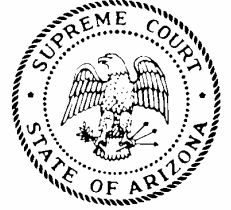




**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



Daniel and Shirley Cornell v. Roger Groves, et al. CV-04-0053

PARTIES/COUNSEL: Cornell is represented by Crystal Russell. Groves is represented by Michael Walker and Mark Hudson of Schian Walker. Kozub is represented by Donald Wilson and William Harrison of Broenig, Oberg Woods & Wilson.

FACTS:

The Cornells purchased a five-acre parcel of undeveloped property from the Groves in 1997. Part of the purchase price was an \$84,000 promissory note secured by a deed of trust. The Cornells were required to make a monthly payment on the first of each month and also to pay taxes. The deed of trust showed the Cornells' mailing address at 4606 W. Gary Drive, Chandler.

In June 2001, Groves declared a default for failure to pay property taxes for 1999. William Kozub, as trustee, prepared and recorded a notice of trustee's sale. He sent the Cornells notice of trustee's sale at the Gary Drive address, but the notice was returned undeliverable. He had another address for them, which he used for a letter notifying them of the tax payment defaults for 1999 and 2000 and for overdue monthly payments for June, August, and September 2001. The Cornells responded to the letter, pointing out that Roger Groves already had the monthly payments referred to in the letter. They took steps to satisfy the other defaults. The trustee's sale was cancelled in October 2001.

The Cornells made their December 2001 and January 2002 payments by checks dated December 4, 2001 and January 13, 2002. It is not clear when Roger Groves received those payments. However, on February 5, 2002, he issued a Statement of Breach and Notice of Election to Sell declaring that the monthly payments for December and January had not been made. Groves cashed the December and January checks on February 14. Nevertheless, on the next day, he recorded a Notice of Trustee's Sale based on the Statement of the Breach.

Kozub mailed the notice of that sale to the same Gary Drive address in Chandler that was undeliverable the previous time. The notice was returned again. He did not mail the notice to the address he had used to successfully communicate with the Cornells. The Cornells never received notice of the sale.

Unaware of the impending trustee's sale, the Cornells paid to Groves the monthly payments for March, April and May of 2002. Groves did not cash those checks. However, he also did not return those checks. Cashing the checks might have suggested a waiver of the defaults caused by the previous payments having been late. Whereas, returning those checks might have alerted the Cornells that something was amiss and might have led them to investigate and perhaps take remedial action.

The Trustee's sale went forward on March 20, with defendant Mandalay purchasing the property. Mandalay was incorporated on January 30, 2002. The corporate attorney was Kozub who is also the trustee of the deed of trust. The principal of Mandalay was Barrott Hurd, who had been negotiating with the Cornells in January and February to obtain the property in an exchange. That exchange never occurred.

Mandalay obtained the property at a trustee's sale for a bid of \$116,000. With Grove's approval, Mandalay paid the price with \$58,000 cash and a \$58,000 promissory note. When the Cornells finally learned of the sale, they filed this action against Groves, Kozub, and Mandalay, alleging that the trustee's sale was invalid and asserting a variety of claims, including irregularities in the trustee's sale, breach of the covenant of good faith and fair dealing, and racketeering.

The Defendants filed a motion to dismiss which the trial court granted. The court of appeals affirmed. The Cornells petition for review in this Court.

ISSUES:

- “1. Was there a default under the deed of trust at the time the trustee sale process began?

2. When both the trustee and the beneficiary have actual knowledge of the trustor's true address, does the trustee have to give notice to that address?

3. Is the requirement of “cash” only for payment in a trustee's sale under A.R.S. § 33-810 inconsequential?”

Applicable Law:

A.R.S. § 33-801 to -813 govern Deeds of Trust, Trustee's Sales, Defaults in Performance and Notice of Sale requirements

This Summary was prepared by the Arizona Supreme Court Staff Attorney's 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.



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



State v. Brown (McMullen), CV-03-0255-PR

PARTIES/COUNSEL: Jonathan Wayne McMullen is represented by Robert Hooker and Michael J. Miller. The State of Arizona is represented by Deputy County Attorney Marc Offenhartz. Amicus Curiae Arizona Attorney General is represented by Randall M. Howe. Amicus Curiae Arizona Public Defender Association and Arizona Attorneys for Criminal Justice are represented by James J. Haas and John A. Stookey.

FACTS:

Jonathan McMullen was charged with one count of first-degree murder and two counts of attempted first-degree murder. Pursuant to a plea agreement, on November 26, 2002, McMullen pled guilty to an amended count of reckless manslaughter, and the two attempted first-degree murder counts were dismissed. Judge Michael J. Brown has deferred acceptance of the plea until the time set for sentencing. The plea agreement states that the sentencing range is a minimum of 3 years, a presumptive of 5 years, and a maximum of 12.5 years, pursuant to A.R.S. §§ 13-701, 13-702 and 13-702.01.

In light of Apprendi v. New Jersey, 530 U.S. 466 (2000), the trial court ordered that the State will have to prove to a jury the existence of aggravating factors beyond a reasonable doubt. In a subsequent order, the court held that §§ 13-702 and 13-702.01 are unconstitutional on their face and as applied to this case.

The State filed a special action petition in the Court of Appeals. That court accepted jurisdiction, vacated both of Judge Brown's orders, and later issued its opinion on May 23, 2003, holding "that Apprendi and its progeny neither compel a jury trial for determining aggravating circumstances in a noncapital case under § 13-702 nor render that statute or § 13-702.01 unconstitutional." McMullen filed a Petition for Review by the Arizona Supreme Court. On June 24, 2004, the U.S. Supreme Court decided Blakely v. Washington, 124 S. Ct. 2531 (2004). On June 29, 2004, the Arizona Supreme Court granted McMullen's Petition for Review and ordered supplemental briefing.

ISSUES:

The issues as stated in the Petition for Review are:

1. "Whether A.R.S. §§ 13-702 and 13-702.01, which provide for an increase in the sentence over the sentence specified in A.R.S. § 13-701 if the judge finds certain factors exist, violate the right to a jury trial by delegating to the judge rather than the jury the determination of factors that substantially increase the possible sentence, contrary to Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584 (2002)?"

2. “Whether the evidentiary standard of “any evidence” render[s] A.R.S. §§ 13-702 and 13-702.01 unconstitutional because Apprendi requires a jury rather than a judge to determine the existence of aggravating factors beyond a reasonable doubt?”

This Summary was prepared by the Arizona Supreme Court Staff Attorney-s 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.