

***Louis E. Cespedes v. Hon. Lee/State of Arizona***

**Citation:** No. CR-16-0384-PR, 2017 WL 4052199 (Ariz. Sept. 14, 2017).

**Date Filed:** September 14, 2017

**Author:** Justice Gould

**Joined by:** Chief Justice Bales, Vice Chief Justice Pelander, Justice Timmer.

**Dissent:** Justice Lopez, joined by Justice Brutinel and Justice Bolick.

**Facts and Procedural History:** A grand jury indicted petitioner Cespedes on two counts of child abuse. The prosecutor had instructed the grand jury as follows:

Justification defenses that we're going to get into now, the legislature changed this. . . . Now, all justification statutes are no longer affirmative defenses. So if somebody alleges that then, as you see, the state must prove beyond a reasonable doubt the defendant did not act with justification. So once that is raised—and, again, you're not going to be making those decisions—although—well, you're going to be making—you certainly can make a decision as to whether someone was justified in committing the crime, but in terms of when you go to trial, a person can allege that they were acting in self-defense and then the state has to disprove that beyond a reasonable doubt. That will become clear to you as we go now to Chapter 4, which we're going to spend the rest of the morning on.

. . . .

So when is somebody justified in using physical force under 403? A parent, guardian, teacher or other person entrusted with the care and supervision of minors or incompetent persons can use reasonable and appropriate physical force upon that person when and to the extent reasonably necessary and appropriate to maintain discipline.<sup>1</sup>

The petitioner filed motions to dismiss the indictment and remand to the grand jury for a new determination on probable cause, arguing that he was denied a substantial procedural right because the prosecutor misstated the law of justification.<sup>2</sup> He specifically argues that the prosecutor incorrectly advised the grand jurors not to consider whether his use of physical force was justified under state law.<sup>3</sup> The superior court denied both motions and the court of appeals declined to accept jurisdiction.

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<sup>1</sup> Cespedes v. Lee, No. CR-16-0384-PR, 2017 WL 4052199, at \*1-2 (Ariz. Sept. 14, 2017).

<sup>2</sup> See ARIZ. R. CRIM. P. 12.9(a) (stating that an indictment may be challenged on the grounds that a defendant was denied a substantial procedural right during the grand jury proceedings).

<sup>3</sup> ARIZ. REV. STAT. ANN. § 13-403(1) (2017) (providing that a parent's use of "reasonable and appropriate physical force" is justified "to the extent reasonably necessary and appropriate to maintain discipline").

The Arizona Supreme Court granted review of the grand jury instruction issue.

**Issue:** In grand jury instructions, prosecutors are required to instruct grand jurors on all applicable law, which includes explaining justification defenses relevant to determining the existence of probable cause. A justification defense determination requires jurors to consider whether a defendant's actions were reasonable under the circumstances. When a prosecutor instructs the grand jury that they "can" decide whether the petitioner's acts were justified, and explains that they would "have to decide" whether the petitioner's use of force was reasonable, does he misstate the law regarding justification?

**Holding:** No. The prosecutor correctly instructed the jury on the defense of justification.

**Disposition:** The superior court's denial of Cespedes' motions is affirmed.

**Rule:** A prosecutor's duty to instruct grand jurors on all applicable law includes explaining justification defenses relevant to determining the existence of probable cause.

**Reasoning:**

- **The Prosecutor Correctly Stated the Law of Justification:** The prosecutor correctly explained that under state law,<sup>4</sup> "justification is a defense in any prosecution for an offense pursuant to this title," and that if one's act is justified, he may be protected by the law.<sup>5</sup>
- **The Prosecutor Instructed the Grand Jury on All Applicable Law:** Reviewing the instructions as a whole, the prosecutor correctly instructed the grand jury on justification pursuant to state law.<sup>6</sup> The prosecutor correctly advised the grand jury that justification determination occurs at trial and that while they would not have to make that decision, they would still be making determinations about whether the petitioner's use of force was reasonable.<sup>7</sup> This instruction, coupled with the significant time he spent on explaining justification, made it clear that the grand jurors could decide whether a defendant's conduct was justified based on the facts of the case.<sup>8</sup>
- **The Prosecutor Properly Instructed the Grand Jurors Regarding The Standard of Reasonableness for using Physical Force:** An objective standard is used to determine whether a defendant's use of force was reasonable;<sup>9</sup> therefore, the

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<sup>4</sup> *Id.*

<sup>5</sup> Cespedes, 2017 WL 4052199, at \*2.

<sup>6</sup> § 13-403(1).

<sup>7</sup> Cespedes, 2017 WL 4052199, at \*3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

prosecutor correctly instructed the jury to determine whether the petitioner's use of force was "reasonable under the circumstances."<sup>10</sup>

- **The Prosecutor's Instruction Regarding Child Abuse Did Not Prevent the Grand Jury from Considering his Justification Defense:** The relevant law states that any person who causes a child to suffer physical injury is guilty of child abuse, and does not require proof that the defendant is a parent of the child.<sup>11</sup>

**Dissent (Lopez):** The dissent argues that the justification instruction did not comply with the relevant legal standard and failed to properly instruct the jury for two reasons: first, the prosecutor conflated the roles of the trial and grand juries and erroneously informed the grand jury it would not be making justification decisions.<sup>12</sup> Second, the prosecutor erroneously implied that a justification determination was permissive, rather than mandatory, by instructing the grand jury that they "can" make a decision as to whether the petitioner was justified in committing a crime.<sup>13</sup>

Because it is not clear whether, beyond a reasonable doubt, the flawed instruction influenced the grand jury's determination, the dissent would remand for a redetermination of probable cause.<sup>14</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> § 13-3623(B).

<sup>12</sup> *Cespedes*, 2017 WL 4052199, at \*5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*6.