

## *State v. Gates (Altamirano)*

**Citation:** 410 P.3d 433 (2018).

**Date filed:** February 16, 2018

**Author:** Justice Gould

**Joined by:** Chief Justice Bales, Vice Chief Justice Pelander, Justice Brutinel, Justice Timmer, Justice Bolick, and Justice Lopez.

**Facts:** In January 2015, Apolinar Altamirano was charged with first-degree murder. Shortly after, the State filed a notice of intent to seek the death penalty in Altamirano’s case. In April 2015, the trial court ordered Altamirano to undergo a prescreening evaluation of his intellectual disability (“ID”) status pursuant to A.R.S. § 13-753, which states that a trial court must order an evaluation of a defendant’s ID status before trial in every capital case. If the defendant objects to the evaluation, the defendant waives the right to a pretrial evaluation. Altamirano objected to the evaluation. However, Altamirano also stated that he did “not waive his right to raise these issues at a later time” and that his refusal to submit to the evaluation “should not be deemed or construed as a waiver of [his] right” to a pretrial ID evaluation.<sup>1</sup>

Over two years after filing the objection—and just four months before his scheduled trial date—Altamirano filed a motion to withdraw his objection to the ID testing and to request that the test be conducted. The State objected to Altamirano’s motion.

**Procedural history:** The Honorable Pamela Gates of the Maricopa County Superior Court granted Altamirano’s motion, concluding that A.R.S. § 13-753(B) permitted him to withdraw his objection any time before the start of the trial and, in so doing, reinstate his right to a pretrial ID evaluation.

In response, the State filed a special action with the court of appeals, which declined to exercise jurisdiction. The court of appeals reasoned that Altamirano’s conditional objection to the court-ordered ID evaluation was, essentially, a request for an extension of time to conduct an independent investigation into whether such a prescreening would be necessary. When Altamirano determined such an evaluation was necessary, he withdrew his objection. The court maintained that the plain language of A.R.S. § 13-753 did not prohibit later withdrawal of an objection to an early initial order for a prescreening evaluation.

After the court of appeals decision, the State then filed a petition for review with the Supreme Court of Arizona, which granted review.

**Issue:** A.R.S. § 13-753 states that if a defendant objects to an order for a pretrial evaluation of his ID status, the defendant waives the right to an evaluation. After timely objecting to a prescreening evaluation for ID status, may a defendant reinstate his right to an evaluation by withdrawing the objection?

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<sup>1</sup> Defendant’s Supplemental Brief at \*10, *State v. Gates*, 410 P.3d 433 (2018) (No. CR-17-0326-PR).

**Holding:** No, a defendant may not reinstate his right to a pretrial evaluation; however, a defendant's waiver does not deprive the court of its discretionary authority to order a pretrial ID evaluation if the defendant later requests or consents to one.

**Disposition:** The trial court's order granting Defendant's motion is vacated and the case is remanded.

**Rule:** A defendant cannot void his waiver of his right to a pretrial ID evaluation under A.R.S. § 13-753(B) by later withdrawing his objection to the evaluation.

**Reasoning:**

- A.R.S. § 13-753(B) expressly states that if a “defendant objects to the prescreening, the defendant waives the right to a pretrial determination of status.”<sup>2</sup> Allowing a defendant to withdraw his objection at any time during the pretrial phase would render the waiver provision of the statute meaningless.<sup>3</sup> As stated in *State v. Pitts*, the court must “presume the legislature did not intend to write a statute that contains a void, meaningless, or futile provision” and should therefore “interpret statutes to give meaning to every word.”<sup>4</sup>
- However, the defendant's waiver applies only to his *right* to the pretrial evaluation.<sup>5</sup> A court may still order a pretrial ID evaluation if a defendant who previously waived his right later consents to an evaluation, as long as such an order would not prejudice the state or the victims.<sup>6</sup> Such prejudice might include, but is not limited to, requiring the court to continue an existing trial date, as victims have the right to a prompt conclusion of the case.<sup>7</sup>

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<sup>2</sup> ARIZ. REV. STAT. ANN. § 13-753(B) (2018).

<sup>3</sup> *Gates*, 410 P.3d at 436.

<sup>4</sup> *State v. Pitts*, 178 Ariz. 405, 407 (1994).

<sup>5</sup> *See* § 13-753(B).

<sup>6</sup> *Gates*, 410 P.3d at 436.

<sup>7</sup> *See* ARIZ. CONST. art. II, § 2.1(A)(10) (stating a victim has the right “[t]o a speedy trial . . . and prompt and final conclusion of the case”).