



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. CHRIS THOMAS GOMEZ
CR-19-0292-PR**

PARTIES AND COUNSEL:

Petitioner: State of Arizona

Respondent/Defendant: Chris Thomas Gomez

FACTS:

J.B. accused Gomez of sexually assaulting her. Gomez initially denied having any contact with J.B. At trial, Gomez testified that he had a consensual encounter with J.B. but denied digitally penetrating her.

A DNA analyst matched the DNA taken from J.B.'s face, neck, chest, and breasts to Gomez. The analyst could neither include nor exclude Gomez as a contributor of the DNA found under J.B.'s fingernails. The internal vaginal swab matched J.B.'s husband and no other male DNA was present. The external genital sample matched J.B.'s husband. The external genital sample also contained two more alleles (referred to as a "minor Y-DNA profile") that did not appear in the husband's profile but appeared in Gomez's. The analyst, however, could not conclusively state that the minor Y-DNA profile was Gomez's.

Gomez filed a pretrial motion to preclude evidence that a minor Y-DNA profile was obtained. Gomez argued that no scientific conclusions could be made so it was irrelevant under Rule 401 and the evidence was not supported by the scientific evidence and, thus, it was not admissible under Rule 702.

The trial court denied Gomez's motion, but prohibited the State from arguing that the two alleles belonged to Gomez or that the jury could make such an inference. The analyst testified that the two alleles did not belong to J.B.'s husband but were consistent with Gomez's profile. The analyst testified that she could not say Gomez was a minor contributor, the alleles were his, or that she could perform any type of comparison.

During closing arguments, the prosecutor referred to the DNA evidence, including the minor Y-DNA profile and the analyst's testimony that it could not be conclusively determined the profile was Gomez's. The prosecutor argued the DNA evidence helped corroborate J.B.'s testimony about the assault. The jury found Gomez guilty of sexual assault and Gomez appealed.

The Court of Appeals found that the presence on the external genital swab of male DNA belonging to someone other than the victim's husband increased the probability that Gomez had

committed the sexual assault. The Court of Appeals determined that the presence of the minor Y-DNA profile did not unfairly prejudice Gomez and lacked any potential to mislead the jury.

The two-judge majority determined testimony regarding the commonality of the minor Y-DNA profile with Gomez's DNA invited the jury to speculate. Finding that the case was a "he said, she said" case, the two-judge majority held that under Arizona Rule of Evidence 403, the potential to mislead and confuse the jury substantially outweighed its minimal probative value. The majority was unable to find beyond a reasonable doubt that the admitted evidence of the alleles commonality with Gomez did not contribute to, or affect the verdict. The majority reversed Gomez's conviction and remanded for a new trial.

The dissent disagreed with the majority's Rule 403 analysis and concluded that the majority's concern about jury confusion was based on speculation.

ISSUES:

Did the Court of Appeals err in ruling that the trial court committed reversible error by admitting expert testimony that inconclusive DNA evidence found on the victim had two alleles also present in the defendant's DNA profile?

DEFINITIONS:

Allele: a viable **DNA** (deoxyribonucleic acid) coding that occupies a given locus (position) on a chromosome.

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