



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310**

**CR-01-0272-AP
State v. Smith**

PARTIES

Appellant Smith: Represented by John W. Rood, III, Law Firm of John W. Rood, III
State of Arizona: Represented by Kent E. Cattani, Chief Counsel, Capital Litigation
Section and J.D. Nielsen, Assistant Attorney General

FACTS:

At approximately midnight on August 21, 1983, Bernard Smith entered the Low Cost Market in Yuma. At the counter, he requested a pack of cigarettes and paid for them. Once the cashier opened the cash register, Smith pulled back the hammer on the .22 caliber, single-action revolver he was carrying and told the cashier to give him the money in the register. The cashier did not immediately comply with Smith's demand; instead he twice called out the name of the market's manager. Smith then discharged the gun, shooting the cashier in the neck. Smith went around the counter to remove the currency from the cash register and left the store.

After witnesses called the police with Smith's license plate number, a Yuma County Sheriff's Deputy stopped Smith's vehicle. In Smith's car, the police found blood- stained currency and a .22 caliber pistol with one bullet missing from the chamber.

Smith was charged with armed robbery and first degree murder. While in custody for the incident at the Low Cost Market, he was also charged with armed robberies of three Yuma Circle K stores occurring on July 23, August 14, and August 15, 1983. Prior to his trial for the Low Cost Market robbery and the cashier's murder, a jury convicted him of the Circle K robberies and the court sentenced him to three life sentences.

At his trial for the Low Cost Market incident, the jury convicted Smith of both robbery and first degree murder. The trial court held an aggravation/mitigation hearing and sentenced Smith to death. On direct appeal, the court affirmed the conviction and sentence.

After three unsuccessful post-conviction relief petitions and a federal district court denial of a writ of habeas corpus, the Ninth Circuit held that Smith did not receive effective assistance of counsel during the sentencing phase of his trial, and thus he must be resentenced. In 2001, Smith was again sentenced to death.

ISSUES:

1. Whether the trial court erred when it failed to recuse itself from doing the resentencing and whether Judge Johnson erred in failing to disqualify Judge Nelson.
2. Whether the trial court failed to give sufficient weight to mitigating factors, which if found, would have required a sentence other than death.
3. Whether the court's failure to grant Smith's request for a jury to sentence him was error
4. Whether Arizona's death penalty is unconstitutional.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts 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.

Wednesday May 29, 2002



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CASE SUMMARY

State of Arizona v. Fletcher Casey, No. CR-01-0223

Parties and Counsel:

Petitioner: Fletcher Casey by D. Jesse Smith (Tucson). Also represented by June Ava Florescue (Glendale) on appeal.

Respondent: State of Arizona by Janet Napolitano, Randall Howe and Robert Walsh, Office of the Attorney General (Phoenix).

Facts and Proceedings Below.

Petitioner Casey was convicted of aggravated assault, a class 3 felony and sentenced to a presumptive 11.25 years in prison. The State presented police witnesses who testified when they arrived at the scene they found the victim (Jimmerson) with a gunshot wound in his abdomen. Jimmerson told them Casey had shot him. Casey was seen fleeing from the scene and was apprehended by police. Casey testified in his own behalf that he had come home, found his pregnant girlfriend and Jimmerson using drugs, a fight had ensued and Jimmerson had pulled out a gun. Casey had fought with Jimmerson over the gun to defend himself and the gun had discharged.

In addition to defining self-defense, the court instructed the jury:

The Defendant must prove the defense of self-defense by a preponderance of the evidence.

“Preponderance” means that the defense of self-defense is more probably true than not true. In determining whether the defendant has met this burden, consider all the evidence, whether produced by the State or the defendant.

However, the burden of proof with regard to the elements of the charged offense is with the State. The burden of proof never shifts during the trial. That burden of proof is proof beyond a reasonable doubt . . .

Casey objected to the instruction, stating that it erroneously shifted the burden of proof of self-defense to him when the case law was clear the state had the burden of proof that Casey had not acted in self-defense.

The court denied that objection, stating it was based on A.R.S. § 13-205. Casey argue that it was not proper to shift the burden of proof on self-defense. The jury convicted Casey of aggravated assault. Casey moved for a new trial and to vacate the judgment, arguing that the above instruction was vague and misleading and violated due process because once Casey there was any evidence of self-defense the State had the burden to show lack of self-defense. The trial court denied both motions.

The Court of Appeals affirmed, following *State v. Farley*, 199 Ariz. 542 (App. 2001), *review denied* (Oct. 30, 2001), which upheld A.R.S. § 13-205(A) under Arizona's due process clause.

Issue Presented:

“Whether the jury instruction on self-defense was an incorrect statement of the law and improperly shifted the burden of proof?”

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**MEDASYS ACQUISITIONS CORP. v. SDMS, P.C.,
CV-02-0045-PR**

Parties and Counsel:

Petitioner SDMS, P.C., is represented by Bryan F. Murphy and Jake D. Curtis of Burch & Cracchiolo. Respondent Medasys Acquisition Corporation, dba Medasys Digital Systems, is represented by Thomas E. Littler of Warnicke & Littler.

Facts:

Dr. Krishna Pinnamaneni, an endocrinologist and a principal of SDMS, purchased a nuclear imaging system from Medasys for use in his practice. The contract provided that SDMS would trade in its old imaging equipment valued at \$9,588, and make a down payment of ten percent of the \$109,000 purchase price.

Shortly after delivery, Dr. Pinnamaneni noticed that the equipment was unable to do various functions needed for his practice, which he specifically had told the sales representative he needed, and which he was assured the equipment could do. When SDMS refused to pay the outstanding purchase balance, Medasys brought suit for breach of contract and unjust enrichment. SDMS counterclaimed for breach of contract, breach of warranty, and consumer fraud. It sought rescission, lost profits, incidental, consequential, and punitive damages.

At the outset of trial, SDMS elected to pursue only rescission and punitive damages. Medasys thereafter sought judgment, as a matter of law, on the claim for punitive damages on the ground that punitives cannot be awarded where a rescission remedy is elected. The trial court denied the motion.

Following trial, the jury found in favor of SDMS on Medasys's claims. Sitting as an advisory jury on the equitable claims, it found that SDMS was entitled to rescission, and recommended \$20,488 in rescission damages, representing the cost of the down payment plus the value of the SDMS's old imaging system. The jury also recommended that SDMS be awarded \$275,000 in punitive damages. The trial court adopted the jury's recommendations, and also awarded SDMS pre- and post-judgment interest and attorney's fees.

Medasys appealed, asserting that the award of punitive damages was improper. Because the appeals court agreed, it reversed and vacated the punitive damages award.

Questions of Law Presented:

- (1) Does the rule precluding punitive damages in rescission actions have any current, valid purpose in Arizona given the merger of courts of law and equity?
- (2) Does correct application of the election of remedies doctrine to the underlying action, in which fraudulent misconduct by Medasys was found by both judge and jury, preclude a punitive damages award?

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Wednesday Mar 29, 2002



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CV-01-0437-PR

**MICHAEL HERNANDEZ and IDA HERNANDEZ v.
STATE OF ARIZONA; ARIZONA STATE PARK
SERVICE. 1 CA-CV 01-0008 (Opinion).**

I. Petition for review filed by Joel T. Ireland of Goldberg & Osborne, attorney for plaintiffs/appellants Hernandez. Response filed by Assistant Attorney General Daniel P. Schaack.

II. **ISSUES**

“1. Whether a Notice of Claim filed pursuant to A.R.S. Section 821.01 for the purposes of making a demand and attempting to settle a claim against the State of Arizona is an offer to settle a disputed claim prohibited from admission into evidence by Rule 408, *Arizona Rules of Evidence* at the trial of the matter.

III. **BACKGROUND**

This is an appeal from a defense verdict in a negligence case. Plaintiff Hernandez and his family were visiting Patagonia State Park for camping and fishing. It was not their first time at the park. After dark, Hernandez and his son attempted to buy bait from the camp store, only to learn that they had to go to the marina store. The camp store was on a hill above the marina store. Rather than using the paved road or a path, Hernandez and his son began to scramble down the “very steep” hill from the camp store to the marina store. At the bottom of the hill was a retaining wall with a 14-foot drop to the road below. In the dark, Hernandez stepped off the retaining wall and fell. He knocked out several of his front teeth and fractured his wrist. He sued the State for not adequately warning of the drop off at the retaining wall.

The jury returned a defense verdict. The Court of Appeals affirmed, with Judge Voss dissenting. The issue on review involves the plaintiff’s notice of claim and its use at trial.

As a person making a claim against a public entity, Hernandez was required by § 12-821.01 to serve a notice of claim on the public entity within 180 days after the cause of action accrued. “The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed” and must also contain a specific amount for which the claim can be settled. The plaintiff’s notice of claim was filed over the signature of his attorney. The notice of claim states that Hernandez was walking on a trail and stepped off the retaining wall, believing he was still on the trail. This statement caused problems for the plaintiff at trial because its account of the accident differed greatly from the facts of the accident presented to the jury by stipulation. The defense used it to impeach Hernandez’s credibility and also used it in closing to cast aspersions on the plaintiff’s lawyer’s credibility. Dissent, ¶ 32.

The trial court permitted the defense to use the notice of claim to impeach Hernandez over the plaintiff’s objection that the notice of claim was inadmissible as an offer of settlement pursuant to Evidence Rule 408. The appeals court majority affirmed. The majority and dissenter Judge Voss disagreed over whether the notice was an offer of settlement within the meaning of the rule.

Evidence Rule 408 excludes evidence of offers of settlement or compromise, but also “evidence of conduct or statements made in compromise negotiations.” The dissent argues that the notice of claim was a statement made in settlement negotiations and also that it should have been excluded because the statements about the circumstances of the accident were irrelevant because the facts of the accident were stipulated to by the parties for trial. The majority and the defense contend that the statements in the notice of claim were not being admitted for their truth but to question the credibility of Hernandez. That issue was significant both regarding how the accident happened but also on matters of damages. Rule 408 allows evidence arising out of settlement discussions when offered for purposes such as showing bias or prejudice.

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