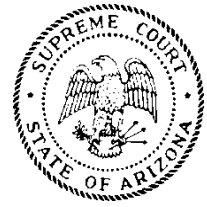




**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v.
GIOVANI FUSTER MELENDEZ
CR-23-0215-PR**

PARTIES:

Petitioner: Giovanni Fuster Melendez

Respondent: State of Arizona

FACTS:

Giovani Melendez (“Melendez”) appealed from his convictions and sentences for one count of aggravated assault and five counts of endangerment.

While A.G. was walking to his apartment, he noticed a car drive up and park nearby. Melendez exited the car and called out asking A.G. if he “was the pastor’s son.” When A.G. responded, “yes,” and walked toward Melendez to greet him, Melendez pulled out a handgun and fired at A.G. multiple times. A.G. was not struck by any of the fired shots. Police found bullet marks on the outside wall of a nearby apartment where a family of five was present.

Melendez was taken into custody, given his *Miranda* warning, and transported to the police station. Once at the station, prior to the detective rereading the *Miranda* warning, Melendez stated that he had never been in this situation before and wanted “to hear what’s going on.” The detective said she also wanted to hear “what was going on,” and then read Melendez his *Miranda* rights. Melendez said he understood his rights. The detective started by explaining that she wanted to get Melendez’s “side of the story,” but first asked him background questions, including his name, birthdate, phone number, information about his employment, and whether he had previous interactions with A.G. or the pastor. Melendez answered each of the background questions.

When the detective asked why Melendez went to the apartment complex and shot at A.G., he responded, “I want to hold some stuff I want to say.” Several minutes later, when the detective asked Melendez if he felt like he needed to protect himself from A.G., Melendez repeated, “I still want to hold off on some information.” About fifteen minutes into the thirty-minute interview, the detective told Melendez he was going to jail because he committed a crime. Melendez said he felt blindsided. The detective asked Melendez to clarify what he was not sure about so she could better explain things to him. Melendez said he was confused about what the pastor was telling the police and the detective clarified that the pastor was not saying anything.

The detective explained that people heard Melendez ask A.G. if he was the pastor’s son, and asked Melendez, “do you have a problem with [A.G.]?” Melendez answered that he “barely talked to them,” and the detective inquired why he was asking about the pastor, to which Melendez replied, “I’m passing this question,” and that he “just want[ed] to hold everything for now.” The detective responded, “[a]nd that’s fine. That’s your right,” and explained that Melendez had one last chance to tell her his side of the story, and then left the room. When the detective returned, she explained again that Melendez would be going to jail.

Then, Melendez shared his version of what occurred. He explained it was his habit to drive around his old neighborhood, and when he saw A.G., he got out of his car (because his window did not roll down) and asked if A.G. was the pastor's son. A.G. responded “Oh, que pasa cabron” and walked aggressively towards Melendez, while moving his hand as if he were “looking for something.” Melendez told the detective that he “reacted to [A.G.] being hostile towards [me] and walking towards me.”

At trial, A.G. testified that he approached Melendez, who had his hand behind his back, and when A.G. moved his hand to greet Melendez, Melendez pulled out the gun and fired at him several times, prompting A.G. to run away. A friend of A.G. who saw the incident testified to a similar version of events.

Melendez elected to testify at trial. His testimony, in general, tracked his interview with the detective. He explained that Spanish is his first language, and that the term ‘cabron’ represents a “male goat.... So, you know, it can be used – at least in Puerto Rico it can be used as an offense.” Melendez had told the detective that he moved from Puerto Rico about a year-and-a-half before the shooting. Melendez also explained that the phrase could be used “if you are cool with a person and you’re friends” to convey a greeting, like “what’s up, dude?”

On cross-examination, the prosecutor questioned Melendez about the interview, asking—among other questions—“while you were talking to [the detective] you never claimed self-defense until after she told you[,] you were going to jail?” During closing arguments, the prosecutor played portions of the interview and emphasized that Melendez choose not to answer certain questions and failed to offer a timely explanation for his conduct until he was told he was being arrested.

Melendez’s trial counsel did not object during trial to the prosecutor’s references to Melendez’s selective silence and decision to not answer certain questions during the interview. On appeal, the Court of Appeals held that the State’s references during cross-examination and closing arguments to Melendez’s selective silence during a pre-arrest, post-*Miranda* interview was fundamental, prejudicial error. The State filed a petition for review.

ISSUE:

Where Melendez waived his right to remain silent, but deferred responding to some questions during a post-*Miranda* police interview, was it a due process violation for the State to use the interview to impeach his testimony at trial that he acted in self-defense?

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.