



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. CESAR MONTES
CR-10-0017-PR**

PARTIES:

Petitioner: Cesar Montes

Respondent: The State of Arizona

FACTS:

Montes was charged with first-degree murder and two counts of aggravated assault based on acts that took place in 2005. He argued self-defense. As he awaited trial, the Arizona Legislature enacted and the Governor signed Senate Bill (SB) 1145, placing the burden of proof in justification cases on the State. 2006 Ariz. Sess. Laws, ch. 199 (amending A.R.S. §§ 13-103(B) and 13-205(A) to say “[i]f evidence of justification pursuant to [A.R.S. §§ 13-401 to -420 (2001) (Supp. 2006)] . . . is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification).

Thereafter, in *Garcia v. Browning*, 214 Ariz. 250, 254 ¶ 20, 151 P.3d 533, 537 (2007), the Arizona Supreme Court held that because A.R.S. § 1-244 requires an express declaration of retroactivity from the legislature before a law can be applied retroactively, and because SB 1145 contained no such declaration, the law was to be applied prospectively only. Accordingly, the enactment’s changes applied only to offenses occurring on or after its effective date of April 24, 2006. In response to the court’s opinion in *Garcia*, the 2009 legislature enacted SB 1449, which purported to clarify the legislature’s intent to make SB 1145 apply retroactively to all cases that had not been submitted to a fact finder for a verdict as of April 24, 2006. 2009 Ariz. Sess. Laws, ch. 190.

Montes’s case was submitted to the jury on January 28, 2008. The trial court instructed the jury that Montes had to prove by a preponderance of the evidence that he acted in self-defense. The jury rejected his self-defense claim and found him guilty of second-degree murder and the two aggravated assault counts. The court sentenced him to a prison term totaling 23.5 years.

Montes appealed, arguing for the first time that the trial court’s self-defense instruction was flawed. He relied on *State v. Grannis*, 183 Ariz. 52, 800 P.2d 1 (1995), and argued that the instruction misstated the law because the jury could have interpreted the instruction to mean that actual, rather than apparent, deadly force is necessary to justify using deadly force. The court of appeals affirmed his convictions and sentences, finding the instruction did not constitute fundamental, prejudicial error. *State v. Montes*, 2009 WL 998931 ¶¶ 1, 13 (2 CA-CR 2008-0148, Memorandum Decision, filed Sept. 18, 2009).

Montes moved for reconsideration, arguing that A.R.S. § 13-205(A), amended by SB 1149, discussed above, effective September 30, 2009, constituted a significant change in the law, mandating a new trial. In a published opinion, the court of appeals held that even if the motion for reconsideration was improper under Rule 31.18, Ariz. R. Crim. P., the court would address the argument because Montes tried to raise the issue before the court rendered its first decision and because the issue qualifies as a significant change in the law. Op. ¶ 7. The court determined the legislature violated the Article III separation of powers provision in the Arizona Constitution when it sought to overrule *Garcia* by passing SB 1499 “to clarify” its prior intention “to make Laws 2006, chapter 199 apply retroactively to all cases involving defendants who pled guilty or no contest which were pending when the governor signed the bill into law on April 24, 2006, regardless of when the conduct underlying the charges occurred.” 2009 Ariz. Sess. Laws Ch. 190, § 2.

The court reasoned: “Our supreme court in [*State v. Murray*], 194 Ariz. 373, 375 ¶¶ 5-7, 982 P.2d 1287, 1300 (1999),] held that the legislature’s attempt to overrule its decision in [*State v. Tarango*], 185 Ariz. 208, 914 P.2d 1300 (1996),] and apply flat-time sentences on a retroactive basis violated the separation of powers doctrine of the Arizona Constitution.” Op. ¶ 10. Although the legislature may change the statute for prospective application so long as cases are decided on the basis of the court’s interpretation of the substantive law existing when the events in question occurred, the court’s interpretation, binding under the separation of powers principles in Article III of the Arizona Constitution, cannot be overruled retroactively. *Id.*

In this case, the legislature enacted SB 1449 precisely to overrule retroactively *Garcia*’s ruling that SB1145’s changes to statutory provisions concerning the burden of proof in justification defense cases could not apply retroactively. *See State v. Fell*, 209 Ariz. 77, 82 ¶ 17, 97 P.3d 902, 907 (App. 2004) (“A legislative attempt to retroactively overrule a decision by the courts of this state interpreting a statute violates the separation of powers doctrine.”). Guided by *Garcia*, the court found the burden of proof in justification defense cases shifts to the State only when the offense at issue was committed on or after April 24, 2006. *See Fell*, 209 Ariz. at 83 ¶ 20, 97 P.3d at 908 (“Once the supreme court interpreted [the statutory provision], that interpretation became part of the statute.”). The legislature’s subsequent attempt to overrule *Garcia* was therefore unconstitutional. Op. ¶¶ 10-11.

The court rejected Montes’s claim that the legislature’s enactment of SB 1449 is not unconstitutional because *Garcia* found “nothing in the United States Constitution or the Arizona Constitution prohibits applying Senate Bill 1145” retroactively. 214 Ariz. 250, ¶ 19, 151 P.3d at 537. As *Garcia* noted, the issue was not whether the Senate Bill could have been applied retroactively when enacted, but whether the legislature’s attempt to overrule retrospectively the supreme court’s interpretation of the Senate Bill was unconstitutional. *Id.* Here, the court found SB 1499 unconstitutional because it attempted to change the statute as interpreted by the supreme court. Op. ¶ 13, applying *Fell*, 209 Ariz. at 83 ¶ 20, 97 P.3d at 908 (supreme court’s interpretation becomes part of a statute). *Fell* clearly held that the legislature cannot nullify a supreme court decision by “clarifying” the law. *Id.* at 82 ¶ 17, 97 P.3d at 907.

Montes seeks review in this court, asserting that the court of appeal's opinion erred in ruling that SB 1449 was an unconstitutional violation of separation of powers principles.

ISSUE: Does Senate Bill 1449 violate separation of powers?

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