



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE of ARIZONA v. Hon. GATES/ALTAMIRANO
CR-17-0326-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Hon. Pamela S. Gates

Real Party in Interest: Apolinar Altamirano

FACTS:

Apolinar Altamirano is charged with first-degree murder. The State filed a notice of intent to seek the death penalty. On April 13, 2015, Altamirano filed Defendant's Objection to Court Ordered Testing Pursuant to A.R.S. § 13-753, including this statement: "Mr. Altamirano does not waive his right to raise these issues at a later time, if appropriate, and his refusal to participate in the evaluations pursuant to the Court's order of April 9, 2015, should not be deemed or construed as a waiver of that right." On May 12, 2017, Altamirano filed a Motion for Court Ordered Testing Pursuant to A.R.S. § 13-753. The motion said he "withdraws his objection to court-ordered testing pursuant to A.R.S. § 13-753, made on his behalf on April 13, 2015." Over State opposition the court granted the motion, accepted the withdrawal of the objection, and initiated the procedures under § 13-753 with the appointment of an expert to conduct I.Q. testing.

ISSUE:

[W]hether a capital defendant's objection to a mandatory pretrial determination of his I.Q. under A.R.S. § 13-753(B) is, as Respondent Judge apparently concluded, a temporary waiver subject to being set aside any time before trial begins despite the statute's express language that an objection results in waiver of a pre-trial determination.

Statute:

A.R.S. § 13-753(B): "If the state files a notice of intent to seek the death penalty, the court, unless the defendant objects, shall appoint a prescreening psychological expert in order to determine the defendant's intelligence quotient The prescreening psychological expert shall submit a written report of the intelligence quotient determination to the court within ten days of the testing of the defendant. If the defendant objects to the prescreening, the defendant waives the right to a pretrial determination of status. The waiver does not preclude the defendant from offering evidence of the defendant's intellectual disability in the penalty phase."

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