

Phoenix City Prosecutor v. Lowery

Full Citation: Phx. City Prosecutor v. Lowery, 430 P.3d 884 (Ariz. 2018).

Date Filed: December 3, 2018

Opinion's Author: Justice Gould

Joined By: Chief Justice Bales, Justices Pelander, Timmer, Bolick, Lopez, and Judge Eppich. (Vice Chief Justice Brutinel recused himself).

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

Facts: The City of Phoenix ("the City") alleges that H.C. (the husband of Claudette Craig) reported that Craig was attempting to leave their residence after she had been drinking. H.C. parked a car behind Craig's car to prevent her from leaving. However, Craig proceeded to back into H.C.'s car, damaging both vehicles. Craig was charged with one count of criminal damage, domestic violence, and three counts of driving under the influence.

Procedural History: This case is currently before the Arizona Supreme Court. The municipal court granted Craig's motions to preclude H.C. from testifying and to sever the DUI charges from the criminal damage charge. These motions were based on Craig's invocation of the anti-marital fact privilege.

The superior court accepted review. The City argued that under the crime exception to the anti-marital fact privilege, H.C. could testify about the DUI charges.¹ The superior court denied relief based on this argument. The court of appeals affirmed this decision.² The court of appeals held that because the anti-material fact privilege precluded H.C. from testifying about the DUI charges, severance was proper.³

Issue: Arizona's anti-marital privilege provides that "[a] person shall not be examined as a witness' in the case of '[a] husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage.'"⁴ The anti-marital privilege has a crime exception which states that "a spouse may testify 'in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband.'"⁵ Does the crime exception to the anti-marital privilege extend to allow a spouse to testify against their husband or wife on charges that occurred in the same unitary event where there was a crime committed by one spouse against the other? Did the municipal court err in severing the criminal damage charge?

Holding: Yes, a spouse may testify against their husband or wife under these circumstances. Yes, the municipal court should not have severed the criminal damage charge because the

¹ Phx. City Prosecutor v. Lowery, 430 P.3d 884, 886 (Ariz. 2018).

² Phx. City Prosecutor v. Lowery, 418 P.3d 1081, 1083 (Ariz. Ct. App. 2018).

³ *Id.* at 1086-87.

⁴ Phx. City Prosecutor, 430 P.3d at 886 (quoting ARIZ. REV. STAT. ANN. § 13-4062(1) (2018)).

⁵ *Id.* at 887 (quoting ARIZ. REV. STAT. ANN. § 13-4062(1) (2018)).

husband, in these circumstances, should be able to testify against the wife in all charges arising from the unitary event.

Disposition: The municipal court's ruling is reversed, and the case is remanded for further proceedings. The superior court and court of appeals decisions are vacated.

Rule: When a husband or wife is charged for a crime that he or she committed against their spouse, the crime exception to "the anti-marital fact privilege allows the witness-spouse to testify regarding not only that charge, but also any charges arising from the same unitary event."⁶

Reasoning:

- **Case Law Interpretation of the Crime Exception.** Multiple cases in Arizona have extended the crime exception to the anti-marital fact privilege.⁷ In *Crow*,⁸ this court held that the crime exception applies when the crime affects the other spouse so that it renders the reason for the anti-marital fact privilege (promotion of marital peace) inapplicable.⁹ In *Whitaker*,¹⁰ this court used a different test than in *Crow* in determining the crime exception applied.¹¹ In *Whitaker*, this court relied on *Briley*¹² in holding that "when a defendant commits a crime 'against' his or her spouse and is charged for that crime, the crime exception allows the witness-spouse to testify" about any charges arising from the event.¹³ This court concluded the *Whitaker* test set forth the proper test for the crime exception.¹⁴
- **Other Jurisdictions' Interpretation of the Crime Exception.** Other jurisdictions with a similar crime exception to Arizona's have adopted a test similar to that in *Whitaker*.¹⁵ Many of these jurisdictions relied on *Briley* when interpreting the crime exception.¹⁶ The decisions this court examined were from the following jurisdictions: California, Michigan, Nebraska, Ohio, Virginia, and Washington.¹⁷
- **Severance.** This court determined that if the crime exception applies to multiple charges arising from a unitary event, then there is no basis to sever these charges.¹⁸ Since the crime exception applies, severance would not be necessary for a fair trial.¹⁹

⁶ *Id.* at 885.

⁷ *Id.* at 887–88.

⁸ *State v. Crow*, 457 P.2d 256 (Ariz. 1969).

⁹ *Id.* at 262.

¹⁰ *State v. Whitaker*, 544 P.2d 219 (Ariz. 1976).

¹¹ *Phx. City Prosecutor*, 430 P.3d at 888.

¹² *State v. Briley*, 251 A.2d 442 (N.J. 1969).

¹³ *Phx. City Prosecutor*, 430 P.3d at 888.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 888–89.

¹⁷ *Id.*

¹⁸ *Id.* at 889.

¹⁹ *Id.*