



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DARREN LEE WINEGARDNER
CR-17-0269-PR**

PARTIES:

Petitioner: Darren Lee Winegardner

Respondent: State of Arizona

FACTS:

On a night when Winegardner argued with his wife, she left to stay at a hotel. Her fifteen-year-old daughter, L.B., remained at the house with Winegardner, her stepfather. Allegedly, he gave L.B. liquor, told her it was “really common for stepdads and daughters to engage in sexual activities,” and engaged in sexual intercourse with her.

The next day, L.B. told a friend and her mother what had happened, relating specific details of the sexual conduct. L.B.’s mother contacted police. L.B. went to the Child Advocacy Center (CAC) for a forensic interview and medical examination. The medical examiner obtained swabs for a DNA analysis.

When questioned by police, Winegardner stated that after his wife left, he and L.B. talked but that he was in bed by 11:30 p.m. He admitted to drinking heavily after his wife left, but he did not believe L.B. had been drinking. When confronted with L.B.’s accusations, Winegardner denied sexual contact. He said he did not remember it happening, and L.B. must have set him up.

Before the DNA test was completed, L.B. re-contacted the police and retracted her statement of six days earlier that Winegardner had engaged in sexual intercourse with her. She now claimed she had falsely accused him after he had denied her a Sweet Sixteen party. She repeated the same story at a second forensic interview a few days after that. Three days later L.B.’s crisis counselor called the detective to say that L.B. said she had slipped a sleeping pill in Winegardner’s drink while he was in the bathroom. A few days later Winegardner’s sister called the detective with a similar message.

The results of the external genital swab taken from L.B. revealed sperm matching Winegardner’s DNA profile. The State then charged him with one count of sexual contact with a minor. At trial, Winegardner based his defense on the version of events saying that L.B. had slipped him a sleeping pill and he had no memory of the act.

Before L.B.’s testimony, Winegardner disclosed his intent to impeach L.B. with evidence of a 2015 misdemeanor shoplifting conviction under Evidence Rule 609(a)(2) (allowing

impeachment of a witness with evidence of “any crime regardless of the punishment...if the court can readily determine that establishing the elements of the crime required proving...a dishonest act or false statement”). The trial court precluded Winegardner from doing so. After L.B.’s direct examination, in which she detailed her original allegation, Winegardner again sought to introduce the prior conviction, and the trial court again refused.

On cross-examination, L.B. testified that Winegardner started coming around a few months after the incident. He took her to the mall and they talked about the case. After they agreed to forgive, forget, and move on, Winegardner asked her to say she had given him a sleeping pill on the night in question, and she agreed to do so. She testified that she had made up the first recantation because she wanted her family back and because she knew her mom was struggling financially. She unequivocally stated that she had never drugged Winegardner.

The jury convicted Winegardner. On appeal he argued the trial court erred by not allowing him to impeach L.B. with evidence of her misdemeanor shoplifting conviction. The Court of Appeals affirmed the conviction and sentence.

ISSUE:

Because the Arizona legislature has defined the singular offense of shoplifting to include elements of deceit and falsification, can a party impeach a witness with a prior misdemeanor shoplifting conviction pursuant to [Ariz. R. Evid. 609\(a\)\(2\)](#)?

DEFINITION:

Impeachment: Presenting evidence, whether documents, cross-examination, or the testimony of another witness, with the aim of reducing the credibility of a witness.

Recantation: Taking back or denying the truth of an earlier accusation.

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