



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DAVID JOSEPH DUFFY
CR-19-0386-PR
247 Ariz. 537 (App. 2019)**

PARTIES:

Petitioner/Appellee: State of Arizona
Respondent/Appellant: David Joseph Duffy

FACTS:

In January 2017, Duffy was pulled over driving an SUV with his co-defendant Dora Matias in the passenger seat. The DPS sergeant observed burlap-wrapped bundles in the back seat of the SUV, which he believed to contain marijuana. The DPS sergeant placed Duffy and Matias under arrest, and later testing revealed the bundles contained over 240 pounds of marijuana.

When questioned by the police, Matias admitted that they had been on a trip to pick up marijuana, and that she was going to get paid for the pick-up. She told police that even though Duffy was driving, he didn't know anything about the arrangements to transport the drugs. When questioned by the police, Duffy confirmed that he did not know anything about any plans to pick up drugs. Duffy and Matias were charged with conspiracy, possession and transportation of marijuana for sale, and unlawful possession of drug paraphernalia.

In February 2017, one law firm entered an appearance as counsel for both Duffy and Matias. At the arraignment, the prosecutor expressed concern to the court about the same law firm representing both co-defendants. At the review hearing on the issue, counsel for Duffy and Matias stated that the defendants had waived any conflicts and had a common defense agreement. The prosecutor again expressed concerns about competing interests and the potential for adverse defenses in the matter. The trial court concluded that it was required to defer to defense counsel that Duffy and Matias had waived conflicts.

The case proceeded to trial, with Duffy and Matias jointly represented. The jury found Duffy guilty on all counts, and he was sentenced to a total of six years' imprisonment.

On appeal, Duffy argued that the superior court erred by allowing the same attorney to represent both Duffy and Matias during trial and by failing to adequately inquire into the conflict, despite the prosecutor's repeated warnings that joint representation constituted a conflict of interest. A divided Court of Appeals vacated Duffy's convictions and remanded

the case for further proceedings. Judge Eckerstrom writing for the majority of the Court of Appeals panel determined Rule 32 did not preclude Duffy from challenging on direct appeal the superior court's failure to protect Duffy's constitutional right to conflict-free counsel. The majority also concluded that the trial court, having been alerted to the potential conflict between Duffy and Matias, erred by failing to conduct an adequate inquiry into the propriety of joint representation in this case or the validity of Duffy's purported waiver of his constitutional right to conflict-free counsel. Finally, the majority concluded that Duffy satisfied his burden of establishing that his trial counsel had an actual conflict of interest that adversely affected the representation of Duffy.

Judge Eppich wrote a special concurrence. Judge Brearcliffe concurred in part and dissented in part and in the result; he concluded that the inquiry conducted by the superior court was sufficient to establish Duffy's waiver.

ISSUES:

1. Whether a claim that the trial court failed to adequately protect a defendant's Sixth Amendment right to conflict-free counsel can be raised for the first time on appeal or whether it must be raised in a petition for post-conviction relief.
2. Whether the court of appeals erred when it found that the trial court made an insufficient inquiry into the joint representation in this matter where, inter alia, defense counsel avowed that both defendants had signed a waiver of any conflict arising from the joint representation.

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