



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BAYRON PEREZ AGUEDA  
CR-21-0097-PR**

**PARTIES:**

*Petitioner:* The State of Arizona

*Respondent:* Bayron Perez Agueda

**FACTS:**

When Defendant was twenty-seven years old, he met the listed victim, who was a minor. When the victim was fifteen, she gave birth to his son.

The State charged Defendant with four counts of sexual conduct with a minor, alleging he engaged in sexual intercourse with the victim when she was 14 (Counts 5 and 6), 15 (Count 7) and 16 (Count 8). Count 5 was based on the first time they had sex and Count 6 was based on the instance when she became pregnant.

The victim testified at trial that she had sex with Defendant when she was 14, had sex with him more than once, and continued to have sex with him after she was pregnant. Defendant testified that the victim became pregnant after the first time they had sex. Defendant admitted to having sex with the victim when she was 15 and 16, after she moved in with him. Both Defendant and the victim testified that they had also engaged in non-sexual behavior such as hugging, kissing and handholding.

Defendant requested an instruction on contributing to the delinquency of a minor under A.R.S. § 13-3613 as a lesser-included offense to sexual conduct with a minor under 15. He cited to his testimony that he hugged and kissed the victim. The court denied the requested instruction, explaining it rejected the instruction for Count 5 because Defendant denied committing that offense. Regarding Count 6, Defendant admitted during the trial he had sex with the victim when she was 14 resulting in the pregnancy; therefore, the court reasoned, he was not entitled to a lesser-included instruction on that count.

The jury convicted Defendant of all four counts relating to the victim.

On appeal, Defendant argued that the superior court abused its discretion in denying his request for a lesser-included instruction on contributing to the delinquency of a minor. In response, the State argued that the trial court did not abuse its discretion in refusing to give the instruction because the Arizona Supreme Court clarified in *State v. Carter*, 249 Ariz. 312 (2020), that a party is entitled to a lesser-included offense instruction only when the *Blockburger* same-elements test is satisfied, which requires determining whether each offense requires proof of a fact the other does not.

The court of appeals held that contributing to the delinquency of a minor under A.R.S. § 13-3613(A) is a lesser-included offense of sexual conduct with a minor under A.R.S. § 13-1405(A). It determined the trial court abused its discretion by failing to provide the instruction. The court of appeals further determined that the State did not meet the burden that the failure to receive a lesser-included instruction was harmless; therefore, the court of appeals vacated Defendant's Count 5 conviction. The court of appeals remanded to the superior court for further proceedings consistent with the opinion and affirmed the remaining convictions and sentences.

The State filed a petition for review before the Arizona Supreme Court, which was granted.

### **ISSUES:**

As phrased by the State:

“Did the court of appeals err when, in a published opinion, it held that contributing to the delinquency of a minor is a lesser-included offense of sexual conduct with a minor when each offense contains an element the other does not?”

### **DEFINITIONS:**

A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age. A.R.S. § 13-1405(A).

A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age. A.R.S. § 13-1410.

“Delinquency” means any act that tends to debase or injure the morals, health or welfare of a child. A.R.S. § 13-3612(1).

“Delinquent person” includes any person under the age of eighteen years who violates a law of this state, or an ordinance of a county, city or town defining crime. A.R.S. § 13-3612(2).

A person who by any act, causes, encourages or contributes to the dependency or delinquency of a child, as defined by § 13-3612, or who for any cause is responsible therefor is guilty of a class 1 misdemeanor. A.R.S. § 13-3613(A).

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