



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JULIO PEDROZA-PEREZ
CR-15-0312-PR**

PARTIES:

Petitioner: Julio Pedroza-Perez

Respondent: State of Arizona

FACTS:

In June 2013, two smugglers led Pedroza-Perez and two other immigrants through the desert and into the U.S. from Mexico. The second day, they met two other smugglers who gave them several bales of marijuana to carry. On the third night, Border Patrol officials and sheriff's deputies spotted the group. When the officials approached, however, they found Pedroza-Perez sitting alone under a tree with six bales of marijuana weighing 134.4 pounds. The others had fled. After his arrest, Pedroza-Perez stated he had carried the marijuana in order to pay for the smugglers' services. Pedroza-Perez was charged with importation of marijuana, transportation of marijuana for sale, and possession of drug paraphernalia.

Pedroza-Perez gave notice that he intended to raise duress as a defense. The State filed a motion in limine to preclude the defense because it was "not supported by the facts." The defense responded that Pedroza-Perez would testify that he acted under duress as he was forced by armed men to carry illegal drugs. After a hearing, the trial court precluded the defense from describing any anticipated testimony in opening statement regarding duress or the fact that a duress defense was being presented. If Pedroza-Perez testified, however, the trial court ruled that the defense could argue the duress defense in closing.

Before trial, Pedroza-Perez sought clarification of the trial court's ruling on the duress defense. He included his sworn affidavit in which he stated that he crossed the border with the help of a coyote to whom he agreed to pay his fee upon reaching Phoenix. After entering the U.S., the coyotes took his possessions and forced him to carry marijuana, on armed threat of death or harm to himself and his family. Pedroza-Perez again requested permission to present a standard opening statement detailing the duress defense and the facts he intended to present, including his testimony as detailed in the affidavit. The trial court reaffirmed its ruling, finding that Pedroza-Perez still could choose not to testify at trial.

Defense counsel did not mention the duress defense in opening statements. Pedroza-Perez testified and related the facts as presented in his affidavit. The trial court instructed the jury on the defense of duress and defense counsel addressed the duress defense in closing. The jury convicted Pedroza-Perez of transportation of two pounds or more of marijuana for sale and possession of drug paraphernalia. The jury did not convict him of the importation charge. Pedroza-Perez was

sentenced to concurrent prison terms, the longest being 50 months.

On appeal, Pedroza-Perez argued that the trial court erred in prohibiting him from discussing this duress defense in opening statement. The court of appeals disagreed. Unlike other witnesses, a criminal defendant has an absolute right not to testify. *State v. Whitaker*, 112 Ariz. 537, 542, 544 P.2d 219, 224 (1975); see U.S. Const. amend. V; A.R.S. § 13-117. Further, prosecutors are prohibited from commenting, directly or indirectly, on a defendant's failure to testify. *State v. Ramos*, 235 Ariz. 230, 233 ¶ 10, 330 P.3d 987, 991 (App. 2014). As a consequence, when "it appears that the defendant is the only one who could explain or contradict the state's evidence," as is the case for Pedroza-Perez, a prosecutor is prohibited from commenting on "the defendant's failure to present [any] exculpatory evidence." *State v. Bracy*, 145 Ariz. 520, 535, 703 P.2d 464, 479 (1985). The court of appeals found that it necessarily follows that if Pedroza-Perez had discussed duress in his opening statement and later exercised his right not to testify, the State would have been unable to respond to his claim. As a result of these "unique circumstances," the court of appeals found that the trial court acted within its discretion in limiting the scope of his opening statement.

The court of appeals also rejected Pedroza-Perez's argument that he was effectively denied an opportunity to present any opening statement. Pedroza-Perez's counsel explained to the jury in opening statement that there was another side to the story and prepared the jury to hear Pedroza-Perez's testimony. Further, the court of appeals found that the trial court's restrictions on his opening statement did not deny Pedroza-Perez his right to present a defense or his right to counsel.

The court of appeals affirmed the convictions and sentences.

ISSUE:

Whether the Court of Appeals erred in holding the trial court properly precluded the defense in opening statement from setting forth the facts related to his duress defense, on the grounds that such restriction was reasonable since Appellant might change his mind about testifying in relation to the defense.

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