



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. LUIS ARMANDO VARGAS  
CR-19-0071-PR**

**PARTIES:**

*Petitioner/Appellant/Defendant:* Luis Armando Vargas (“Vargas”)

*Respondent/Appellee:* The State of Arizona (“the State”)

**FACTS:**

*Conviction and Appeal.* In February 2008, a Tucson woman disappeared from her home, leaving behind her glasses, purse, cell phone, and leg braces that she needed to walk. Her van also was missing, but was later found near an auto-parts store after it was set on fire and burned out. The woman was never found. Vargas’s fingerprints were found on an appliance inside her home. This fact and others led to Vargas’s arrest for first-degree murder, kidnapping, burglary, arson, theft of a means of transportation, and theft of a credit card. After a fourteen-day trial, the jury convicted Vargas as charged.

Vargas then filed an appeal in the Court of Appeals. He devoted nearly 60 pages of his opening brief to his argument that the State committed prosecutorial misconduct during his trial. He specifically identified eleven instances of misconduct, with some having multiple subparts. The brief did not attempt to identify whether Vargas had made an objection at trial to each of these alleged acts of misconduct. But he began his argument by stating “[w]hen a defendant objects to an alleged act of prosecutorial misconduct, the issue is preserved; when a defendant fails to object, the court engages in fundamental error review.” And, at the end of his argument, he contended:

*Although certain instances of misconduct may not have caused great harm, when the cumulative effect is considered, it is evident that Luis Vargas was denied his right to a fair trial. The error was not harmless, and although the issue should be considered preserved because much of the misconduct was objected to, the misconduct was sufficiently pervasive that Luis was deprived of his fundamental right to a fair trial. Accordingly, the misconduct likewise amounted to fundamental prejudicial error.*

(Emphasis added.) In between these two statements, Vargas discussed each of the eleven instances of alleged misconduct. In that discussion, he did not contend that any instance, by itself, constituted fundamental error.

*Court of Appeals’ Opinion.* The Court of Appeals affirmed Vargas’s convictions and sentences, ruling (among other things) that Vargas failed to show prosecutorial misconduct. It explained that in considering such a claim, a court evaluates each instance of alleged misconduct, and then considers the cumulative effect on the fairness of a defendant’s trial. (Citing *State v. Hughes*, 193 Ariz. 72, 79 ¶ 26 (1998).) It further explained that the applicable standard of review depends on whether the defendant made an objection at trial to the alleged misconduct. It noted that “[w]hen a defendant has objected at trial, we review allegations of misconduct for harmless

error; however, when a defendant fails to object, we review for fundamental error.” (Citing *State v. Martinez*, 230 Ariz. 208, 214 ¶ 25 (2012).)

The court then turned to Vargas’s arguments with respect to each instance of alleged misconduct. It held that of the eleven alleged acts of misconduct, Vargas preserved error on only two instances and part of another, and that they did not constitute prosecutorial misconduct. It further held that Vargas waived any right to challenge the remaining instances for fundamental error because he had not specifically and separately contended that each of them involved fundamental error. The court’s waiver ruling relied on *State v. Moreno-Medrano*, 218 Ariz. 349 (App. 2008), which holds that defendant waives the right to fundamental error review if he or she does not specifically request it in his or her appellant brief.

Based its review, the court held that Vargas failed to establish the existence of misconduct in connection with any of his arguments. It further held that “because we find no misconduct with respect to his individual allegations, we further conclude Vargas has failed to establish cumulative error.” (Citing *State v. Bocharski*, 218 Ariz. 476, 492 ¶ 75 (2008).)

#### **ISSUES:**

The Supreme Court has asked the parties to address two issues:

(1) Did petitioner preserve fundamental error review for individual claims of prosecutorial misconduct by arguing that cumulative instances of prosecutorial misconduct constituted fundamental error?

(2) Did the Court of Appeals properly rely on *State v. Moreno-Medrano*, 218 Ariz. 349 (App. 2008)?

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