



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**

CASE SUMMARY

STATE v. AGUILAR, CR-03-0332-PR

Parties and Counsel: The State of Arizona, represented by Robert A. Walsh, Assistant Attorney General. Appellant Aguilar, represented by Joel M. Glynn, Deputy Public Defender.

Facts:

Between November 9, 1999, and May 10, 2001 appellant allegedly committed three separate assaults against three separate adult female victims. Specifically, he (1) threatened to kill victim Amy with a knife, used force to pin her body underneath his own, and had vaginal intercourse with her while she cried; (2) brandished a gun at victim Maria, forced her to perform fellatio on him until he ejaculated into her mouth, and issued threats about the Mexican Mafia before he let her go; and (3) used a gun to force victim Sophia to perform fellatio and submit to vaginal intercourse, told her that she was going to get fucked-up to discourage further resistance, struck her three times on the head when she tried to resist, and threatened to call the Mafia if she reported the event. In interviews with detectives after the incidents, appellant admitted having sexual intercourse with the victims after encountering them on the street, but asserted that the acts were consensual.

On May 21, 2001 appellant was indicted on three counts of kidnaping; seven counts of sexual assault; four counts of sexual abuse; two counts of aggravated assault; and one count of armed robbery.

Before trial, appellant moved to sever the counts related to each victim from the counts related to the other victims as a matter of right pursuant to Rule 13.4, Rules of Criminal Procedure. Following a hearing on the motion, the trial court ruled that the counts were properly joined under 13.3(a) because all counts as to all victims involved sufficient same or similar circumstances. The trial court also denied the motion to sever based on a finding that the facts as to each case would be admissible in the other cases under Rule 404(c), Rules of Evidence, because the prior acts (1) were shown by clear and convincing evidence; and (2) demonstrated an aberrant sexual propensity; and (3) any prejudice did not outweigh the acts' probative value.

At the conclusion of trial, the court instructed the jury that evidence of abnormal sexual acts has been presented to them and that they must consider this evidence in determining whether the defendant had a character trait that predisposed him to commit the crimes charged. The jury found appellant not guilty of the counts against victim Maria and not guilty of one count each of the sexual assault and sexual abuse against victim Sophia. Appellant was found guilty of the remaining counts.

The trial court sentenced appellant to concurrent and consecutive presumptive prison terms totaling 28 years on eight of the nine counts. The court suspended sentencing on

the remaining count and placed appellant on lifetime probation.

Appellant appealed his convictions, arguing that the trial court erred in denying his motion to sever the counts because Rule 404(c) required an *aberrant* sexual propensity and was thus inapplicable to sexual assaults against adult female victims. The Court of Appeals agreed, and held that no basis existed under Rule 404(c) for admission of the “other act” evidence. Appellant’s convictions were therefore vacated to permit separate trials related to each incident unless the trial court determined that the charges could be properly joined under one of the non-character exceptions found in Rule 404(b). The Arizona Supreme Court granted the State’s Petition for Review.

Issue:

Whether the scope of the propensity exception codified in Rule 404(c) encompasses violent sexual assaults against adults as well as sex-related crimes against children.@

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