



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE ex rel. ADEL v. HON. PALMER/DURAND
CR-21-0397-PR**

PARTIES:

Petitioner: The State of Arizona ex rel. Allister Adel, Maricopa County Attorney

Respondent Judge: Hon. David J. Palmer, Maricopa County Superior Court

Real Party in Interest: Tamira Marie Durand

Amici Curiae: Mark Brnovich, Arizona Attorney General
(in Support of Petitioner)

FACTS:

The Maricopa County Attorney's Office (MCAO) charged Tamira Marie Durand (Durand) with fraudulent schemes and aggravated taking identity of another. For these felony offenses, the State alleged there were multiple victims, including Victim 12, a bureau chief of MCAO who is alleged to have suffered a de minimis loss.

Durand's cases were assigned to an attorney in the White Collar/Cyber Crimes Bureau at MCAO, a separate bureau and division from where Victim 12 works.

Durand filed a motion to disqualify MCAO and requested that the case be reassigned to a separate prosecuting agency. Durand alleged that MCAO had a conflict of interest by virtue of the fact that a named victim and critical witness worked for MCAO as a Deputy County Attorney. Durand claimed that there may be pressure to extend an offer that is less favorable to the defendant or even force the case to trial. Durand avowed that the *Alexander* factors were met to warrant disqualification.

In its response, the State argued that: (1) any alleged conflict of interest as to Victim 12 was not imputed to the entire office; (2) there was no appearance of impropriety; and (3) victims' rights did not interfere with the screening procedure put in place. The State maintained that Victim 12 had no supervisory authority over the assigned prosecutor, her bureau, or her division, and Victim 12 was completely screened from the case.

In her reply, Durand included a sworn expert opinion, in which the expert opined that the conflict of interest arising from Victim 12's status as a victim may fairly be imputed to MCAO as an agency and no screening mechanism would effectively quarantine Victim 12.

After considering the motion, the response, and the reply, Respondent Judge issued an order granting Durand's motion in the interest of justice.

The State sought special action relief in the Court of Appeals, arguing that Respondent Judge committed error in disqualifying MCAO when there was no legal basis to do so.

The Court of Appeals accepted special action jurisdiction, but denied relief. The State filed a petition for review before the Arizona Supreme Court, which was granted.

ISSUE:

As presented by the State:

A prosecuting agency may be disqualified after a showing of a conflict of interest. *See State ex rel. Romley v. Superior Court* (Flores), 181 Ariz. 378, 379 (App. 1995). A prosecuting agency may also be disqualified based on an appearance of impropriety after conducting a fact-specific analysis. *State v. Marner*, 251 Ariz. 198 ¶ 12 (2021). Did the Court of Appeals err by approving of MCAO's disqualification where there is no legal or factual support for a showing of conflict of interest or appearance of impropriety, and where disqualification was based solely on the fact that a victim is also an employee of MCAO?

RELEVANT CASE LAW:

The court, when considering a motion for disqualification based upon the appearance of impropriety, should consider the following: (1) whether the motion is being made for the purposes of harassing the [other party], (2) whether the party bringing the motion will be damaged in some way if the motion is not granted, (3) whether there are any alternative solutions, or is the proposed solution the least damaging possible under the circumstances, and (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation. *Alexander v. Superior Ct. In & For Maricopa Cty.*, 141 Ariz. 157, 165 (1984).

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