

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-031021-001 DT

08/27/2012

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
K. Molina  
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI  
JENNIFER L WILLMOTT

CAPITAL CASE MANAGER

MINUTE ENTRY

Courtroom SCT, 8C

The Court has considered the defendant's Motion to Preclude the State from Arguing Lack of Remorse During any Potential Penalty Phase. The State did not file a response. Pursuant to Rule 35.1(a), *Arizona Rules of Criminal Procedure*, the motion is deemed submitted on the record.

The Arizona Supreme Court has held a prosecutor's comment, made in closing argument during the penalty phase, that the defendant did not express remorse for the crime was not an improper comment on the defendant's right to remain silent. Rather, the argument was fair rebuttal to the defendant's allocution. *State v. Cota*, 229 Ariz. 136, ¶82, 272 P.3d 1027 (2012). The Court has also rejected a defendant's subsequent claim of remorse as mitigation when she claimed self-defense in the guilt phase and continued to deny responsibility in the penalty phase. *State v. Andriano*, 215 Ariz. 497, ¶76, 161 P.3d 540 (2007). (Because Andriano continues to deny responsibility for her conduct, we reject her contention that she is remorseful.) *See also*, *State v. Dann*, 220 Ariz. 351, ¶¶150-51, 207 P.3d 604 (2009). (Defendant maintained throughout the resentencing trial he is actually innocent and someone else killed the victims. Defendant did not prove this mitigating factor by a preponderance of the evidence.)

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Whether the State will be allowed to argue in closing argument during the penalty phase that the defendant has not shown any remorse will be determined following the close of evidence in that phase.

**IT IS ORDERED** deferring ruling on this motion until the penalty phase, if any, occurs.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.