



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ENIS JOHN CHERAMIE, III
CR-08-0001-PR**

PARTIES AND COUNSEL:

Petitioner: The State of Arizona, represented by Assistant Attorney General Joseph L. Parkhurst. Randall M. Howe, Assistant Attorney General will be arguing the case for Petitioner.

Respondent: Enis John Cheramie, III, represented by Deputy Pima County Public Defender Michael J. Miller

FACTS:

A Tucson police officer stopped Cheramie's car and arrested him for two outstanding misdemeanors. Officers searched the car incident to arrest and found an aerosol can with a false bottom on the floor behind the front passenger seat. The can contained two plastic bags containing approximately 42 grams of methamphetamine. The officers also found between \$400 and \$500 cash in the car's console. While being transported to the police station, Cheramie escaped. He was eventually captured and charged with transportation of a dangerous drug for sale, possession of drug paraphernalia, and second- degree escape.

Several police officers testified at trial about the events surrounding Cheramie's arrest and the discovery of drugs in his car. The State's other witnesses included Cheramie's parole officer, who identified Cheramie, and a criminalist, who verified the quantity and nature of the drug. The State had also planned to call an expert on the "for sale" element of the transportation for sale charge. However, this expert failed to appear and, after the State rested its case, the trial court granted Cheramie's motion for judgment of acquittal on that charge. Over Cheramie's objection, the court substituted for that charge the charge of possession of a dangerous drug, believing it to be a lesser-included offense of transportation for sale.

Following trial, the jury convicted Cheramie of possession of a dangerous drug, possession of drug paraphernalia, and second-degree escape. The trial court sentenced him to concurrent, presumptive prison terms of 4.5 years for the possession of a dangerous drug count, and 1.75 years each for the drug paraphernalia and escape counts.

Cheramie timely appealed, arguing that possession of a dangerous drug is not a lesser-included offense of transportation of a dangerous drug for sale, and therefore his conviction on this count violated his right to notice of the charges against him under the Arizona and United States Constitutions.

ISSUES:

1. Where Appellant was charged with transportation of a dangerous drug for sale, and

where the trial court directed a verdict of acquittal as to the “for sale” element of that offense, did submission of the lesser charge of possession of a dangerous drug to the jury deprive Appellant of his constitutional right to notice of the charge against him?

2. Should this Court accept review of the Court of Appeals’ Opinion in this case where this Court has not determined whether possession of a dangerous drug can be a lesser included offense of transportation of a dangerous drug for sale, and where the majority and the dissent in the Opinion rely on conflicting Arizona case law on the issue?

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