SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000594 10/08/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

MARIBETH MARTORI PATRICK E ELDRIDGE

v.

STATE OF ARIZONA DIANA C HINZ

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6119475

Charge: 1. D.U.I. ALCOHOL
3. OPERATOR FAIL TO PROVIDE I.D.

DOB: 01/31/66

DOC: 12/25/01

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13-4032.

This case has been under advisement since oral argument on September 15, 2003. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the memoranda and oral argument of counsel.

The only issue presented for review in this appeal by the State of Arizona is whether the trial judge (the Honorable George Logan, Phoenix City Court Judge) abused his discretion in granting Appellee, Maribeth Martori's Motion to Suppress evidence obtained by the Phoenix Police Department after Appellee invoked her right to counsel by making a request to speak with her husband (who was an attorney) that was ignored by police. These issues involve mixed questions of law and fact, which the court must review *de novo*.[1] The reviewing court must afford great weight to a trial judge's assessment of witnesses' credibility and findings of fact.

In this case the trial judge found:

> Yes, so I believe that when the Defendant (Martori) made her request to speak to her husband, she, in fact, knew that he was a lawyer; however, she did not communicate that portion of information to Officer Smelter. However, Smelter then called Mr. Martori and Mr. Martori said he was an attorney, and then from that point on, I believe that Officer Smelter was charged with the knowledge that Mr. Martori was an attorney and should have acted accordingly. And his failure to act based on that knowledge results in my decision to suppress the- - any testimony or evidence from that point on.[2]

Appellant (the State) argues that a third-party, such as Mr. Martori may not invoke the constitutional rights of another person.[3] Certainly, the right to counsel is a personal right that Arizona courts have recognized may not be asserted by a third-party.[4] However, the facts in this case, as the trial judge found, indicate that the right to counsel was asserted by Appellee, Maribeth Martori. She, personally requested to speak to her husband whom she and Officer Smelter knew was an attorney. The trial judge found that this was not an equivocal request to speak to counsel. This Court finds no abuse of discretion by the trial judge and concurs in the result, as ordered by the trial judge in this case.

Finding no error,

IT IS ORDERED affirming the order of the Phoenix City Court granting Appellee, Maribeth Martori's Motion to Suppress in this case, after Martori asserted her right to counsel.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court, with the expectation that the file will be transmitted back to the Phoenix City Court, and that the State may choose to refile this matter, at their discretion.

---

[1] State v. Winegar, 147 Ariz. 440, 711 P.2d 579 (1985).
[2] R.T. of August 5, 2002, at page 89.
[3] Appellant's memorandum, at pages 4-7.
[4] State v. Transon, 186 Ariz. 482, 924 P.2d 486 (1996).

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT