



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**CRIME VICTIMS R.S. and S.E. v. HON. PETER  
THOMPSON (rpi, Teddy Carl VANDERS),  
CR-19-0395-PR (Opinion) (247 Ariz. 575)**

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**PARTIES:**

*Petitioner:* Real party in interest Teddy Carl Vandera

*Respondents:* Crime Victims R.S. and S.E. (“**victims**” are surviving siblings of M.S., who died)

*Amici curiae:* (1) Arizona Attorneys for Criminal Justice (“**AACJ**”);  
(2) Arizona Voice for Crime Victims (“**AVCV**”) and National Crime Victim Law Institute (“**NCVLI**”);  
(3) Maricopa County Attorney’s Office (“**MCAO**”);  
(4) Pima County Public Defender’s Office;  
(5) Arizona Attorney General’s Office.

**FACTS:**

On July 13, 2017, Teddy Carl Vandera called 9-1-1 and told the emergency operator that he had just shot and killed his long-term girlfriend, M.S., during a domestic dispute. He described the incident to the operator, saying “[M.S.] was acting evil and possessive. She was crawling around. It was insane and not normal.” He also said that M.S. had abused him throughout their relationship, and that he had “been threatened for many years.” He told the operator that M.S. had been to a mental hospital and that he thought she had been diagnosed with a mental illness.

Vandera was arrested and charged with second-degree murder.

Before trial, Vandera asked the superior court to compel the “Magellan Hospital/Urgent Psychiatric Care Center” to disclose M.S.’s privileged mental health records for an *in camera* review. The records were created during her visit to the Center six years before her death. Vandera claimed that the requested records were essential to his defenses and to his ability to effectively examine witnesses.

In support of his motion, Vandera cited his statements to the 9-1-1 operator, and two earlier police reports from 2009 and 2011, both of which listed him as the victim of domestic assault. In the 2009 incident, M.S. was taken into custody after she admitted to hitting Vandera while both were intoxicated. In the 2011 incident, while they also were intoxicated, M.S. broke open the couple’s gun safe to get a gun to kill herself, and Vandera physically restrained her. According to that report, M.S. was “hysterical and kept saying she wanted to kill herself,” and, once in custody, she asked for an officer’s gun so she could kill herself. The police took her to Magellan Hospital “due to [her] current mental state,” where she voluntarily checked herself in and told staff that “she did need help and wanted to talk to them about suicide.”

The superior court granted Vandera’s motion. The court found that Vandera’s due process rights required the Center to disclose M.S.’s privileged records for an *in camera* review.

M.S.’s siblings, R.S. and S.E., as victims under Arizona’s Victims’ Bill of Rights (“**VBR**”),

filed a petition for special action to challenge the ruling.

The court of appeals accepted jurisdiction, finding that the victims had no adequate remedy by appeal from an order to disclose privileged documents, and that their petition presented issues of recurring statewide importance. It recognized that there is no constitutional right to discovery in a criminal prosecution, but a defendant's right to discovery is governed by Arizona Rule of Criminal Procedure, Rule 15.1. Under the rule, in order to be entitled to an *in camera* inspection of privileged medical records, a defendant must show a substantial need for the information to prepare his case, and the substantial equivalent cannot be obtained by other means without undue hardship.

The court determined that the documents were protected from disclosure by the statutory physician-patient privilege, ARS § 13-4062(4), which prevails over the substantive right granted to defendants by the rule. The court of appeals also decided that a defendant must make a showing of prejudice before he is entitled to an *in camera* review of a victim's privileged medical records. It explained:

In this case, we hold that the physician-patient privilege does not yield to the request of a criminal defendant for information merely because that information may be helpful to his defense.

....

We hold that the "reasonable possibility" standard for *in camera* review is inadequate. Instead, a defendant is entitled to an *in camera* review of physician-patient privileged records not subject to *Brady* when the defendant demonstrates (1) a substantial probability that the protected records contain information that is trustworthy and critical to an element of the charge or defense, or (2) that their unavailability would result in a fundamentally unfair trial.

247 Ariz. at ¶¶ 1, 3. The "reasonable possibility" standard, which the court held was inadequate, previously was recognized and applied by courts in *State v. Connor*, 215 Ariz. 553, 558 ¶ 10 (App. 2007), and *State ex rel. Romley v. Superior Court (Roper)*, 172 Ariz. 232 (App. 1992).

Because the court of appeals decided this case based on the primacy of the statutory privilege, it said it did not need to address whether the records were protected by the Victims' Bill of Rights, although the parties had also asked it to do so.

Vanders filed this petition for review.

#### **ISSUE PRESENTED (as rephrased by the Court):**

"Did the court of appeals correctly hold that to be entitled to an *in camera* review of privileged records as a matter of due process, the defendant must establish a substantial probability that the protected records contain information critical to an element of the charge or defense or that their unavailability would result in a fundamentally unfair trial?"

#### **Definitions:**

"*In camera*" is Latin for "in chambers." An *in camera* review of documents is performed by a trial judge in chambers and in private, without the presence of the parties. *Brady* is a U.S. Supreme Court case that requires the State to disclose exculpatory material in its possession to the defense.

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