



## ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
1501 West Washington - Phoenix Arizona 85007- 3231  
Public Information Office: (602) 542-9665

**Case:** Hohokam Irrigation v. AZ Public CV-02-0091-PR

### **Parties and Counsel:**

**Petitioner:** Hohokam Irrigation and Drainage District (“Hohokam”), represented by : Paul F. Eckstein, Brown & Bain, P.A.

**Respondent:** Arizona Public Service Company (“APS”), represented by Andrew D. Hurwitz, Osborn Maledon, P.A.

### **Facts:**

In 1997 Hohokam began buying power on the wholesale market and transmitting the power to its own customers. In 1998, Hohokam filed for declaratory and injunctive relief to prevent APS from preventing them from competing for customers in overlapping areas. APS counterclaimed to enjoin Hohokam from furnishing service outside its district boundaries. The trial court in Pinal County entered summary judgment in favor of Hohokam. The Court of Appeals reversed in favor of APS. Thirteen other irrigation and electrical districts joined the case as intervenors. Only the primary parties will be arguing.

### **Issue Presented for Review:**

Whether the Arizona Constitution and statutes allow an irrigation district to serve electric power to customers located outside its boundaries, where it is undisputed that (a) cities, towns and other municipal corporations and special purpose districts may serve customers outside their boundaries and (b) the district will use all surplus revenues from such power sales to reduce water charges and further its primary purpose of reducing the cost of irrigating district lands.

*This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office and the Administrative Office of the Courts 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.*

Thursday, November 7 2002



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ADMINISTRATIVE OFFICE OF THE COURTS  
1501 West Washington - Phoenix Arizona 85007- 3231  
Public Information Office (602-542-9665)

**Case:** STATE OF ARIZONA v. ANTHONY CHARLES DAVIS, CR-01-0423-PR

**Parties:** The petitioner is Anthony Charles Davis. The respondent is the State of Arizona.

**Counsel:** Mr. Davis is represented by Anna M. Unterberger, Deputy Maricopa County Public Defender. The State is represented by Joseph T. Maziarz, Assistant Attorney General.

**Facts:** In 1999, 13-year-old T., her stepsister C., and their 14-year-old friend P. were “hanging out” at the Superstition Mall when they met 19-year-old Jason. Shortly thereafter, on January 18, they snuck out of their home at night and met Jason in a neighborhood park. Defendant, age 20, was in the car with Jason. That night, according to T., she voluntarily engaged in sexual intercourse with defendant in his home.

Two days later, all three girls snuck out of their homes at night and met Jason and defendant. P. voluntarily engaged in sexual intercourse with defendant that night, and two or three times thereafter.

The sexual conduct came to the attention of the girls’s parents when defendant, Jason, and another boy visited P. and C. while P. was babysitting, and the adults returned home earlier than expected. P. told her mother about the sex. After these revelations, T. and C. ran away from home on January 29, the Friday before Super Bowl Sunday. P. went with them, but returned home later that evening.

Jason picked up the girls from their junior high school and took them to defendant’s home. T. and C. were at defendant’s home from Friday after school until Monday morning. T. recalled that defendant “came and went” all weekend long, and testified that she had intercourse with him two or three times, the last time during the night of Super Bowl Sunday.

On February 1, the Monday morning after the Super Bowl, police went to defendant’s home in search of T. and C. The girls were taken to a juvenile detention facility, and an officer was told about their sexual activity with defendant. On February 3, a doctor

examined them and found a fresh tear on T.'s hymen, which was consistent with her having had intercourse within a one-week period. Examination of P. did not reveal any genital injury.

Police had P. place a recorded confrontation call to defendant. She told him she thought she was pregnant, and he admitted having intercourse with her. She also asked defendant if he had had sex with T. Defendant denied that he had, but said that T. "was before you."

Defendant was charged with four counts of sexual conduct with a minor under age 15. Count I alleged sexual conduct with T. on or about January 18, 1999, Counts II, III and IV alleged sexual conduct with P., occurring on or about January 20, January 25, and January 29, respectively.

During his testimony, defendant denied having intercourse with T., but admitted having intercourse with P. on three occasions. He testified that P. told him she was 18. In support of an alibi defense on Count IV, defendant testified that he worked the entire Super Bowl weekend painting a house, and that he slept in his truck away from home. His employer corroborated defendant's testimony that he worked that weekend, and that he finished painting the house about 4:00 a.m. Monday morning. P. testified that the last act of intercourse with defendant occurred approximately between January 27 and January 29.

Over objection, the jury was instructed that the state need only prove beyond a reasonable doubt that the crime was committed "on or about" the dates charged in the indictment, but need not prove that the crime was committed on the exact day charged. The jury also was given an alibi instruction that, if it had a reasonable doubt about whether defendant was present at the time and place of the alleged crimes, it must find him not guilty.

During closing argument, the prosecutor told the jury that, as to T., only one act of intercourse was alleged in the indictment although she had testified about two sexual encounters with defendant, once on January 18, 1999, the first night they met, and again the weekend of the Super Bowl. Without objection, the date was eliminated from the verdict form relating to T. As to P., the prosecutor told the jury that the dates were not elements of the offenses so "if you believe that [defendant] had sex with P. on all three occasions like he said, then you don't have to worry about was it this date or that date."

Defendant was convicted as charged, and the court imposed mitigated sentences of 13 years on each count, to run consecutively, as required by A.R.S. § 13-604.01(K). After the jury was excused, the foreperson and another juror wrote to the judge that they

considered the required sentences to be excessive; they requested executive clemency for defendant. The trial court entered a supplemental order stating the court's opinion that the sentences were excessive, and noting that the jurors unanimously agreed that the sentences were excessive. The court ordered that defendant could petition the Board of Executive Clemency for commutation of his sentence within 90 days of his commitment to ADOC. The mothers of the girls and the presentence writer all thought that defendant should receive five years imprisonment.

The court of appeals affirmed the sentences imposed, and this court granted defendant's petition for review.

**Issues:**

1. Should defendant receive a new trial on Counts 1 and 4 because the trial court's instructions improperly amended Count 1, which resulted in a duplicative charge and the possibility that the verdict for that count was not unanimous; and/or improperly amended Count 4, as well as gutting defendant's alibi defense?
2. Should this court remand this case for resentencing without the application of A.R.S. § 13-604.01 because defendant's sentences are cruel and unusual under the federal and Arizona Constitutions?

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