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State's high court to rule on rape cases

When statute of limitations runs out is core issue

By Kim Smith

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The Arizona Court of Appeals in Phoenix ruled last week that the statute of limitations in most felony cases should not start running until a suspect is identified.

That's in direct conflict to a November ruling by the Tucson Division of the appeals court, which held that rape charges filed against two Tucson men should be thrown out because the statute of limitations started running at the time of the crimes.

Now, the Arizona Supreme Court is being asked to look at the cases prompting the ruling to decide which interpretation is right.

The Tucson ruling imperiled potentially hundreds of cold cases that are now being reopened thanks to the increasing availability of DNA evidence.

Legal experts say it's not just sexual-assault cases that could be affected by which way the Supreme Court decision goes. If a burglary suspect cut himself breaking a window years ago, that case, too, could be solved if his DNA is ever entered into a national DNA databank.

If the justices rule the statute of limitations should start running when a suspect is identified, crimes committed as far back as 1978 could be prosecuted if a suspect is ever identified.

In the Tucson case, the alleged victims of Olin Gene Taylor and John Adrian Johnson were raped in 1994. But neither man was linked to the crimes until late 2005 and early 2006.

Presiding Appeals Court Judge Peter J. Eckerstrom and his colleagues ruled that the seven-year statute of limitations in nearly all felony cases begins to run as soon as a crime is committed — not when a suspect is identified.

In other words, the judges ruled that the statute of limitations in the Johnson and Taylor cases expired in 2001.

However, the more recent Phoenix division ruling is that the statute of limitations starts to run when a suspect is identified.

The judges there noted that the law concerning the statute of limitations was amended in 1997 to say it starts to run when a suspect is identified. They said that the 1997 amendment should apply retroactively to 1990, so prosecutors appropriately sought charges against Yavapai County resident Edward Harry Gum in 2002 in connection with two 1991 rapes.

Defense attorneys argue that the statute of limitations should start to run when the crime occurs.

They say it was created to make sure police investigate crimes promptly to make sure people accused of crimes aren't denied a chance to prove their innocence because of lost evidence, foggy memories and dead witnesses if they are indicted years after the fact.

The Supreme Court justices have a variety of options on how to approach the issues, said Deputy Pima County Public Defender Walt Palser and Deputy Pima County Attorney Shawn Jensvold, two of the attorneys

involved in the Taylor and Johnson cases.

They can combine the cases and ask for oral arguments from both sides, they can ask for written briefs, or they can simply choose one side over the other.

It's unclear when the Supreme Court will review the cases.

"It could happen tomorrow or it could happen six months from now," Palser said.

Palser said a recent Arizona Supreme Court decision should aid the defense. In *Garcia v. Browning*, the justices applied a state law that says a new statute can be applied retroactively only if legislators specify that it should be applied retroactively.

The 1997 amendment says the statute of limitations starts to run when a suspect is identified. It does not state it should be applied retroactively, Palser said.

In the Yavapai County case, the Division I judges said the statute can be applied retroactively because the law doesn't say it shouldn't be.

Not knowing how long the Arizona Supreme Court would take to make its decision, Pima County Superior Court Judge Michael Cruikshank released Taylor, 50, from jail Dec. 8, with the understanding that he would maintain contact with Pretrial Services.

A warrant was issued for Taylor's arrest in January after he absconded.

Johnson remains in custody. He is serving a 4 1/2-year prison sentence for burglary and theft.

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