

State v. Richter

Full Citation: State v. Richter, No. CR-17-0452-PR, 2018 WL 4039523 (Ariz. Aug. 24, 2018).

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Opinion's Author: Chief Justice Bales

Joined By: Vice Chief Justice Brutinel, Justices Timmer and Bolick

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: In November 2013, police discovered the abuse and poor living conditions that three young sisters were enduring in Pima County. Police were alerted of the situation when two of the sisters escaped from their bedroom, ran to a neighbor's house, and explained that their father was threatening them with a knife. When police arrived at the home, they discovered an internal alarm system, video cameras, and a knife near the master bedroom. The girls' parents, Sophia and Fernando Richter, were arrested and indicted on separate counts of kidnaping and child abuse, which occurred between September 1, 2013–November 26, 2013. Fernando was also charged with two counts of aggravated assault for his attacks on two of his daughters.

Procedural History: This case is currently before the Arizona Supreme Court. Before trial, Sophia indicated that she planned on raising a duress defense. The State opposed claiming that Sophia couldn't establish the immediacy of the threat required to establish duress and that the expert psychologist testimony Sophia sought to introduce was barred, as the testimony merely established diminished capacity. The trial court agreed with the State and held that the alleged offenses, which spanned for eighty-six days, were not immediate. Further, the trial court held that Sophia's proposed expert testimony was precluded by Arizona precedent. Ultimately, the trial court found that Sophia had offered insufficient evidence to support a duress defense.

Sophia and Fernando were convicted and charged, and Fernando's convictions and sentences were affirmed on appeal. Sophia appealed, claiming that the trial court erred in denying her duress defense and preventing her expert from testifying. The court of appeals agreed with Sophia. The court of appeals held that the psychologist testimony was admissible to show that she committed the offenses under duress, Sophia was permitted to testify, and considering both the expert's and Sophia's testimony, Sophia provided a sufficient basis to assert a duress defense. The Arizona Supreme Court granted review to address the two issues explained below.

Issue: Per A.R.S. section 13-412(A), to successfully assert a duress defense, one must have committed an offense because they were facing an immediate threat of harm. In this case, was the threat of harm Sophia faced over the course of eighty-six days immediate such that she can successfully assert a duress defense? Further, while a defendant is entitled to present observation evidence to rebut the prosecution's evidence of mens rea, a defendant is not entitled to present psychological evidence to rebut mens rea. In this case, is the

psychologist expert testimony Sophia seeks to present observation evidence or psychological evidence?

Holding: Sophia faced an immediate harm; therefore, she is permitted to present a duress defense. Further, based on the limited information in the record regarding the substance of the expert's testimony, it is classified as psychological evidence and is not admissible.

Disposition: Sophia's convictions and sentences are reversed and the case is remanded for a new trial.

Rule: First, an ongoing threat can establish immediacy in a duress defense even when the threat precedes the illegal conduct by several days, the coercing party is physically removed from the defendant, or the threat is initiated and then repeatedly renewed over several years. Second, it is unlikely that observation evidence is permissible in duress defenses, as duress mandates an objective standard and observation evidence mandates a subjective standard.

Reasoning:

- **Issue 1: Duress Defense.** A.R.S. section 13-412(A) justifies one's otherwise wrongful conduct if the offender acted under a state of duress.¹ A.R.S. section 13-412(A) states that one is justified by virtue of duress if "a reasonable person would believe that he was compelled to engage in the proscribed conduct by threat or use of immediate physical force" against himself, or another which either resulted, or could result in "serious physical injury which a reasonable person in the situation would not have resisted."²

Immediacy. In Arizona, the "threat or use of immediate physical force"³ requirement of A.R.S. section 13-412(A) has been defined as a threat that is "present, imminent and impending."⁴ In this case, the court broadened the definition of "immediacy" and held that an ongoing threat can establish the requisite immediacy in a duress defense even when "the threat precedes the illegal conduct by several days,"⁵ "the coercing party is physically removed from the defendant"⁶, or "the threat is initiated and then repeatedly renewed over several years."⁷ Even if the immediacy requirement is met, one has not established a successful duress defense if the threat is a generalized fear, rather than a specific threat.⁸ Here, Sophia was

¹ A.R.S. § 13-412(A).

² *Id.*

³ *Id.*

⁴ *State v. Richter*, No. CR-17-0452-PR, 2018 WL 4039523, at *3 (Ariz. Aug. 24, 2018) (quoting *State v. Kinslow*, 799 P.2d 844, 846-47 (Ariz. 1990)).

⁵ *Id.* at *4 (citing *Esquibel v. State*, 576 P.2d 1129 (N.M. 1978)).

⁶ *Id.* (citing *United States v. Contento-Pachon*, 723 F.2d 691 (9th Cir. 1984)).

⁷ *Id.* (citing *United States v. Chi Tong Kuok*, 671 F.3d 931 (9th Cir. 2012)).

⁸ *Id.* (citing *United States v. Sixty Acres in Etowah Cty.*, 930 F.2d 857, 860-61 (11th Cir. 1991)).

facing an ongoing and specified threat of harm.⁹ For example, Sophia's evidence revealed that she had to go to the grocery with Fernando's mother and Sophia had to be on the phone with Fernando the whole time, so he knew where she was.¹⁰ Sophia's evidence also showed that Fernando had thrown Sophia out of a window by her hair when she stood up to him.¹¹ Accordingly, the court held that Sophia met the requirements to present a duress defense.¹²

Permissible Evidence to Establish Defense. In Arizona, justification defenses rely on "objective standards that depend on the beliefs of a 'reasonable person' in the defendant's circumstances rather than the defendant's subjective beliefs."¹³ For a jury to assess a duress defense, they must be informed of the knowledge of the circumstances in which the defendant committed the crime, as this allows the jury to assess whether the defendant was reasonable.¹⁴ In this case, that meant that the jury should be permitted to consider evidence of the specific instances of recurring abuse Sophia suffered from.¹⁵ This is consistent with A.R.S. section 13-412(A), which requires that the "duress claim be evaluated from the perspective of a reasonable person in the defendant's situation."¹⁶ To avoid turning this into a subjective analysis, the proper inquiry for the jury is whether "a reasonable person subjected to the same threats and pattern of abuse would have believed he or she was compelled to engage in the same illegal conduct."¹⁷

- **Issue 2: Admissibility of Expert Testimony.** In Arizona, the "introduction of 'observation evidence' 'to rebut the prosecution's evidence of mens rea'" is admissible.¹⁸ Observation evidence is defined as "testimony from those who observed what [the defendant] did and heard what he said."¹⁹ It can also include expert testimony regarding "[the defendant's] tendency to think in a certain way and his behavioral characteristics."²⁰ In this case, the record doesn't clearly illustrate what Dr. Perrin (Sophia's psychological expert) was going to testify on, but based on the record, it appeared that the testimony wouldn't have been admissible, primarily because it was mostly hearsay regarding what Sophia had told him.²¹ Further, the court held that it is unlikely that observation evidence to rebut mens rea is admissible in duress claims because "duress requires an objective inquiry"²²

⁹ *Id.* at *5.

¹⁰ *Id.* at *4.

¹¹ *Id.*

¹² *Id.* at *5.

¹³ *Id.* (quoting *State v. Carson*, 410 P.2d 1230, 1232 (Ariz. 1983)).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at *6.

¹⁸ *Id.* (quoting *Clark v. Arizona*, 548 U.S. 735, 760 (2006)).

¹⁹ *Id.* (quoting 548 U.S. at 757).

²⁰ *Id.* (quoting 548 U.S. at 757).

²¹ *Id.* at *7.

²² *Id.*

and evidence regarding a “defendant’s tendency to think in a certain way or his [or her] behavioral characteristics” is inherently subjective.²³

²³ *Id.* (quoting 548 U.S. at 760).