



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ISRAEL JOAQUIN ALVAREZ,
CR-05-0104-PR**

PARTIES AND COUNSEL:

Petitioner: Israel Joaquin Alvarez , represented by John Seamon, Deputy Pima County Public Defender.

Respondent: State of Arizona, represented by Randall Howe and Joseph T. Maziarz, Assistant Attorneys General.

FACTS:

On June 10, 2001, Pima County Sheriff's deputy Maurice Othic was on patrol. Deputy Othic noticed a male staggering in the street at 3:00 p.m. He saw blood on his face and called for medical assistance. Deputy Othic parked his car and the victim collapsed on his vehicle. The deputy asked him repeatedly what his name was and what had happened to him. The victim was going in and out of consciousness. The deputy testified that "over about a minute period, I was able to get his first name, which he gave me was Andrew, and that three subjects had jumped him and took his '95 white Suzuki." The deputy said that the victim's words were really mumbled and he was in some pain "so it was hard to get everything out of him. I kept repeating my questions to him, tried to get what I could out of him." "And like I said, it took about a minute for all that to come out. And I was able to piece it all together. I wasn't able to get his last name, just his first name of Andrew and that a vehicle—a white '95 Suzuki was taken." The deputy described the victim as exhausted and out of energy. The victim died two days later from multiple blunt force injuries to his head.

A few weeks prior to this incident, the victim's '95 Suzuki jeep had been stolen. The car the victim was driving on the day in question was a rented Chevy Cavalier. In the afternoon of June 10, 2001 a custom's inspector impounded the Chevy Cavalier at the U.S/Mexico border. He stopped the car because the three men did not seem to know where they were going. Alvarez, sitting in the backseat, gave conflicting information about who owned the car. Eventually, the inspector obtained the rental agreement with the victim's name on it and called the rental car company. Since none of their names were on the rental agreement, the rental car company requested that the car be seized. The inspector impounded the car and released the men. Alvarez walked across the border into Mexico.

Alvarez was arrested later when he returned to the U.S. and he gave a taped statement to police. He said that he and the victim had been hanging out together for two days before the incident. They had been partying and obtaining, selling and smoking crack cocaine. Two more men, Cruz and Nixon, met up with them and they continued to party. At one point, the victim drove them in his rental car to a place in the desert. While in the desert, Nixon decided to steal the victim's car. Nixon pulled the victim out of the driver's seat and they began to fight. Cruz joined in. Alvarez told police that he stayed in the car and did not participate in the beating. After the

beating, Alvarez approached the victim to see if he was okay. The victim told him to just take the car and leave. Nixon and Cruz yelled for Alvarez to get in the car with them, and he did so out of fear. Alvarez maintained that he never touched the victim, took no part in the beating and had no interest in the car. The victim's blood was found on two concrete blocks found at the scene as well as on the defendants' clothes. Nixon's clothes (pants and socks) had stains of blood belonging to the victim and himself. Cruz's clothing (shirt and pants) also contained stains of blood belonging to the victim and himself. The only blood stains found on Alvarez's clothing belonged to the victim and were found on his shoes.

Alvarez was charged with one count of first degree murder and one count of aggravated robbery, dangerous (serious physical injury). His trial was severed from the co-defendants' and they pled guilty to manslaughter. At trial the State sought to admit the statements made by the victim to Deputy Othic. Alvarez objected on the grounds that they were hearsay and were not admissible under the exception for excited utterances. Alvarez argued that they were not excited utterances because they weren't spontaneous and the victim was referring to a different startling event; the theft of his Suzuki a few weeks before this crime. The trial court admitted the statements as an excited utterance.

Alvarez also objected to the following felony murder instruction:

The crime of first degree murder requires proof of the following two things: The defendant committed or attempted to commit aggravated robbery or robbery, and, in the course of and in furtherance of this crime or immediate flight from the crime, the defendant or another person caused the death of any person.

With respect to the felony murder rule, in so far as it provides the basis for a charge of first degree murder, it is the law that there is no requirement that the killing occurred while committing or engaged in the felony, or that the killing be a part of the felony. The homicide need not have been committed to perpetrate the felony. It is enough if the felony and the killing were part of the same series of events.

Alvarez objected to the language in the second paragraph arguing that it is a misstatement of the law, confusing to the jury, and has been disapproved by the Arizona Supreme Court in *State v. Miles*, 186 Ariz. 10, 918 P.2d 1028 (1996). Over Alvarez' objection, the trial court gave this instruction to the jury.

The jury convicted Alvarez of first degree murder and aggravated robbery. Alvarez was sentenced to concurrent terms of 6.5 years for the aggravated robbery and 25 years to life for first degree murder. On appeal, the court of appeals affirmed the convictions and sentences. As to the felony murder instruction, the court recognized that the supreme court in *Miles* "discouraged" the use of the language in the second paragraph. The instruction taken as whole, however, did not mislead the jury and there was no error. As to the admission of victim's statements, the court of appeals found that they were properly admitted as excited utterances. Further, the victim's statements were nontestimonial hearsay and their admission did not violate Alvarez' Sixth Amendment confrontation rights.

ISSUES:

The Court accepted review of issues I and III:

- I. Whether the trial court committed reversible error when it instructed the jury on felony murder.

- III. Whether the trial court committed reversible error in admitting the deceased victim's hearsay statements to a sheriff's deputy, contradicting Crawford v. Washington, infra.

Authority:

Ariz. R. Evid. 803(2). An excited utterance is “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.”

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