



**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**

Case: CR-02-0093

Parties: State of Arizona v. Charles Gerald Conard

Counsel: Charles Gerald Conard is represented by J. Douglas McVay.
The State of Arizona is represented by Randall M. Howe, Chief Counsel,
Criminal Appeals Section and Robert A. Walsh, Assistant Attorney General

Facts: This petition arises out of the prosecution of Charles Conard for one count of manslaughter. Conard was convicted by a jury of the lesser included offense of negligent homicide, a felony offense. This action arises out of a car accident that occurred in Phoenix. Conard was driving his truck when another driver pulled out from a side street attempting to make a left hand turn across southbound traffic to go north on 59th Avenue. Conard steered his vehicle to the left but was unable to avoid a collision. Conard's pick up truck "T-boned" the smaller vehicle driven by the other driver. The impact caused the other driver to die at the accident scene.

The manslaughter claim was based on a claim that Conard was excessively speeding. There was no other factual basis for the charge. For instance, there was no claim that Conard was under the influence of alcohol or drugs. Conard's defense was that the other driver attempted to turn left suddenly and Conard was unable to avoid the accident.

To support its claim that Conard's excessively speeding caused the accident, the prosecution offered the testimony of two accident reconstructionists and a witness. The accident reconstructionists testified that the skid marks from Conard's vehicle and other physical evidence at the accident scene showed that Conard was speeding at least twenty-five miles above the posted speed limit of 40 miles per hour.

Five days before trial, Conard's attorney filed a motion to continue trial because blood test results from the body of the victim had not yet been received. The trial court denied that motion. Conard's attorney again asked the court for a continuance on the morning of trial on the basis that the blood test results still had not been given to the defense. The record is clear that neither Conard nor his attorney was at fault for the delay in the blood test results being obtained. The court again denied the request to continue the trial until the blood test results were available.

Trial was held. After the close of evidence, but before closing arguments, the crime lab informed Conard's counsel that the victim's blood was negative for both THC (the active ingredient of marijuana) and for 11-OH-THC (the equipotent active metabolite of THC). However the victim's blood contained 34 nanograms per milliliter (ng/ml) of cannabinoids as carboxy-THC, which is an inactive and non-psychoactive metabolite of marijuana.

Based on this information, Conard's attorney filed a motion to re-open trial to allow him to introduce evidence that the victim's blood contained carboxy-THC. Conard argued that although carboxy-THC is an inactive metabolite of marijuana, by having that metabolite in his blood the victim violated A.R.S. § 28-1381(A)(3), a law that states that a person violates Arizona law by operating a motor vehicle while his body contains any of the drugs listed in that statute or the metabolites of any of the listed drugs. Conard argued he was entitled to present the evidence to the jury that at the time of the accident, the victim violated Arizona law by having an inactive metabolite of marijuana in his body. The court denied Conard's motion to re-open the trial.

Conard was convicted of negligent homicide. He then filed a motion for a new trial, again arguing he was entitled to present evidence that the victim's body contained carboxy-THC. Again, the trial court denied his motion.

Conard appealed, arguing that the trial court abused its discretion by denying his motion to reopen the trial and his later motion for a new trial. Both motions claimed Conard was entitled to introduce the newly discovered evidence that the victim had marijuana metabolite in his blood at the time of the collision.

The court of appeals affirmed Conard's conviction. First, the court agreed that Conard was blameless about the late discovery of the marijuana metabolite in the victim's blood. The court noted that Conard had sought and obtained a court order directing the Maricopa County Medical Examiner to release the victim's body fluid samples for independent testing and Conard had timely directed the medical examiner to send the samples for testing. However, the test results did not come back until after both parties had finished presenting evidence in the jury trial. The court of appeals also acknowledged that as soon as he could - before the parties started closing arguments to the jury - Conard's counsel informed the trial judge that the blood tests had come back and Conard's counsel sought to re-open the trial to present that evidence to the jury. The court denied the motion. The trial court relied on a previous case, State v. Krantz, 174 Ariz. 211 (App. 1992), which affirmed a trial court's decision to preclude evidence of methamphetamine in the victim's system.

However, the court of appeals noted that Krantz involved very different facts. In Krantz, the victim who was killed was seated on a stationary motorcycle in the center turn lane with his motorcycle lights on. Krantz, who was very intoxicated, ran into the victim and killed him. The court in Krantz held that based on those unique circumstances, it did not matter if the victim was impaired because the victim's impairment would not have assisted Krantz in defending himself against charges for running into the stationary victim.

In this case, the State argued at trial, and the trial court agreed, that it did not matter that the victim whom Conard hit had an inactive metabolite of marijuana in his body. First, the accident could have been avoided if Conard had not been speeding more than twenty-five miles above the speed limit. Second, there was no proof that the victim was impaired by marijuana at the time of the accident because all the presence of the inactive metabolite in his body showed was that in the several days before the accident the victim had probably used marijuana . Therefore, the court of appeals held that the trial court could have reasonably decided that the newly discovered evidence was at best ambiguous and did not warrant either a re-opening of trial or a new trial.

Petitioner seeks review. The Supreme Court of Arizona has agreed to consider this **issue**: “Did the trial court clearly abuse its discretion in denying Petitioner’s request to reopen his case and his subsequent motion for a new trial?”

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.



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Scottsdale Healthcare Inc. v. AHCCCS and Phyllis Biedess and Banner Health System v. AHCCCS and Phyllis Biedess, Nos. CV-02-0190 PR, CV-02-0218-PR and CV-02-0220-PR (Consolidated)

Parties and Counsel:

Plaintiffs/Petitioners: Scottsdale Healthcare, Inc. and Banner Health System by Richard Burnham and Cameron Artigue, Gammage & Burnham.

Defendants/Respondents: AHCCCS and Phyllis Biedess by Logan Johnston, Johnston & Kelly

Facts and Proceedings:

These cases involve undocumented aliens who presented themselves at hospitals in Arizona for emergency care. In each case, the individual was admitted to the hospital's acute care unit with severe, life-threatening injuries. After treating each patient in that unit, the hospital transported each patient to the acute-rehabilitation unit where the hospital continued to provide treatment for serious effects from the injuries. AHCCCS paid for the care provided in the acute care units, but refused to pay for most or all of the care in the acute-rehab units, claiming such services were not emergency medical services.

In each case, the hospital filed a grievance from the denial of reimbursement. AHCCCS denied the grievances holding, in part, rehab was not for an emergency medical condition, the extent of AHCCCS' obligation for undocumented aliens. Rather, AHCCCS held the rehab services were for chronic conditions requiring long-term care and thus not emergent and not meeting the immediacy requirement for continued care. The Superior Court reversed each of AHCCCS' decisions, holding the medical conditions met the requirement for reimbursement as a medical emergency and AHCCCS had misinterpreted the law, continuing to apply a bright line test for exclusion from coverage prohibited by *Mercy Healthcare Arizona v. AHCCCS*, 181 Ariz. 95 (App. 1994). In one of the cases, the court also held AHCCCS' decision was based on a "24 hour benchmark," providing that AHCCCS will not pay for services unless those services, if withdrawn, would put the patient at emergency risk within 24 hours.

In each case, the Court of Appeals reversed the trial court. In *Scottsdale Healthcare Inc.*, the Court of Appeals stated that under A.R.S. § 36-2905.05(A) (now A.R.S. § 36-2901.06), AHCCCS only has to reimburse for care for undocumented

aliens for services necessary to treat an emergency condition as defined by 42 U.S.C. §1396b.v.3. Section 1396b defines an emergency medical condition as

a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.

The Court of Appeals held § 1396b did not provide coverage for chronic conditions requiring continuous daily care after initial emergency treatment, even though cessation of ongoing care could have grave consequences for the patients. Rather, reimbursable care was limited to the immediate care needed to treat the emergency condition and stabilize the patient. The Court of Appeals also stated its decision did not conflict with *Mercy*.

In the two *Banner Health System* cases, the Court of Appeals relied on its decision in *Scottsdale Healthcare, Inc.*, and reversed. The Court of Appeals also held the test for reimbursement for emergency services is not whether the patient was ineligible for discharge or medical necessity, but immediacy. Chronic conditions requiring continuous daily care following initial emergency treatment are not covered.

Mercy requires reimbursement if “the absence of immediate treatment for a medical condition manifested by an acute symptom could reasonably be expected to result” in one of the adverse results of §1396b. *Mercy* also rejected the view that AHCCCS responsibility ends when the emergency condition stabilizes.

Issue Presented:

While each case formulates the question slightly differently, the issue is:

“Arizona statutes and case law require AHCCCS to provide medical coverage to undocumented aliens so long as the absence of such care would pose an immediate risk to the patient's health - in other words, until care can safely be discontinued. Did the court of appeals correctly conclude that private hospitals, rather than the state AHCCCS program, should bear the expense of providing such medical care to undocumented aliens?”

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Thursday, December 5, 2002



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Case: State v. Towery, CR-02-0031-PC
State v. Mann, CR-02-0022-PC
State v. McKinney, CR-02-0038-PC
State v. Murray, CR-02-0146-PC

Parties: State of Arizona
Petitioners/Defendants: Robert Towery, Eric Mann, James McKinney
and Roger Murray

Counsel for Petitioners: Daniel Maynard, David Lipartito, James Stuehringer

Counsel for the State: Robert L. Ellman, Assistant Attorney General

Facts/Issue: The superior court denied the petitions for post-conviction relief filed by these capital defendants. Each defendant claimed that his constitutional rights were violated because a judge, instead of a jury, decided the existence of aggravating factors for sentencing. The Arizona Supreme Court granted review of that issue and the related issue whether Ring v. Arizona, 536 U.S. ____, 122 S.Ct. 2428 (2002), applies to cases that are final and are before the court only on collateral challenge. The four cases were consolidated for oral argument.

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