



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. LUVIANO
CR-21-0329-PR
2 CA-CR 2019-0102 (Opinion)**

PARTIES:

Petitioner: Nicolas Luviano

Respondent: The State of Arizona

FACTS:

As officers pulled behind the car Luviano was driving, which was suspected stolen, Luviano jumped out of the car and a foot chase ensued. Luviano attempted to jump a six-foot fence, but officers grabbed his thigh before he could get over it. On the ground, he struggled with officers, resulting in injuries to one officer's hand and elbow. Luviano was eventually taken into custody and later indicted on one count of resisting arrest under A.R.S. § 13-2508(A)(2) for allegedly "[u]sing any other means creating a substantial risk of causing physical injury to the peace officer."

At trial, on its own and without objection, the trial court instructed the jury that they could find Luviano guilty of resisting arrest for "[u]sing or threatening to use physical force against the peace officer," under § 13-2508(A)(1), *or* for "[u]sing any other means creating a substantial risk of causing physical injury to the peace officer," under § 13-2508(A)(2). The jury ultimately found Luviano guilty of resisting arrest.

On appeal, as relevant here, Luviano argued that by instructing the jury that they could alternatively find him guilty of resisting assets under § 13-2508(A)(1), the trial court effectively amended his indictment in violation of Ariz. R. Crim. P. 13.5(b), resulting in fundamental error. The court of appeals, however, rejected Luviano's argument.

The court held that although the instruction did effectively amend the indictment, it did not impermissibly change the nature of the offense for which Luviano was indicted because resisting arrest under § 13-2508(A)(1) and § 13-2508(A)(2) are alternative means of committing a single unified offense, and Luviano was otherwise not prejudiced by the amendment.

The court first reasoned that the plain language of § 13-2508 showed that subsections (A)(1) and (A)(2) were alternative means of committing the single offense of resisting arrest because subsection (A)(2) proscribes using any other "means." The court then determined that even if the language weren't unambiguous, § 13-2508 describes a single unified offense, as opposed to separate offenses, under the four part test in *State v. West*, 238 Ariz. 482, 490 ¶ 20 (App. 2015), which examines (1) the title of the statute, (2) whether there is a readily perceivable connection between the various acts listed in the statute, (3) whether those acts are consistent with and not repugnant to each other, and (4) whether those acts might inhere in the same transaction.

Luviano filed a petition for review in this Court, which was granted as to the following rephrased issue:

ISSUE:

“What standard governs whether a statute describes a single unified offense or separate offenses, and how does that apply in this case?”

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.