



ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY



STATE OF ARIZONA v. HON. ROLAND J. STEINLE/MORAN
CV-15-0263-PR

PARTIES:

Petitioner/Plaintiff: The State of Arizona

Real Party in Interest/Defendant: Alejandra Monserat Moran

FACTS:

Moran attended a house party, where he got into a fight. A witness, Hector Ponce, used his cell phone to make a video recording of the fight. Several witnesses, including Moran, stated that in the minutes leading up to the altercation, there was both a verbal and physical altercation between Moran and the victim, L.U. Ponce “cropped” the first four and one half minutes from the video, sent the final thirty-one seconds of the video to a friend, and deleted the original video from his cell phone. The final thirty-one seconds of the video showed an individual, purported to be Moran, stab L.U. in the chest.¹ Moran was subsequently indicted for first-degree murder.

Detectives were unable to recover the full version of the video from Ponce’s phone. Moran moved to exclude the edited video, arguing Arizona Rules of Evidence 106 (the rule of completeness) and 1001 (the best evidence rule) did not allow admission of just a portion of the full video. The trial court granted Moran’s motion. The State’s motion to reconsider was denied, and the State petitioned the court of appeals for special action relief, challenging the trial court’s order precluding it from introducing as evidence the cropped version of a video because the full version of the video was unavailable through no fault of the State.

A majority of court of appeals’ panel accepted jurisdiction of the State’s petition for special action but denied relief, finding Rules 106 and 403 require admission of the full video. The majority reasoned that the entire video should have been preserved so that opposing counsel could review the evidence and determine if another part of the recording should, in fairness, be considered at the same time as the part of the recording initially offered. Quoting *U.S. v. Yevakpor*, 419 F. Supp. 2d 242, 252 (N.D.N.Y. 2006), the majority concluded the State could not “make use

¹ According to the State, “[t]he video depicts a blonde female, later identified as Sindy, walking with other individuals to a dark-colored vehicle. Moran approaches. Sindy can be seen extending her arm as if trying to keep Moran away. Moran then stabs Sindy once in the chest. As Moran attempts to pull the knife from Sindy’s chest, Sindy’s upper body jerks forward. . . . A second female, Alexis Nicole Hernandez (“Hernandez”), then enters the video. She grabs Sindy’s hair and pulls it. A male steps between Sindy and Hernandez. As he does so, Moran stabs Sindy twice more. The video ends shortly after Sindy is stabbed for third time.”

of video segments that have been ‘cherry picked’ when the remainder of the recording has been erased or recorded-over[.]” It found the complete video was necessary to put the events in context. The part of the video that was deleted was especially relevant to Moran’s defense because she argues the murder was not premeditated and she was provoked. Also, the deleted portion of the video was “necessary to qualify, explain or place into context the portion already introduced.” See *State v. Prasertphong*, 210 Ariz. 496, 499 ¶ 15, 115 P.3d 828, 831.

Finally, the majority relied on Rule 403 in concluding that admitting the edited video would prejudice Moran. The result might be different if there were no witnesses claiming that in the minutes leading up to the stabbing, Moran and L.U. engaged in both a verbal and physical altercation. In that event, Moran might not be able to show prejudice. But where such witnesses do exist, the majority held, Moran has successfully shown prejudice under Rule 403.

In his dissent, Judge Howe contended that Rule 106 is inapplicable here because the State seeks to admit the entire video that it was provided with. He found it significant that the video was edited by the videographer before coming into police custody, so the State did not act in bad faith. Judge Howe distinguished *Yevakpor*, the case relied upon by the majority, because in that case the court recognized that the critical factor in determining whether to preclude the preserved segments was whether the government was at fault.

Judge Howe also disagreed with the majority’s reliance on Rule 403 because the video’s admission does not hamper Moran’s presentation of her defense that she had been provoked into stabbing the victim. Moran asserts the longer recording would have been visual evidence that she had been provoked, but nothing prevents her from testifying to provocation herself or presenting the testimony of other witnesses about provocation. While both parties may wish the full recording had been preserved as evidence, Moran and the State must deal with the evidence as they find it. Thus, Judge Howe reasoned, Rule 403 cannot justify precluding the video.

The State seeks this court’s review. Proceedings in the superior court have been stayed pending this Court’s decision.

ISSUE FOR WHICH REVIEW WAS GRANTED:

Did the trial court abuse its discretion by excluding from evidence the video in question on any of the grounds identified by the courts below?

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