



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**GARY ALLER v. STATE OF ARIZONA
CV-25-0176-PR**

PARTIES:

Petitioner/Appellant: Gary Aller (“Aller”)

Respondent/Appellee: The State of Arizona (“the State”)

FACTS:

Aller’s Criminal Case. In 2021, an Arizona grand jury indicted Aller for fraudulently violating Arizona procurement statutes in connection with consulting with the Higley Unified School District in 2012 about financing school construction and his later successful bid to develop a funding mechanism for the school district. The indictment was based largely on a 2021 report from the Arizona Auditor General accusing Aller of violating Arizona’s procurement statutes.

In 2022, the superior court in his criminal case remanded the indictment back to the grand jury to reconsider the indictment. It ruled that this was necessary because the Auditor General’s report erroneously based its allegations against Aller on the procurement code as it existed after it was substantially amended in 2015 rather than on the code as it existed in 2012. The State then obtained a second indictment from the grand jury, but, in 2024, the State moved to dismiss the case. The court granted the motion and dismissed the action with prejudice (meaning the charges could not be brought again).

Later Superior Court Ruling. After the dismissal, Aller’s counsel began preparations to file a civil lawsuit against the State seeking compensation for wrongful prosecution. As part of those preparations, Aller filed a motion in the now-dismissed criminal case asking for permission to use the grand jury transcripts from the criminal case in his civil action.

One key issue was whether Aller was entitled to use the transcripts under *State ex rel. Ronan v. Superior Court*, 95 Ariz. 319 (1964). In that case, the Arizona Supreme Court held that a criminal defendant is not entitled to gain access to a grand jury transcript in his or her case unless he or she shows a “particularized need” for the disclosure. That standard, in turn, requires a defendant to show: (1) the defendant’s legal rights would be adversely affected if the transcripts were not disclosed; and (2) the defendant’s need for disclosure outweighs the State’s interest in preserving grand jury secrecy.

Among other things, Aller argued that he had a “particularized need” to use the grand transcripts in a civil action to show that the State based its presentation to the grand jury on the flawed Auditor General’s report; otherwise, he could not show that the report caused the State’s wrongful prosecution. He also argued that that this need outweighed the State’s interest in grand jury secrecy because the case already had been dismissed and because the Auditor General’s report was a public record.

The superior court denied the motion because Aller failed to show he had “particularized need” for the grand jury transcripts. It reasoned that to the extent Aller’s wrongful prosecution

claim depended on the allegations in the Auditor General's report, he had no need for the grand jury transcripts because the Auditor General's report was a public record.

The Court of Appeals' Decision. Aller then sought relief in the Court of Appeals by filing a special action petition, which gives an appellate court the discretion to review a lower court ruling if the petitioner otherwise does not have the right to directly appeal the ruling.

Aller made two arguments:

(a) First, he contended that the "particularized need" test should not apply where, as here, the movant already lawfully possesses a copy of the grand jury transcripts. He noted that when *Ronan* was decided, defendants were not entitled to gain access grand jury transcripts in their case as a matter of right. That is no longer the case as defendants now have a right by statute and rule to obtain copies grand jury transcripts in their case. He argued that in such a situation, a former defendant should be able to use the grand jury transcripts in a later civil action against the State so long as he or she shows a reasonable basis for the request.

(b) Second, he argued that even if *Ronan*'s "particularized need" test applied, Aller satisfied it because the transcripts were essential to demonstrating in a civil action that the prosecution's introduction of the Auditor General's report to the grand jury caused Aller to be wrongfully indicted and prosecuted.

The Court of Appeals agreed to consider the matter but denied relief, rejecting both of Aller's arguments. First, it ruled that the "particularized need" test applies not only to gaining access to a grand jury transcript, but also to using it in a later civil lawsuit. Second, it ruled that Aller failed to show a "particularized need" to use the grand jury transcripts in a civil lawsuit against the State because the information in the transcripts was also available in the Auditor General's report, which was a publicly available record.

ISSUES:

The Supreme Court has been asked to address the following issues:

1. Whether the Court of Appeals erred in finding that the "particularized need" test of *Ronan* and *Bergin* applies to the use of transcripts in subsequent legal proceedings by private parties who already lawfully possess grand jury transcripts.
2. Whether the Court of Appeals erred in finding that Mr. Aller failed to show "particularized need" to use his Grand Jury transcripts in his subsequent civil litigation under the circumstances.

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