



**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**

State v. Michael Gene Blakley

CR-00-0360-AP

Facts:

Michael Gene Blakley was charged with one count of first degree murder and two counts of sexual assault. He was found guilty of all three charges. He was sentenced to death on the murder count and to two consecutive life sentences without the possibility of parole for thirty-five years on the sexual assault counts. An automatic appeal to this court was filed pursuant to Arizona Rule of Criminal Procedure 32.1(B).

The defendant, Michael Gene Blakley met Melissa Behunin in April 1998. Less than a week later, the defendant was living with Behunin and her sixteen-month old daughter, Shelby. Blakley lost his job at a fast food restaurant and the couple moved into a motel room at the Arizona Clearwater Hotel in Bullhead City. Behunin started a job at a nearby assisted living facility and Blakley began taking care of Shelby while she was working.

Around five o'clock on the morning of July 18, 1998 Shelby, now nineteen months old, started crying and woke up her mother. Shelby had apparently fallen off the sofa sleeper. Shelby had a little bruise over her left eye. Later that day, Behunin left for work around 12:45 in the afternoon. Prior to her departure, Shelby was acting normally.

At 4:23 PM the hotel manager called 911 and stated that the occupants of one of the rooms had reported that a baby was not breathing. Immediately prior to this, the defendant called the hotel manager and request he call 911. The 911 dispatcher called back to the defendant's room and instructed the defendant on how to give the child CPR. When the paramedics arrived, Shelby was rushed to a local hospital. Because of the severity of her condition, Shelby was taken by helicopter to Sunrise Hospital in Las Vegas, Nevada. A few hours after arriving in Las Vegas, Shelby was pronounced dead. Dr. Diane Lipscomb, the pediatric critical care physician that attended Shelby, noticed bruising and signs of trauma to Shelby's vagina and rectum. The medical examiner who conducted the autopsy testified that Shelby died of anoxic encephalopathy, lack of oxygen to the brain. He found evidence of blunt force trauma to the head. She had a vaginal abrasion and a 3/8 inch tear in her rectum. In his opinion, the genital injuries appeared to have been recent and within the same general time period as the head injuries. He believed that the child was suffocated, most likely by having her mouth and nose covered.

On July 21, 1998 the defendant and Behunin voluntarily went to the Bullhead City Police Department to be interviewed. The defendant was interviewed first and the interview was conducted by two police detectives along with two Child Protective Services Investigators. Blakley was read and waived his *Miranda* rights. The defendant first stated that after Melissa left for work he washed the dishes and then gave Shelby a bath. Then he laid her down on the bed and laid down with her. Several minutes later, he got up for a drink and noticed she was not breathing. After the police confronted him with the three hours unaccounted for in his story, the defendant admitted that he had digitally penetrated the victim's vagina, digitally penetrated her rectum, and placed his penis in her rectum. He stated that after he had done this she was "fussing" and when he laid her down to take a nap she was crying. He said he placed his hand over her mouth and possibly her nose for five minutes and she quieted down. After the interview, the defendant was placed under arrest. He was charged with two counts of sexual assault and one count of murder in the first degree. On February 17, 2000 a jury found defendant guilty of all counts. After a sentencing hearing, the judge sentenced the defendant to death on the first degree murder charge and two terms of life imprisonment without the possibility of parole for 35 years to be served consecutively.

Trial Issues:

1. Was it error for the trial court to deny the defendant's Motion for Change of Venue based on pretrial publicity?
2. Was it error for the trial court to deny the defendant's mistrial motion based on statements made by two prospective jurors during jury selection?
3. Did the trial court err in denying the defendant's Motion to suppress his confession?
4. Did the trial court abuse its discretion in prohibiting certain testimony at both the voluntariness hearing and at trial from Dr. Richard Ofshe, the defense expert on false confessions?
5. Was it error for the trial court to grant the State's request for a jury instruction on child abuse as the underlying felony, as opposed to sexual assault?
6. Should defendant's Motion to Dismiss for Timeliness have been granted?
7. Was it an abuse of discretion for the court to exclude evidence concerning defendant's cousin and that he may have committed the crime?

Sentencing Issues:

1. Is the Arizona's death penalty statute unconstitutional because the judge rather than the jury finds the aggravators?
2. Was it error for the trial court, as opposed to the jury, to make the *Enmund/Tison* finding required in felony-murder cases where the death penalty is sought and did the trial court use a negligence standard in making this finding?
3. Was the victim's age double counted in aggravation?
4. Was the A.R.S. 13-703(F)(6) cruelty finding proven?
5. Should the following factors have been found and considered in mitigation?
 - residual doubt of defendant's guilt
 - Defendant's cognitive disability in relation to his confession
 - Defendant's passive nature
 - Defendant's young intellectual age and low level of education
 - Defendant's abandonment by his father
 - Blakley's attempt to save the victim
 - He was a loving caregiver to the victim

The (G)(4) statutory mitigator, that defendant "could not reasonably have foreseen that his conduct in the course of the commission of the offense for which [he] was convicted would cause, or would create a grave risk of causing, death of another person."

- Defendant's prior good act
- Defendant's cooperation with the investigation
- lack of violent history
- Model prisoner
- Family love and support

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.

Tuesday, April 30, 2002



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CASE SUMMARY

Simat Corp. dba Abortion Services of Phoenix, et al. v. AHCCCS and Phyllis Biedess,
CV-01-0324-PR

Parties and Counsel:

Petitioners: Simat Corp. dba Abortion Services of Phoenix, Arizona Reproductive Medicine & Gynecology, Ltd., Family Planning Associates Medical Group, Tucson Woman's Clinic and Drs. Robert Tamis, Joel Bettigole, Damon Raphael and William Meyer, Jr. by Christopher LaVoy and Mark Chernoff, LaVoy & Chernoff (Phoenix) and Bebe Anderson and Hillary Schwab, Center for Reproductive Law & Policy (New York)

Respondents: AHCCCS and Phyllis Biedess represented by Logan Johnston, Johnston & Kelly (Phoenix).

Amici Curiae members of the Arizona Legislature represented by Len Munsil and Gary McCaleb, Center for Arizona Policy (Scottsdale) and Paul Linton (Northbrook, Ill.)

Amici Curiae Southern Arizona Chapter of the National Lawyers Guild and the Arizona Civil Liberties Union represented by Leigh Anne Ciccarelli, Greenberg Traurig (Phoenix)

Amici Curiae Southern Arizona People's Law Center and National Network of Abortion Funds represented by Bonnie Booden (Phoenix) and M. Carolyn Cox, Wilmer, Cutler & Pickering (Washington, DC).

Facts and Proceedings Below.

Petitioners (Simat) are clinics and physicians who perform medically necessary abortions. They sought declaratory relief that A.R.S. §§35-196.02 and AHCCCS regulations prohibiting state funding of abortions unless the abortion is necessary to save the life of the mother and in some cases of rape or incest violate the Arizona Constitution's right to privacy (Art. II, §8), privilege and immunities clause (Article II, §13), and prohibition of special laws (Article IV, part 2, §19).

A.R.S. §35-196.02 prohibits AHCCCS funding of abortions except to save the life of the mother. AHCCCS defines medical necessity for coverage of abortion to be limited to saving the life of the mother and in certain cases where the pregnancy was the result of rape or incest. It defined such term for all other cases as any covered services provided by a healthcare provider to prevent disease, disability or other adverse health conditions or to prolong life. Between 18 and 23% of AHCCCS-eligible women denied abortions went to full term. Many of the individuals suffered from medical or mental conditions which made an abortion necessary to protect the health of the mother, ranging from cancer to brain damage. Others had to forego medical treatment, which jeopardized their health and in some cases, their medical condition threatened both the health and life of the fetus. In 1996, AHCCCS paid for only four abortions. Approximately 7,000 AHCCCS-eligible women sought abortions that year. While some eligible women were able to obtain abortions elsewhere at reduced rates, an indeterminate number might have obtained illegal or self-induced abortions. The cost of abortion is above most of these women's ability to pay. Evidence was introduced that the cost of an abortion is less than the childbearing costs covered by AHCCCS.

The trial court granted Simat summary judgment. It found the restriction violated Arizona's constitutional privacy clause and AHCCCS' justification to protect childbirth is not so compelling as to outweigh needed medical treatment. The Court of Appeals reversed. It held there is nothing in the privacy clause indicating it was intended to require the State to pay for abortions. Interpreting that clause consistently with the federal constitution, the court adopted *Harris v. McRae*, 448 U.S. 297, 316-18 (1980), while held that the Hyde Amendment, prohibiting use of federal Medicaid funds for abortions to protect the mother's health, was valid under the federal constitution. It also held the statute does not violate the privilege and immunities clause because, as in *Harris*, it does not create suspect classes. It held the statute is rationally related to a legitimate goal of protecting unborn life and promoting childbirth.

Issues Presented:

"1. Whether AHCCCS's failure to cover medically necessary abortions violates the right to privacy clause of the Arizona Constitution, Article II, §8.

"2. Whether the State, once it chooses to fund health care for the poor, must do so in a neutral fashion.

"3. Whether AHCCCS's failure to cover medically necessary abortions violates the privileges and immunities clause of the Arizona Constitution, Article II, §13."

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CV-01-0336-PR

**FRANK DOUGLAS HUGHES v.
HON. CINDY JORGENSON, Respondent,
and STATE OF ARIZONA, Real Party in Interest**

Parties/Counsel:

Frank Douglas Hughes is represented by Walter B. Nash III.
The State is represented by Assistant Attorney General John R. Evans.

Facts/Issue:

Frank Hughes is the Sheriff of Graham County. A deputy sheriff made a traffic stop of a vehicle driven by Diane Michelle Ashcraft. Ms. Ashcraft is Sheriff Hughes' sister. Sheriff Hughes was charged with violating A.R.S. § 38-503(B), based on his actions during and after the traffic stop.

The superior court found probable cause. Sheriff Hughes filed a petition for special action in the Court of Appeals, which declined to accept jurisdiction. Sheriff Hughes then filed a petition for review, which the Arizona Supreme Court granted.

The issue is whether A.R.S. § 38-503(B) applies to this case.

Definitions:

A.R.S. § 38-503(B), provides:

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

A.R.S. § 38-502(11) defines "substantial interest" as "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." "Remote interest" is defined at § 38-502(10).

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