



**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 SUMMARY:

**MARY VIRGINIA SWANSON v. THE IMAGE BANK, INC., and
SWANSTOCK, INC., CV-02-0176-PR**

Parties and Counsel:

Petitioners: The Image Bank, Inc. and Swanstock, Inc. (“TIB”), represented by David A. Selden and Christine A. Bailey, Stinson Morrison Hecker L.L.P.

Respondent: Mary Virginia Swanson, represented by Tibor Nagy, Jr., Mark E. Konrad and Wade R. Swanson, Snell & Wilmer, L.L.P.

Facts:

Mary Swanson founded and owned Swanstock, which represented owners of fine art photography and licensed the photos for commercial use. In 1997 TIB bought Swanstock and hired Swanson as its president through a negotiated employment agreement. Both sides were represented by counsel. The agreement selected the law of Texas, TIB’s home state, to govern the agreement. In July 1999 TIB terminated Swanson “without cause.” On the same day, it presented her with a proposed termination agreement, release and waiver. Even though it purported to be in accord with ¶ 7(a)(4) of the employment agreement, Swanson refused to sign it.

¶ 7 of the employment agreement concerns termination. ¶ 7(a)(4) reads:

Ms. Swanson’s employment may be terminated by the Company, other than “for cause” as set forth in Section 7(a)(1) above, before the end of the Term, in which event Ms. Swanson shall receive and the Company shall pay to her one (1) year’s Basic Compensation payable on a semi-monthly basis commencing within thirty (30) days after termination and a bonus determined in accordance with Section 3(b), pro-rated to the date of termination, to be paid by the Company within thirty (30) days after termination. ...

Section 7(d) reads:

Provided that all amounts payable to Ms. Swanson pursuant to this Agreement and the Stock Purchase Agreement have been paid, and TIB has not breached Section 7(c) of this Agreement [agreeing not to make disparaging statements about any party to the agreement] or otherwise materially breached this Agreement, Ms. Swanson agrees that payment of the full amount of Basic Compensation, bonus, and other amounts payable to her hereunder following termination of her employment hereunder without “cause”, shall be in full release and discharge of any claim or action she may have against the Company or any director, officer or employee of the Company or TIB arising out of this Agreement.

Section 14 reads:

Construction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to the principles of conflicts of laws.

The release agreement gave Swanson twenty-one days to review it. Two days after the meeting where Swanson was terminated, her counsel told TIB in-house counsel Elizabeth Warren that she demanded one year’s salary, and intended to seek more that she was due under the employment agreement. Based on that conversation, TIB withheld payment of the severance pay.

Swanson then filed this action in superior court. After both parties filed motions for summary judgment, the trial court ruled that TIB had breached the employment agreement by failing to pay the \$150,000 severance pay. It awarded treble damages under §23-355, plus \$50,000 in attorneys’ fees.

Issues:

“1. Whether the choice-of-law provision in an extensively negotiated employment contract will be enforced in accordance with its terms, or whether Arizona mandates that its treble damage wage statute, A.R.S. § 23-355, as a matter of ‘fundamental policy,’ supersedes the choice-of-law provision agreed to by the parties.

“2. Whether summary judgment was proper, awarding severance pay and treble damages to an employee, despite evidence that the employee anticipatorily repudiated her obligation to release claims under her Employment Agreement.”

Definitions:

- choice of law* contract term that represents an agreement of the parties that the named locale's law will be used to decide disputes arising from the contract. Also refers to case law and statutes dealing with this issue.
- summary judgment* request, by motion to the trial court, that argues there are no material issues of fact requiring trial, states that the law favors deciding the case for the moving party, and asks the court to so rule.
- treble damages* money due to a party that an applicable statute multiplies by three.

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, January 14, 2003



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Case:

CR-01-0129-AP; STATE OF ARIZONA, Appellee v. SHERMAN RUTLEDGE,
Appellant

Parties/Counsel:

The State is represented by the Arizona Attorney General's Office, by Kent E. Cattani, Chief Counsel, Capital Litigation Section and John Pressley Todd, Assistant Attorney General, Capital Litigation Section.

Sherman Rutledge is represented by Robert W. Doyle.

Facts and Procedural History:

The State charged Sherman Rutledge with armed robbery, first degree murder of Ryan Harris, and attempted second degree murder of Chase Clayton.

The facts show that on May 13, 1997, Rutledge met Clayton and Harris while walking near 40th Street and Camelback. The victims offered Rutledge and his companions a ride. The group went to a nearby apartment while Rutledge tried to locate some drugs. The group left the apartment on two occasions, once to pick up Rutledge's brother, and a second time to buy drugs at Madison Park at 26th Street and Campbell. Once at Madison Park, Rutledge got out of the vehicle. Rutledge's brother hit Clayton over the head with a beer bottle. The two struggled with a knife. Then, Rutledge pulled Clayton out of the vehicle, pointed a gun at him and pulled the trigger. When the gun failed to fire, Clayton ran from the park and climbed over a chain link fence to reach safety. Rutledge fired three or four shots at Clayton as he ran, hitting him once in the shoulder.

Next, Rutledge shot Harris and pulled him from the vehicle. The bullet passed through Harris' pulmonary artery and lodged in his left lung causing him to bleed to death. Rutledge and his brother left in Clayton's Ford Explorer. Later that morning, Rutledge burned the Explorer, completely destroying the vehicle. Rutledge was arrested the next day. Upon questioning by the Phoenix Police Department, Rutledge denied any involvement in the crimes, and denied having met Clayton and Harris.

At trial, all but one witness testified that Rutledge committed the crimes. Jason Ellis testified that an unknown black male committed the crimes. But previously, in a videotaped interview with a Phoenix Police Department detective, Ellis identified Rutledge

as the person who committed the crimes. However, at trial, Ellis claimed to have named Rutledge as the shooter because he was intoxicated, and confused during the interview. That interview was admitted into evidence and was played at trial for the jury.

Based on the above facts, the jury found Rutledge guilty of all charges, and the trial judge sentenced him to death.

On appeal, Rutledge argues that the trial court's admission of Jason Ellis' videotaped interview denied him a fair trial. Rutledge argues that the trial court's ruling ignored Arizona Rule of Evidence 613(b)'s requirement that admission of extrinsic evidence of a prior inconsistent statement made by a witness must be inconsistent with that witness's trial testimony. Rutledge contends that Ellis admitted making inconsistent statements and therefore there was no reason for the trial court to allow admission of the videotaped statement at trial. The State argues that the videotaped interview was properly admitted to allow the jury to determine the overall credibility of Ellis' trial testimony.

Rutledge also argues that he was denied a fair trial because the prosecutor made an impermissible reference to Rutledge's decision not to testify. During closing arguments, the prosecutor questioned why Rutledge had not been more forthcoming with police as to the names of some people he claims to have been with at the time of the crimes. Rutledge argues that the comment lead the jury to speculate why he did not take the stand, in violation of his Fifth Amendment rights. The State argues that the comments were not directed at Rutledge's decision not to testify, but rather to his police interview.

Finally, Rutledge argues that he is entitled to a new trial because the jury instructions given on accomplice liability and its relationship to his alibi defense were erroneous in light of recent Arizona case law. The State argues that there has been no change in accomplice liability in Arizona and therefore a new trial is not warranted.

Rutledge presents other sentencing issues on appeal. This Court has consolidated numerous death penalty cases, including Rutledge's, to consider death penalty sentencing issues in light of *Ring v. Arizona*, a recent U.S. Supreme Court decision. Accordingly, those sentencing issues will not be determined as part of this proceeding.

Issues:

1. Whether the Trial Court erred in denying Rutledge's Motion for a New Trial based on erroneous admission of videotaped testimony of Jason Ellis?
2. Whether the prosecutor committed misconduct during closing arguments by making an impermissible reference to Rutledge's decision not to testify?
3. Whether in light of recent Arizona case law, the trial court erred in its instructions regarding accomplice liability?

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CASE SUMMARY:

CV-02-0140-PR
consolidated with
CV-02-0175-pr

Bunker's Glass Company v Pilkington plc, et al

Michael R Gray, M.D., vs Phillip Morris Inc et al

No information available for these two consolidated cases

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