



**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-03-0070-PR
STATE v. ABRAHAM DAVID SEPAHI

Parties:

The State of Arizona is the petitioner. Abraham David Sepahi filed a cross-petition for review, which was denied.

Counsel:

The State is represented by Diane Leigh Hunt, Assistant Attorney General. Abraham David Sepahi is represented by Brian D. Strong of Roberts Rowley Chapman.

Facts:

Abraham David Sepahi, then age 14, and his friend, also a minor, got involved in a verbal altercation with the 14-year-old victim and an adult as they stood on the front porch of the adult's trailer. The victim stepped off the porch and told Sepahi and his friend to leave. Sepahi hit the victim on the arm, and she responded by hitting him on the head. Sepahi then stepped back and shot the victim once in the stomach before running off.

Sepahi was tried as an adult and convicted of, aggravated assault causing serious physical injury, and aggravated assault involving the use of a deadly weapon. The jury also found that both offenses were dangerous and that the victim had been under the age of 15.

The court found that Sepahi's crimes were dangerous crimes against a child, within the scope of A.R.S. § 13-604.01, and sentenced him to two consecutive 10 year prison terms.

On appeal, Sepahi contended that the trial court erred in sentencing him pursuant to § 13-604.01. The appeals court agreed. It found that, although Sepahi's conduct was focused on and directed against a victim under the age of 15, as required by *State v. Williams*, 175 Ariz. 98 (1993), there was no evidence that he also is "peculiarly dangerous to children" or otherwise poses a direct and continuing threat to children, as required by *Williams* and *State v. Samano*, 198 Ariz. 506 (App. 2000). Because the court found that applying § 13-604.01 to this case would contravene rather than effect the legislature's intent, it vacated the sentences and remanded for resentencing with any sentences imposed to be served concurrently.

The court granted the state's petition for review.

Issue:

Whether the Court of Appeals err in finding that A.R.S. § 13-604.01, the dangerous crimes against children statute, was improperly applied in this case.

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CV-03-0090-PR FREDERIC LONDON v. BARBARA BRODERICK et al.,

Parties and Counsel:

Petitioners: Chief Probation Officer Barbara Broderick, Division Director Vicki Biro and the Maricopa County Adult Probation Department ("MCAPD"), represented by Assistant Attorney General Michael M. Walker.

Respondent: Frederick London, represented by Martin A. Bihn, Donna M. McDaniel and Frank L. Migray of Ryan, Woodrow & Rapp.

Facts:

Frederic London worked as a MCAPD probation officer. Several female complainants alleged he engaged in sexually inappropriate behavior. On December 20, 2000, MCAPD placed London on administrative leave pending investigation. After interviewing various witnesses, on February 8, 2001, MCAPD gave London a Notice of Charges of Misconduct, a formal requirement prior to imposing serious disciplinary action.

Before the pre-disciplinary hearing, London submitted a public records request to MCAPD seeking several documents, including the investigative file. On March 14, MCAPD gave him all he requested, except for the investigative notes and witness statements. In declining to provide those records, Division Director Vicki Biro stated the information was not a public record until after the disciplinary hearing. London challenged the decision in two court filings, one under both the Public Records Act, A.R.S. § 39-121.02 (by filing a special action in superior court) and the second under Supreme Court Rule 123(f)(5)(A) (seeking administrative review of the MCAPD decision).

Superior Court Judge Colin Campbell agreed MCAPD did not have to produce the records, and denied London's Rule 123 request based on Rule 123's exemptions from disclosure of employee records, and pre-decisional administrative records. Rule 123(e)(1), (6). In the public records special action, Judge Roland Steinle accepted Judge Campbell's ruling concerning Rule 123, and dismissed the special action.

The disciplinary actions against London, which had been continued pending the superior court cases, resumed on October 10, 2001. After conclusion of

the pre-disciplinary hearing, MCAPD terminated London's employment on November 1, 2001. He appealed the termination to the Judicial Merit System Commission, which set an evidentiary hearing for the appeal. Before that Commission hearing, MCAPD let him review the full investigative file.

London appealed Judge Campbell's ruling against disclosure, and also petitioned for special action from Judge Steinle's dismissal order. In an opinion consolidating the two cases, the Court of Appeals reversed, holding that although London requested the investigative file as a member of the public, Rule 123 did not exempt it from disclosure.

Issues:

"1. Did the court of appeals err in contending that the public disclosure of an on going (sic) investigation would not substantially interfere with the MCAPD'S ability to investigate and discipline its employees?

"2. Did the court of appeals err in considering London's interest differently from the public's interest and then holding that his 'compelling interest' in reviewing an open investigative file prior to the pre-disciplinary hearing outweighed MCAPD's interest in non-disclosure?"

Definitions:

continued postponed

Judicial Merit System Commission

administrative body that reviews appeals by merit system-covered judicial branch employees (including probation officers) from serious agency disciplinary actions such as suspension, demotion and termination.

pre-decisional administrative records

records given temporary higher confidentiality, for a period of time prior to significant public agency decisions, in order to encourage more informed decisions and high-level policy debate; the records become subject to ordinary public scrutiny once the agency decision has been made.

sic indication that the word or words appearing just before it are unaltered from the original.

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**CV-02-0369-PR
CHERYL WEATHERFORD, as guardian ad litem for MICHAEL L.
v. THE STATE OF ARIZONA, et al.,**

Parties:

The petitioners are Claudette Washington, Shirley Lewis, and Parthenia Gibson. The respondent is Cheryl Weatherford, as guardian ad litem for Michael L.

Counsel:

Petitioners Washington and Lewis are represented by Dennis I. Wilenchik of Wilenchik & Bartness; petitioner Gibson is represented by James R. Hart, II of Martin, Hart & Fullerton. Respondent is represented by Laurence M. Berlin.

Facts:

In 1996, the state removed Michael L., age 12, from his home because of unsanitary conditions. Social worker Claudette Washington arranged for his placement at the Alice Peterson Shelter. While Michael was in the shelter, he was sexually assaulted by two older boys who had known histories of sexual misconduct.

It is undisputed that caseworkers failed to (1) prepare an initial case plan, including a safety plan, until over two months after it was due and the sexual assaults had begun; (2) assess Michael's needs and whether the placement was appropriate; (3) visit the shelter within 24 hours of his placement there; and (4) make more than two of the 16 required weekly supervisory visits to the shelter between his placement there and disclosure of the abuse four months later.

Cheryl Weatherford, as guardian ad litem for Michael, sued the state and social workers Washington and Parthenia Gibson, and their supervisor, Shirley Lewis, for negligence and deprivation of Michael's constitutional rights under 42 U.S.C. § 1983. Each defendant filed a motion for summary judgment. The trial court ruled first that the social

workers were not entitled to absolute immunity because they made their decisions independent of judicial review and approval. The court did grant the motions of the individual social workers on the ground of qualified immunity, however, finding that Weatherford had failed to prove that, in 1996, Michael had a clearly established right to be free from unnecessary and unreasonable harm while in state regulated foster care. The complaint was dismissed, and Weatherford appealed.

The appeals court disagreed that Michael did not have a clearly established right to reasonable safety while in foster care, and therefore found that granting summary judgment on the § 1983 claim was improper. The court ruled that state officials will be shielded from liability unless it is shown that they abdicated their duty to act professionally in making foster care placements, which is what Weatherford alleges here.

Issue:

Whether defendant caseworkers, who claim they did not know that Michael's placement in foster care was not safe, are immune from individual liability for damages under 42 U.S.C. § 1983 for alleged misconduct in connection with Michael's placement, which he alleges resulted in his being sexually abused by other minors in the shelter.

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