



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JASON DONALD SIMPSON v. HON. PHEMONIA MILLER/STATE
OF ARIZONA**
JOE PAUL MARTINEZ v. HON. ROLAND STEINLE/STATE OF ARIZONA
CR-16-0227-PR

PARTIES:

Petitioner: State of Arizona

Respondents: Jason Donald Simpson and Joe Paul Martinez

Amici Curiae: Victims D.D. and D.L.

FACTS:

In 2002, Arizona voters passed Proposition 103, amending the Arizona Constitution, Article 2, Section 22 and A.R.S. § 13-3961. Prior to that amendment, paragraph (1) of Article 2, Section 22 of the Arizona Constitution had declared, “All persons charged with crime shall be bailable by sufficient sureties, except: 1. For capital offenses when the proof is evident or the presumption great.” *See also* A.R.S. § 13-3961(A) (2001) (“A person in custody shall not be admitted to bail if the proof is evident or the presumption great that he is guilty of the offense and the offense charged is a capital offense.”).

Proposition 103 amended both the constitutional provision and the statute by adding an additional category of charges for which there would be no release on bail: sexual assault, sexual conduct with a minor under fifteen, and molestation of a child under fifteen where “the proof is evident or the presumption great” that the defendant committed the offense. *See* 2002 Ariz. Sess. Laws, Ch. 219 § 21, Ch. 223 § 1. *See also* A.R.S. § 13-3961(A)(3).

In April, 2014 respondent Martinez was arrested for multiple counts of sexual conduct with a minor (“SCWM”) under fifteen years of age. At his initial appearance, the court determined that Martinez was automatically non-bailable due to the SCWM charges.

To determine whether “the proof was evident or the presumption great” that he committed one of the offenses listed in A.R.S. § 13-3961(A)(3), Martinez was given a “*Simpson* hearing” pursuant to *Simpson v. Owens*, 207 Ariz. 261, 270 ¶ 27, 85 P.3d 478, 487 (App. 2004) (defendant held entitled to an adversary hearing on whether the “proof was evident or the presumption great” that he committed one of the offenses). Following the “*Simpson* hearing,” Martinez was again held as non-bailable.

Martinez filed a Petition for Special Action in the Court of Appeals, challenging the

constitutionality of the SCWM exception in Article 2, Section 22 of the Arizona Constitution and A.R.S. § 13-3961(A)(3). The Court of Appeals consolidated his case with that of Jason Donald Simpson, who also had been indicted on multiple counts of SCWM and had also been held non-bondable under Article 2, Section 22 (1) of the Arizona Constitution and A.R.S. § 13-3961(A)(3).

A two-judge majority of the Court of Appeals granted Special Action relief to both defendants by striking down the SCWM exception in Article 2, Section 22 (1) and A.R.S. § 13-3961(A)(3) as facially unconstitutional under the federal constitution's due process clause and *United States v. Salerno*, 481 U.S. 739 (1987) (defendants have a due process right to hearings at which judges consider whether any release conditions could protect victims and the community).

The majority found the absence of the third of the enumerated *Salerno* factors—a full adversary hearing on whether conditions of release could assure the safety of the community “or any person”—fatal to the statute's constitutionality.

The majority acknowledged that an exception to bail for those charged with murder is also found in Arizona's constitution in Article 2, Section 22 (1), as in many state constitutions. The majority noted that the constitutionality of that provision is an “open issue” which, however, it declined to decide.

The dissenting judge, Judge Gould, disagreed that Arizona's procedure violates *Salerno*. While *Salerno* did discuss the specific procedures contained in the Bail Reform Act, it did not state that due process mandates every single one of these procedures, he opined.

Judge Gould also opined that his colleagues in the majority have effectively decided the constitutionality of the bail exception for those charged with murder. How can this exception survive a facial challenge under the majority's analysis? he asked.

Judge Gould conceded that under the challenged procedure, we will not always know if a defendant poses a danger to the victim or the community. However, he noted, the same can be said of a defendant charged with murder. Judge Gould would have upheld the constitutionality of the challenged provisions.

ISSUES:

1. “Did the Court of Appeals err in sustaining a facial constitutional challenge to a constitutional amendment and statute that were overwhelming approved by Arizona voters in 2002?”

2. “Did the Court of Appeals err when it interpreted *Salerno v. United States*, 481 U.S. 739 (1987) to require it to sustain [Respondents'] challenge?”

This Summary was prepared by the Arizona Supreme Court Staff Attorney=s Office 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.