



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. HON. ARAGON/MAX FONTES
CR-20-0304-PR
249 Ariz. 573 (App. 2020)**

PARTIES:

Petitioner: State of Arizona

Real Party in Interest: Max Fontes

FACTS:

In April 2018, Max Fontes was driving between 70 and 95 miles per hour in an area with a posted speed limit of 45 miles per hour. Fontes struck a car driven by Angel Shelby while Shelby was attempting to make a left hand turn at an intersection. Neither Shelby nor his seven-month-old son, G.T., were restrained, and both were ejected from the vehicle. Shelby was injured and G.T. passed away. At the time of the crash, Shelby had THC and a related metabolite in his blood. Fontes was indicted on charges of manslaughter, aggravated assault, and criminal damage.

In November 2019, the State filed two motions in limine. First, the State asked the court to preclude arguments, comments, testimony, and evidence related to (1) Shelby and G.T. not being restrained in their car; (2) Shelby's blood analysis, including the presence of THC in his blood; and (3) the fact that marijuana and a glass pipe were located in Shelby's car. The State argued that this evidence was irrelevant under Rule 401, Arizona Rules of Evidence, or alternatively should be precluded under Rule 403 based on the risk that it may confuse the jury. Second, the State asked the superior court to preclude Fontes from presenting a superseding cause defense, arguing that because Shelby's actions in failing to yield and failing to properly restrain himself and G.T. were foreseeable, they could not constitute superseding causes as a matter of law. The superior court denied the State's motions, concluding that a jury could determine Shelby's conduct was a superseding cause, and that there was an insufficient basis at that time to preclude a superseding cause defense.

The State filed a special action in the court of appeals, arguing that the superior court had abused its discretion by allowing a superseding cause jury instruction and by allowing evidence that Shelby and his son had been unrestrained. The court of appeals rejected Fontes's argument that the State's request for special action relief was premature, and accepted special action jurisdiction to consider whether a superseding cause instruction would be inappropriate as a matter of law based on the facts presented in the motions.

The court of appeals agreed with the State's argument that because the risk of harm Fontes foreseeably created was the same risk that injured Shelby and his son, Shelby's conduct could not be a superseding cause. The court of appeals concluded "Fontes's speeding created the foreseeable risk that a fatal accident could occur. That Shelby's conduct increased that risk does not entitle Fontes to a superseding-cause instruction." Op. p. 4 ¶ 9. The court of appeals also stated that it had already determined in *State v. Freeland*, 176 Ariz. 544 (App. 1993) that a victim's failure to wear a seatbelt is not a superseding cause, because it is reasonably foreseeable that some victims of car accidents will not be wearing seatbelts.

Accordingly, the court of appeals vacated the superior court's order concluding that Fontes was entitled to a superseding cause instruction based on Shelby's possible impairment, failure to yield, or failure to properly use restraints, and also reversed the superior court's order denying the State's request to preclude evidence that Shelby and G.T. had been unrestrained.

ISSUES:

1. Did the court of appeals err by accepting special action jurisdiction?
2. If not, did the court of appeals err by defining the "event" in a superseding cause defense as defendant's conduct and finding foreseeability as a matter of law where the defendant's conduct "event" increased the risk of harm to the victim, thereby eliminating the defense of superseding cause?

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