

SUPREME COURT OF ARIZONA

Jorge Romero-Millan, et al. v. William Barr

No. CV-20-0128-CQ · No. No. CV-20-0128-CQ · Decided April 19, 2022

SUMMARY

The Supreme Court of Arizona answered in part certified questions from the United States Court of Appeals for the Ninth Circuit concerning Arizona drug offenses and federal immigration removability. The court declined to answer whether Arizona’s drug paraphernalia and narcotic drug statutes are divisible under federal law and declined to decide the jury-unanimity issue under the drug paraphernalia statute. It held that under A.R.S. § 13-3408, the identity of the alleged narcotic drug is an element requiring jury unanimity.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Justice Beene; Chief Justice Brutinel; Vice Chief Justice Timmer; Justice Bolick; Justice Lopez; Justice Pelander (Ret.)
JURISDICTION	Arizona
DECIDED	April 19, 2022
DOCKET	No. CV-20-0128-CQ
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Ninth Circuit certified three questions of Arizona law concerning whether Arizona drug paraphernalia and narcotic-drug statutes require jury unanimity as to the specific drug involved. The Arizona Supreme Court accepted jurisdiction, declined to answer the first two questions concerning federal divisibility doctrine, declined to answer the third question as to the drug-paraphernalia statute, and answered the third question affirmatively as to the narcotic-drug possession statute.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo; the court independently determines the meaning of the statute.
PRECEDENTIAL VALUE	published
PARTIES	Jorge Romero-Millan, Ernesto Hernandez Cabanillas, Marco Antonio Garcia-Paz v. William P. Barr, Attorney General

TOPICS

immigration

statutory interpretation

criminal procedure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Arizona's possession-of-drug-paraphernalia statute, A.R.S. § 13-3415, is divisible as to drug type under federal law.
2. Whether Arizona's narcotic-drug possession statute, A.R.S. § 13-3408, is divisible as to drug type under federal law.
3. Whether jury unanimity is required as to the specific drug involved in an offense under A.R.S. § 13-3415.
4. Whether jury unanimity is required as to the specific drug involved in an offense under A.R.S. § 13-3408.

HOLDINGS

1. The court declined to answer the first two certified questions because federal divisibility is a matter of federal law, not Arizona law, and vacated its order accepting jurisdiction over those questions.
2. The court declined to answer whether jury unanimity regarding the identity of a specific drug is required under Arizona's drug-paraphernalia statute.
3. The identity of the alleged narcotic drug is an element of an offense under A.R.S. § 13-3408, and the jury must unanimously agree on that specific drug.

KEY QUOTATIONS

“Because the “divisibility” of a criminal statute pertains solely to federal law, and no Arizona court has addressed the issue, we improvidently accepted the first two questions and now decline to answer them.” (¶ 2)

“Although we decline to answer that question in relation to § 13-3415, we conclude that the identity of an alleged narcotic drug is an element of § 13-3408, and therefore jury unanimity is required.” (¶ 22)

FACTUAL BACKGROUND

Romero-Millan, Cabanillas, and Garcia-Paz were Mexican natives lawfully residing in the United States. Romero-Millan was convicted of possessing or using drug paraphernalia under A.R.S. § 13-3415, while Cabanillas and Garcia-Paz were convicted of possessing a narcotic drug for sale under A.R.S. § 13-3408(A)(2). Their drug convictions resulted in removal orders, which the Board of Immigration Appeals affirmed.

PROCEDURAL HISTORY

The petitioners were convicted in Arizona of drug-related offenses and were subsequently ordered removed from the United States by an immigration court; the Board of Immigration Appeals affirmed. In consolidated appeals, the Ninth Circuit certified questions to the Arizona Supreme Court because no controlling Arizona precedent addressed the relevant issues. The Arizona Supreme Court vacated its order accepting jurisdiction over the first two questions and answered the state-law jury-unanimity question only with respect to A.R.S. § 13-3408.

DISPOSITION

other

REMAND INSTRUCTIONS

The Ninth Circuit should determine the § 13-3415 jury-unanimity issue under existing Arizona law. The Arizona Supreme Court answered the § 13-3408 question affirmatively and declined to answer the federal divisibility questions.

CASES CITED

- State v. Newton, 200 Ariz. 1, 2 ¶ 3 (2001)
- Romero-Millan v. Barr, 958 F.3d 844, 849 (9th Cir. 2020)
- Descamps v. United States, 570 U.S. 254, 257 (2013)
- State v. Soza, 249 Ariz. 13 (App. 2020)
- Kaiser v. Cascade Cap., LLC, 989 F.3d 1127, 1131-32 (9th Cir. 2021)
- Commissioner v. Bosch's Estate, 387 U.S. 456, 465 (1967)
- Judd v. Weinstein, 967 F.3d 952, 955-56 (9th Cir. 2020)
- BSI Holdings, LLC v. Ariz. Dep't of Transp., 244 Ariz. 17, 19 ¶ 9 (2018)
- Lewis v. Debord, 238 Ariz. 28, 30-31 ¶ 8 (2015)
- Redgrave v. Ducey, 251 Ariz. 451, 457 ¶ 22 (2021)
- Rosas v. Ariz. Dep't of Econ. Sec., 249 Ariz. 26, 28 ¶ 13 (2020)
- Nicaise v. Sundaram, 245 Ariz. 566, 568 ¶ 11 (2019)
- State ex rel. Montgomery v. Harris, 237 Ariz. 98, 101 ¶ 12 (2014)
- State v. Wright, 239 Ariz. 284, 284 ¶ 1, 285 ¶ 6 (App. 2016)
- State v. Siplivy, 228 Ariz. 305, 306 ¶¶ 1-2 (App. 2011)
- State v. Tarango, 182 Ariz. 246, 247-49 (App. 1994)
- State v. Padilla, 176 Ariz. 81, 82, 85-86 (App. 1993)
- State v. Aikins, 17 Ariz. App. 328, 330, 336 (1972)
- State v. Jurden, 239 Ariz. 526, 529 ¶¶ 10-11 (2016)
- United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221 (1952)