

State v. Escalante

Full Citation: State v. Escalante, No. CR-17-0251-PR, 2018 WL 4374241 (Ariz. Sept. 14, 2018).

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Opinion's Author: Justice Timmer

Joined By: Chief Justice Bales, Vice Chief Justice Brutinel, and Justices Pelander, Bolick, Gould, and Lopez

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

Facts: Detectives suspected Escalante of selling methamphetamine after receiving many tips and surveilling him. In response, detectives requested Phoenix deputies perform a civil traffic stop on Escalante. Two Phoenix deputies turned onto the same street as Escalante, where he proceeded to veer, stopping perpendicular to the roadway. The deputies blocked the road with their vehicles, activated their lights, and performed the traffic stop. As a deputy approached the truck, Escalante began to reverse, at which point the deputy told him to stop, pulling his gun and repeating the instruction. Escalante eventually complied, seeming agitated. Escalante later claimed he was trying to "pull to the side of the road."

Deputies searched the truck, finding: a semi-automatic handgun, knives, a machete, a digital scale, dryer sheets, coffee beans, a flip cellphone, and \$200. A K-9 officer's dog "alerted" on the truck, but no drugs were found. A deputy returned to the scene, locating a plastic baggie that had been run over, later determined to contain 47.8 grams of methamphetamine. The digital scale was also determined to contain methamphetamine residue.

Procedural History: This case is currently before the Arizona Supreme Court. Escalante was charged with four counts of drug-related offenses and four counts of misconduct involving weapons. Before trial, the State moved in limine to introduce evidence that Escalante had engaged in behavior "indicative of and consistent with drug trafficking," which Escalante's counsel did not object to. The trial court ruled the evidence was admissible, and Escalante was found guilty on all counts of drug-related offenses. He was found guilty of the remaining weapons charges by the trial court after waiving his right to a jury trial.

Escalante appealed, and the court of appeals affirmed, reviewing for fundamental error whether the trial court incorrectly admitted drug-courier profile evidence and hearsay evidence, and finding "the jury had substantial evidence" to support their finding and the evidence was therefore not prejudicial.¹

The Supreme Court granted review to clarify what a defendant must show to establish fundamental, prejudicial error warranting a reversal.

¹ State v. Escalante, 396 P.3d 611, 620 (Ariz. Ct. App. 2017).

Issue: When a defendant fails to object to trial error, he forfeits appellate relief absent a showing of fundamental error. Did the State’s admission of drug-courier profile evidence influence the jury’s decision to the extent that it constitutes prejudicial, fundamental error?

Holding: In part—three of the counts for which Escalante was convicted were prejudiced by the admission of drug-courier profile evidence, because the jury could have returned a not-guilty verdict in their absence. The second count, however, was not prejudiced, because the jury could not have returned any other verdict, even in the absence of the error.

Disposition: Escalante’s conviction for counts one, three, and five are reversed and remanded due to prejudicial error. His conviction for count two, however, is affirmed.

Rule: The defendant must first demonstrate the error goes to the foundation of the case, takes away a right essential to the defense, or is of such magnitude that it denied the defendant a fair trial. These are to be applied disjunctively. If prong one or two is satisfied, the defendant must also show prejudice to warrant reversal. If prong three is satisfied, the trial was unfair, and prejudice is automatically established with no further showing required.

Reasoning:

- **Fundamental Error Standard.** If error is present, the court will not reverse unless the committed error is both fundamental and prejudicial.² This standard was described in *State v. Henderson* as: “those rare cases that involve ‘[prong 1] error going to the foundation of the case, [prong 2] error that takes from the defendant a right essential to his defense, and [prong 3] error of such magnitude that the defendant could not possibly have received a fair trial.’”³ This burden rests on the defendant who must also prove the error caused him prejudice.⁴ This is done on a case-by-case, fact specific inquiry.⁵
- **Clarifying Henderson Standard.** The “and” in *Henderson*’s three-prong test made application difficult, with some courts requiring all three prongs conjunctively, and others just requiring one, disjunctively.⁶ The *Henderson* court applied the standard disjunctively.⁷ The standard should henceforth be applied disjunctively, as requiring all three prongs would be “overkill.”⁸ Because satisfying the third prong results in the presumption of prejudice, the only way to give the remaining prongs meaning is to apply the *Henderson* standard disjunctively.⁹

² *State v. Escalante*, No. CR-17-0251-PR, 2017 WL 4374241, at ¶ 12 (Ariz. Sept. 14, 2018) (citing *State v. Henderson*, 115 P.3d 601, 608 (Ariz. 2005)).

³ *Id.* at ¶ 13 (quoting *Henderson*, 115 P.3d at 607 (emphasis added) (citations omitted)).

⁴ *Id.*

⁵ *Id.* at ¶ 21 (citing *Henderson*, 115 P.3d at 608).

⁶ *Id.* at ¶ 14.

⁷ *Id.* (citing *Henderson*, 115 P.3d at 608).

⁸ *Id.* at ¶ 16.

⁹ *Id.*

- **Satisfying the Prongs.** The first prong, going to the “foundation of a case”, is satisfied if the error impacts a key factual dispute, or deprives the defendant of constitutionally guaranteed procedures.¹⁰ The second prong, the taking of an “essential right”, is satisfied if the error deprives the defendant of a constitutional or statutory right necessary to establish a viable defense of rebut the prosecution’s case.¹¹ The third prong, denying a fair trial, is satisfied if the error so profoundly distorts the trial that injustice is obvious without the need to further consider prejudice.¹² These prongs are to be considered under the totality of the circumstances.¹³
- **Motion to Admit Profile Evidence.** Profile evidence cannot be used as substantive proof of guilt because of the “risk that a defendant will be convicted not for what he did but for what others are doing.”¹⁴ Here, the admission of the profile evidence thus constituted error, because it was substantively used to prove Escalante’s guilt.¹⁵ The admission constituted fundamental error, because it went to the foundation of the case.¹⁶ All other evidence linking Escalante to the drug trafficking was circumstantial, and the profile evidence therefore was the “linchpin” of the state’s argument.¹⁷ This error deprived Escalante of the opportunity for the jury to render a verdict free of the taint of this evidence.¹⁸ A reasonable jury, in the absence of this error, could have returned a verdict of not guilty, as the remaining evidence was purely circumstantial—the error was thus prejudicial on counts one, three, and five.¹⁹ The fact that Escalante’s counsel may have failed to object to the evidence’s admission as a defense strategy is not relevant, and does not preclude a finding of prejudice, unless it invites trial error (i.e. when the defendant is the source of the error).²⁰ However, Escalante was unable to prove this prejudice existed for the count two.²¹ The jury could not have reached a different conclusion on this count even without the fundamental error.²²

¹⁰ *Id.* at ¶ 18.

¹¹ *Id.* at ¶ 19.

¹² *Id.* at ¶ 20.

¹³ *Id.* at ¶ 21 (citing *State v. Gendron*, 812 P.2d 626, 628 (Ariz. 1991)).

¹⁴ *Id.* at ¶ 22 (quoting *State v. Lee*, 959 P.2d 799, 801 (Ariz. 1998) (citation omitted)).

¹⁵ *Id.* at ¶ 24.

¹⁶ *Id.* at ¶ 26.

¹⁷ *Id.* at ¶ 26–27.

¹⁸ *Id.* at ¶ 29.

¹⁹ *Id.* at ¶ 40.

²⁰ *See id.* at ¶ 33–38.

²¹ *Id.* at ¶ 42.

²² *Id.*