



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**STATE v. MICHAEL A. RIVERA, CR-04-0170-PR**

**Parties:** The State of Arizona is the petitioner. Michael A. Rivera is the cross-petitioner.

**Counsel:** The State is represented by Randall M. Howe, Chief Counsel, Criminal Appeals Section, Office of the Attorney General. Michael A. Rivera is represented by Garrett W. Simpson, Deputy Maricopa County Public Defender.

**FACTS:**

In 1998, Michael Rivera, Marcario Vela, Victoria Valenzuela, and Katherine Saiz were charged with kidnaping and murdering Megan Ramirez. Pursuant to agreements with the State, Valenzuela and Saiz independently agreed to plead guilty to second-degree murder. In exchange, each woman specified that the information she had provided in a “free talk” statement on August 10, 1998 was full, accurate, and truthful, that the plea agreement was contingent on that avowal, and that she would testify truthfully at Rivera’s trial. Rivera sought to preclude their testimonies, arguing that their plea agreements contained unenforceable consistency provisions, in violation of *State v. Fisher*, 176 Ariz. 69 (1993). The motion was denied.

At trial, Valenzuela testified that the victim was dating Rivera, who was a member of the West Side Chicanos street gang. The night she was murdered, the victim danced with a member of a rival street gang, who was thought to be responsible for the death of Saiz’s boyfriend. After the victim went home, Rivera, Vela and Valenzuela broke in and abducted her at gun point. They picked up Saiz and then drove to a field. Valenzuela and Saiz testified that Rivera shot the victim twice and then directed each of them to shoot her as well. Her body was found the next day.

On cross-examination, Valenzuela and Saiz each admitted she had given police multiple versions of the events surrounding the victim’s murder prior to their August 10 videotaped interview. Each also testified that she understood that any variation in her testimony from that interview would cause her to lose the benefit of her plea agreement. The trial court did not inform them that they were not required to stick with any prior version of events given police. Although Saiz and Valenzuela both testified that they shot the victim at Rivera’s direction after he had shot her, their separate accounts varied in other respects.

Rivera was convicted of first-degree murder, first degree burglary, and kidnaping. He appealed, contending that the accomplice witness plea agreements contained illegal consistency clauses that deprived him of a fair trial. The appeals court, in a split decision, agreed. It therefore reversed and remanded for a new trial. The court ruled that, at Rivera’s retrial, the State could not introduce the testimony of Valenzuela or Saiz from the previous trial to establish Rivera’s guilt, or any statements they made after they had entered their plea agreements and before any taint caused

by the consistency provisions had been removed. However, their testimony could be introduced at the new trial if the court removed the taint of the improper provisions by informing the witnesses, prior to testifying, that the consistency provisions are unenforceable.

Both the State and Rivera filed petitions for review, which this court granted.

**ISSUES PRESENTED:**

***In the State's Petition for Review***

- A. Did the court of appeals misapply this court's decision in *State v. Fisher* in holding that the witnesses' plea agreements were impermissible "consistency agreements," when they required truthful testimony and the trial court used safeguards to protect Rivera's due process rights?
- B. Did the court of appeals contravene this court's precedent by holding that proof that witnesses testified pursuant to "consistency agreements" was per se prejudicial, when this court has held that defendants must prove that the "consistency agreements" suppressed exculpatory testimony?

***In Rivera's Cross Petition for Review***

Can the taint of Ms. Saiz's and Ms. Valenzuela's plea agreements be removed at a subsequent re-trial?

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