



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. MARTIN DAVID SALAZAR-MERCADO
CR-13-0244-PR**

PARTIES:

Petitioner: Martin David Salazar-Mercado

Respondent: The State of Arizona

FACTS:

In October 2010 Salazar-Mercado's niece, V.S., and her brother, H.B., disclosed to family members that Salazar-Mercado had molested them on several occasions in the past. The police were called and Salazar-Mercado was arrested.

Before trial, Salazar-Mercado moved to preclude the State's proposed expert witness, Dr. Wendy Dutton, a forensic interviewer, from presenting testimony on the general characteristics of child victims of sexual abuse,¹ arguing her testimony would not satisfy the requirements of new Rule 702.² Salazar-Mercado claimed such generalized or "cold" testimony ran afoul of Rule 702(d), which requires that "the expert has reliably applied the principles and methods [at issue] to the facts of the case." The trial court denied the motion, and allowed Dutton to testify at trial.

At trial, the court also admitted V. S.'s prior inconsistent statement as the only evidence that Salazar-Mercado digitally penetrated her and thus committed Count Three, sexual conduct with a minor. V.S. testified that Salazar-Mercado touched her vagina, but she could not remember if his finger had penetrated her. When interviewed before trial, however, V.S. told Detective Barry that

¹ Dr. Dutton testified, among other things, about delayed disclosure, piecemeal disclosure, possible reasons for false allegations, and the difficulty both adults and children have when placing events in time.

² Rule 702 was amended effective January 1, 2012, to conform to its federal counterpart. The amended rule provides as follows:

- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - (b) the testimony is based on sufficient facts or data;
 - (c) the testimony is the product of reliable principles and methods; and
 - (d) the expert has reliably applied the principles and methods to the facts of the case.

Salazar-Mercado did put his finger inside her vagina. Over Salazar-Mercado's hearsay objection, the court allowed the detective to testify about the prior statement and permitted its use as substantive evidence.

Salazar-Mercado was convicted of one count of sexual conduct with a minor and one count of child molestation involving V.S. and four counts of child molestation involving H.B. Salazar-Mercado was sentenced to a combination of concurrent and consecutive sentences, the longest of which was life imprisonment, and he appealed.

On appeal, Salazar-Mercado argued the trial court erred in denying his motion to preclude Dutton's testimony pursuant to Rule 702. He also argued the court erred in admitting V.S.'s prior inconsistent statement as substantive evidence of guilt.

In an opinion filed June 20, 2013, the court of appeals affirmed Salazar-Mercado's convictions and sentences. Salazar-Mercado filed his petition for review in this Court on August 21, 2013. The State filed its response in opposition on September 19, 2013.

ISSUE FOR WHICH REVIEW WAS GRANTED:

Do Ariz. R. Evid. 702 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), require preclusion of "cold" experts?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum or other pleading filed in this case.