



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. PATRICIA A. BARNES
Court of Appeals No. 2 CA-CR 06-0191
Supreme Court No. CR-07-0227-PR**

PARTIES AND COUNSEL:

Petitioner: State of Arizona, represented by David R. Pardee, Deputy Cochise County Attorney

Respondent: Patricia A. Barnes, represented by Mark A. Suagee, Deputy Cochise County Public Defender and Kelly A. Smith, The Law Offices of Kelly A. Smith

FACTS:

In 2005, while a Wilcox police officer was arresting Patricia Barnes' boyfriend on an outstanding warrant, Barnes intervened in an attempt to prevent the arrest. During the struggle, the officer saw the boyfriend hand a small paper item to Barnes, who then moved her hand down the front of her pants. The officer arrested her for intervening in the arrest.

Barnes was taken to an isolated cell in a detention facility and ordered her to disrobe. While a female city code enforcement officer was visually inspecting Barnes' anal area, she saw something protruding from Barnes' anus and asked her to remove it. When Barnes did not comply, the officer, wearing rubber gloves, "grabbed a hold of the item" and it fell into her hands. It was a bag containing methamphetamine. During a subsequent interview, Barnes reportedly made incriminating statements about the bag.

Barnes was indicted on one count each of possessing a dangerous drug for sale and resisting arrest by using physical force. She moved to suppress evidence of the bag. The trial court granted the motion, finding that the strip search, lawful under the facts of the case, became a body cavity search, requiring a warrant, the moment the officer touched the bag. The court suppressed the physical evidence and Barnes' subsequent statements concerning that evidence.

In a split decision, the court of appeals affirmed, finding the case controlled by *Schmerber v. California*, 384 U.S. 757, 770 (1966). Although the officer did not reach into any body cavity, the court said, her manipulation and removal of the protruding portion of the bag necessarily

exerted force on the portion that extended into Barnes' rectum. When an officer's actions have the effect of exerting force within an arrestee's body, the court concluded, the arrestee's privacy is invaded and the court will not draw constitutional distinctions based on the mechanism by which such an invasion of privacy is accomplished.

Judge Espinosa dissented on the ground that no intrusion into a body cavity occurred and the officers, conducting a lawful strip search incident to arrest, merely seized evidence in plain view.

The Arizona Supreme Court granted the State's petition for review.

Issue Presented:

Is a search warrant required to seize evidence lawfully discovered in plain view hanging out of a Defendant's body cavity?

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