



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



DAVID GARCIA v. Hon. CHRISTOPHER BROWNING,
Respondent, and STATE, Real Party in Interest, CV-06-0320-PR

PARTIES AND COUNSEL:

Petitioner: David Garcia is represented by D. Jesse Smith and Anthony Payson II.

Respondent: The State of Arizona, Real Party in Interest, is represented by Deputy County Attorney Taren M. Ellis.

FACTS: David Garcia has been indicted on a charge of first-degree murder allegedly committed on December 5, 2004. In accordance with the version of A.R.S. § 13-205 then in effect, the grand jury was instructed that justification defenses, including self-defense, are affirmative defenses that a defendant must prove by a preponderance of the evidence.

On April 24, 2006, Senate Bill 1145 was signed into law. 2006 Ariz. Sess. Laws, ch. 199. It amended A.R.S. § 13-205 to provide that justification defenses are not affirmative defenses and "[i]f evidence of justification pursuant to chapter 4 of this title is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification." The Senate Bill also stated that it was an emergency measure and operative immediately.

Mr. Garcia filed a motion to remand the case to the grand jury, requesting that it be instructed pursuant to the amended § 13-205, and a motion to instruct the jury based on the amended statute if the case proceeded to trial. Judge Browning denied the motions, finding that the amended statute was not retroactively applicable and therefore did not apply to Mr. Garcia's case. Mr. Garcia filed a petition for special action. The Court of Appeals, division two, accepted jurisdiction and granted relief, holding that the amended statute does apply to Mr. Garcia's case. The State filed a Petition for Review by the Arizona Supreme Court.

ISSUES: Whether the amended version of A.R.S. § 13-205, Arizona's statute on affirmative defenses, enacted as an emergency measure and effective on April 24, 2006, applies to criminal defendants such as Mr. Garcia who allegedly committed a crime before the effective date of the statute but whose trial will occur after that date.

Statutes:

A.R.S. § 13-103 was amended as follows:

§ 13-103. Abolition of common law offenses and affirmative defenses; definition

A. All common law offenses and affirmative defenses are abolished. No conduct or omission constitutes an offense or an affirmative defense unless it is an offense or an affirmative defense under this title or under another statute or ordinance.

B. For the purposes of this section, "affirmative defense" means a defense that is offered and that attempts to ~~justify~~ **excuse** the criminal actions of the accused or another person for whose actions the accused may be deemed to be accountable. Affirmative defense does not include **any justification defense pursuant to chapter 4 of this title or** any defense that either denies an element of the offense charged or denies responsibility, including alibi, misidentification or lack of intent.

2006 Ariz. Legis. Serv. Ch. 199, § 1 (S.B. 1145) (West).

A.R.S. § 13-205 was amended as follows:

§ 13-205. Affirmative defenses; burden of proof

A. Except as otherwise provided by law, a defendant shall prove any affirmative defense raised by a preponderance of the evidence, ~~including any justification defense under chapter 4 of this title.~~ **Justification defenses under chapter 4 of this title are not affirmative defenses. Justification defenses describe conduct that, if not justified, would constitute an offense but, if justified, does not constitute criminal or wrongful conduct. If evidence of justification pursuant to chapter 4 of this title is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification.**

B. This section does not affect the presumption contained in section 13-411, subsection C and section 13-503.

2006 Ariz. Legis. Serv. Ch. 199, § 2 (S.B. 1145) (West).

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