



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA
v.
SERGIO ARTURO ROJO-VALENZUELA
CR-14-0364-PR**

PARTIES:

Petitioner: Sergio Arturo Rojo-Valenzuela

Respondent: State of Arizona

FACTS:

The Tucson police were conducting a high-speed car-chase when the suspects' car stopped and the three people inside of it ran away. When Officer Jared Wolfe started to get out of his car to chase them on foot, five gun-shots were fired, two of which hit his car. Officer Wolfe did not see the shooter's face but saw his build and clothing.

A few hours after the shooting, the police found a shirtless Sergio Arturo Rojo-Valenzuela hiding underneath a van. The police arrested him and brought him to Officer Wolfe in what is called a "show-up." Officer Wolfe identified him as the shooter based on his clothing, shoes, and physical stature.

Before trial, Rojo-Valenzuela filed a motion to suppress Officer Wolfe's identification of him as the shooter. The trial court held what is called a "*Dessureault* hearing" to determine whether the officer's identification of Rojo-Valenzuela was reliable enough to be admitted at trial for the jury's consideration. At the end of that hearing, however, the trial court ruled that a motion to suppress does not apply to identifications made by way of build and clothing, and so denied the motion.

After the jury convicted him and the trial court sentenced him to concurrent, 11-year prison terms for aggravated assault with a deadly weapon and attempted first-degree murder, Rojo-Valenzuela argued in the Arizona Court of Appeals that the trial court should have both ruled on the reliability issue and ruled that the officer's identification of him should have been suppressed.

The State agreed that the trial court should have ruled on the reliability question even though this particular identification occurred through the suspect's build and clothing (as opposed to his face), but the State contended that the officer's identification was still necessary, reliable, and ultimately harmless because other evidence pointed to this defendant as the shooter. The State also argued in the alternative that, at most, a limited remand to the trial court may be warranted, as opposed to a full reversal of the convictions.

In a published opinion, the court of appeals agreed with Rojo-Valenzuela and the State that the

trial court erred by concluding that Officer Wolfe's identification was not subject to a reliability analysis under *Dessureault*. The court of appeals then undertook that analysis for the first time on appeal, and held that the officer's pretrial and in-court identifications of Rojo-Valenzuela were, indeed, reliable and admissible. Consequently, the court upheld Rojo-Valenzuela's convictions.

ISSUE:

When a trial court erroneously refuses to perform its fact-finding function at a *Dessureault* hearing, may the appellate court conduct its own *de novo Dessureault* analysis based on its review of the cold transcript, when it cannot evaluate the testifying witness in person?

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