



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. MAVERICK KEMP GRAY  
CR-15-0293-PR**

**PARTIES:**

*Petitioner:* Maverick Kemp Gray

*Respondent:* State of Arizona

**FACTS:**

On June 23, 2013, at 11:30 p.m., an undercover Tucson police officer saw Gray sitting at a bus stop. The officer pulled his car to the curb near the bus stop and he and Gray exchanged looks. The officer asked him “Hey, can you help me out?” Gray approached the passenger side of the car and said, “What kind of help do you need?” The officer replied that he was trying to get some “hard,” a slang term for crack cocaine. Gray asked what was in it for him and got in the car. Gray negotiated a ten-dollar fee in exchange for getting twenty dollars of crack.

Gray led the officer on a four-mile drive through the city to an apartment complex. The officer gave Gray a twenty dollar bill and Gray left and returned in ten minutes with the drugs. The officer gave him ten dollars. The officer then communicated to other officers that the deal was completed. Gray was arrested.

Gray was charged with one count of sale of narcotics. At trial, Gray did not testify but he requested an instruction on entrapment. The undercover officer had secretly recorded his conversation with Gray during their encounter. Over Gray’s objection, the recording was admitted into evidence. During the conversation with the officer, Gray stated “I’m a good person,” and “I don’t usually do this.” Based on these statements, Gray requested an entrapment instruction arguing that he admitted the elements of the crime in the recording. The trial court denied the requested instruction on the basis that Gray had not admitted to the substantive elements of the crime. Gray was convicted and sentenced to a presumptive term of 9.25 years in prison.

On appeal, Gray argued that the trial court abused its discretion in denying his request for an entrapment defense. The elements of the entrapment defense were codified in 1997 in A.R.S. § 13-206, providing in part that a defendant must “admit by [his] testimony or other evidence the substantial elements of the offense charged.” Gray argued that his decision not to challenge the State’s evidence during trial was sufficient to justify an instruction. According to Gray, the statute’s authorization of admission by “other evidence” expanded the narrow, common law rule that a defendant had to affirmatively admit the crime. The court of appeals rejected Gray’s argument, finding the common law rule and the codified statute quite similar. Op. ¶ 8. Under the common law rule, a defendant could satisfy the admission requirement by testifying, stipulating, or having the admission read into evidence. *State v. Nilsen*, 134 Ariz. 431, 432, 657 P.2d 419, 420

(1983). The court of appeals found that stipulating or having the admission read into evidence would constitute “other evidence” under the statute. *State v. Williamson*, 236 Ariz. 550, 563-64 ¶¶ 50-51, 343 P.3d 1, 14-15 (App. 2015). There was nothing in the statutory language to suggest that a defendant’s silence constitutes “other evidence.” The court of appeals concluded prior case law is still controlling law and “a defendant is required to affirmatively admit the elements of the offense.” Op. ¶ 8. Gray’s silence at trial was not an admission to all elements of the offense.

Next, Gray argued that the statements from the audio recording and its transcript constitute “other evidence” as required by A.R.S. § 13-206(A). Gray argued that the statute allows “admission-by-implication.” The court of appeals rejected this argument. Both *Williamson* and *Nilsen* suggest the admission must be more than implied from the existing evidence; it must be “affirmatively admitted.” Op. ¶ 10. Even if the statements from the recording could constitute “other evidence,” the court of appeals found that Gray’s actual statements (“I’m a good person” and “I don’t usually do this”) did not amount to an admission of the substantive elements of the offense. None of Gray’s statements suggested a complete admission.

The court of appeals found the trial court did not abuse its discretion in denying the instruction on entrapment. It affirmed the conviction and sentence.

**ISSUE:**

In light of the language of § 13-206(A) that allows the defendant to use “other competent evidence” to serve to admit the elements, should this Court revisit its previous cases on entrapment and hold that the defendant can “admit the elements” by means other than testifying or stipulating to the elements?

**STATUTE:**

A. R. S. § 13-206 provides, in part:

**A.** It is an affirmative defense to a criminal charge that the person was entrapped. To claim entrapment, the person must admit by the person's testimony or other evidence the substantial elements of the offense charged.

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