closing argument.<sup>34</sup> As for Sander’s argument regarding the prosecutor’s statements on causal nexuses, the court determined that any potential error was remedied by the jury instructions, which informed jurors: “You are not required to find that there is a connection between a mitigating circumstance and the crime committed in order to consider the mitigation evidence. Any connection or lack of connection may impact the quality and strength of the mitigation evidence.”<sup>35</sup> The court also found no error in the prosecutor’s statement that mitigation was not an excuse or justification for Schala’s murder.<sup>36</sup>

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<sup>26</sup> *Id.* (citing *State v. Miller*, 316 P.3d 1219, 1228 (Ariz. 2013)).

<sup>27</sup> *Id.* at \*11.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (citing *See A.R.S. § 13-3623(A)(1); State v. Payne*, 314 P.3d 1239, 1261 (Ariz. 2013)).

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at \*12.

<sup>33</sup> *Id.* (quoting *State v. Via* 704 P.2d 238, 246 (Ariz. 1985)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at \*14.

<sup>36</sup> *Id.*

- **Admission of Sanders' Girlfriends' Statements.** The court rejected Sanders' claim that the trial court violated his right to a fair trial and his Sixth Amendment right to confront witnesses by admitting Susan's (Sanders' girlfriend) interview with police at the hospital, her statements to the police during her car ride to the police station, and the video and audio of her interrogation at the police station.<sup>37</sup> The court reasoned that the evidence was admitted as rebuttal evidence during the penalty phase, and thus was not subject to the Confrontation Clause.<sup>38</sup>
- **Cumulative Prosecutorial Misconduct.** Sanders alleged that several instances of prosecutorial misconduct occurred throughout the trial.<sup>39</sup> The court noted that "[t]o prevail on a claim of prosecutorial misconduct, a defendant must demonstrate that the prosecutor's misconduct 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'"<sup>40</sup> The court rejected all of Sanders' claims regarding prosecutorial misconduct.
- **Other Constitutional Claims.** The court declined to revisit the additional twenty-six constitutional claims set forth by Sanders.<sup>41</sup>
- **Death Sentence.** Sanders asked the court to reduce his death sentence to life because his mitigation was substantial and not rebutted by the State.<sup>42</sup> The court found that The State challenged the alleged mitigation with rebuttal testimony or argument, and also argued that the mitigating factors, if proven, should be given little weight.<sup>43</sup> The court held that even if it was assumed that Sanders proved each mitigating circumstance, a reasonable juror could conclude they were not sufficiently substantial to call for leniency, and thus the jury did not abuse its discretion.<sup>44</sup>

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<sup>37</sup> *Id.* (citing *Crawford v. Washington*, 541 U.S. 36, 50–52 (2004)).

<sup>38</sup> *Id.* (citing *State v. Guarino*, 362 P.3d. 484, 489–90 (Ariz. 2015)).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at \*15 (quoting *State v. Hughes*, 969 P.2d 1184, 1191 (Ariz. 1998)).

<sup>41</sup> *Id.* at \*15–16.

<sup>42</sup> *Id.* at \*16.

<sup>43</sup> *Id.* at \*17.

<sup>44</sup> *Id.*