

THE SUPREME COURT OF ARKANSAS HELD THAT SECTION 5-14-125(a)(6) OF THE ARKANSAS CODE ANNOTATED WAS UNCONSTITUTIONAL AS APPLIED TO DAVID WALDON PASCHAL.

In *Paschal v. State*,¹ the Supreme Court of Arkansas held unconstitutional Section 5-14-125(a)(6) of the Arkansas Code Annotated as applied to Paschal.² David Waldon Paschal, Appellant, was convicted of witness-bribery and second-degree sexual assault.³ Paschal was a high school teacher at Elkins High School where A.D., an eighteen year old student, attended.⁴ Paschal admitted to having a sexual relationship with A.D. after her mother first brought this allegation to school officials.⁵

Before formal charges were filed, but after being arrested by the Fayetteville Police Department, Paschal contacted S.C., a friend of A.D., and stated that “[A.D.] knows that she’s not gonna get any money out of this and if it’s money she wants, I’ll give her a couple of thousand if she’ll drop the case.”⁶ S.C. tried to inform A.D., but when he was unsuccessful he informed the police of what Paschal had said.⁷

Paschal appealed his convictions, asserting “that the circuit court erred in (1) denying his motion for directed verdict on the witness-bribery charge, (2) refusing to admit evidence of bias on the part of the State’s chief witness-bribery-charge witness . . . [and] (4) finding the second-degree sexual-assault statute constitutional as applied to him”⁸

Paschal first asserted that the evidence presented was not sufficient to convict him of witness-bribery.⁹ Arkansas Code Annotated Section 5-53-108 provides that a person commits bribery when he offers a benefit to a person who may be called as a witness in hopes of influencing his or her testimony, “inducing that person to avoid legal process summoning that person to testify;” or compelling them to not be present after being summoned to an official proceeding.¹⁰

1. 2012 Ark. 127, 388 S.W.3d 429.

2. *Id.* at 14–15, 388 S.W.3d 437.

3. *Id.* at 1, 388 S.W.3d 431.

4. *Id.* at 3, 388 S.W.3d 432.

5. *Id.*

6. *Id.* at 3–4, 388 S.W.3d 432 (alterations in original).

7. *Paschal*, 2012 Ark. 127, at 4, 388 S.W.3d 432.

8. *Id.* at 1–2, 388 S.W.3d 431. Paschal appealed on six grounds all together, however one was not preserved at trial so the court could not hear it on appeal and two were not reached because it was not necessary to do so based on the holding that the statute, as applied to Paschal, was unconstitutional. *Id.* at 7–8, 15, 388 S.W.3d 434, 437.

9. *Id.* at 2, 388 S.W.3d 431.

10. *Id.* at 2–3, 388 S.W.3d 431 (quoting ARK. CODE ANN. § 5-53-108(a)(1) (Repl. 2005)).

Paschal believed that since there were no charges filed at the time that he contacted S.D., the statute did not apply to him.¹¹ However, criminal cases are not brought by victims—like A.D.¹² Instead, “the State is the party in the criminal prosecution.”¹³

In this case, A.D. was not the decider of whether or not to bring a case against Paschal.¹⁴ However, the State’s case did rely on A.D.’s testimony against Paschal.¹⁵ Since Paschal had already been arrested and interviewed, he was well aware that the charges relied on testimony by A.D.¹⁶ The supreme court held that by trying to influence A.D.’s testimony that was necessary to the State’s case, Paschal attempted to bribe her in violation of Section 5-53-108.¹⁷

Paschal’s second claim was that the trial court improperly abused its discretion when the court excluded evidence of S.C.’s bias against Paschal.¹⁸ The year prior to Paschal’s trial, a corporation that Paschal held an interest in sued S.C.’s father to quiet-title to some property.¹⁹ S.C.’s father prevailed in the trial and S.C. lived on the property at the time of Paschal’s trial.²⁰ S.C. also admitted that he was aware that Paschal was on the other side of the litigation.²¹ “The circuit court concluded that the evidence was not relevant, that it had no probative value, and that it would be prejudicial.”²²

According to Arkansas’s rules of evidence, any evidence that is relevant is admissible.²³ Further, evidence is relevant if it tends to prove a fact in question.²⁴ Finally, bias is relevant since it helps the jury to determine the credibility of witnesses.²⁵ Since the evidence Paschal wanted to present was directly related to the biases of the chief witness for the State’s bribery charge, the evidence should have been presented at trial.²⁶ The court abused

11. *Id.* at 4, 388 S.W.3d 432.

12. *Id.* at 4–5, 388 S.W.3d 432.

13. *Paschal*, 2012 Ark. 127, at 4–5, 388 S.W.3d 432 (citing *Clay v. State*, 236 Ark. 398, 403 n. 4, 366 S.W.2d 299, 303 n. 4 (1963)).

14. *Id.* at 5, 388 S.W.3d 432.

15. *Id.*

16. *Id.*

17. *Id.*, 388 S.W.3d 433.

18. *Id.*

19. *Paschal*, 2012 Ark. 127 at 5–6, 388 S.W.3d 433.

20. *Id.* at 6, 388 S.W.3d 433.

21. *Id.*

22. *Id.*

23. *Id.*, 388 S.W.3d 433 (citing ARK. R. EVID. 402 (2011)).

24. *Id.*, 388 S.W.3d 433 (quoting ARK. R. EVID. 401 (2011)).

25. *Paschal*, 2012 Ark. 127, at 7, 388 S.W.3d 433 (quoting *Fowler v. State*, 339 Ark. 207, 219, 5 S.W.3d 10, 16–17 (1999)).

26. *Id.* at 7, 388 S.W.3d 434.

its discretion in refusing to allow Paschal to question S.C. about his biases based on the prior litigation.²⁷

Paschal's third point on appeal is that Section 5-14-125(a)(6) was unconstitutional as applied to him in this case.²⁸ The court will: (1) presume that a statute is constitutional, (2) place the burden to overcome this presumption on the challenger, and (3) not rule a statute unconstitutional without a "clear and unmistakable" conflict with the constitution.²⁹ The statute in question holds a teacher from a K-12 school guilty of second degree sexual assault if he or she "engages in sexual contact with another person who is [a] student enrolled in the public school and [l]ess than twenty-one (21) years of age."³⁰

Paschal asserts that there is fundamental right to privacy in the United States Constitution³¹ and a protection for consensual sex between adults in the Arkansas Constitution.³² The State relied on *Talbert v. State*³³ to try to show "that there is no fundamental right for a public high school teacher to have sex with an eighteen-year-old high school student enrolled in that public school."³⁴ However, the court reiterated its point in *Talbert* that it is constitutional to hold that an adult cannot use "his position of trust and authority" to coerce someone into a sexual relationship.³⁵ *Talbert* criminalized the use of a ministerial position to coerce sexual acts between two adults.³⁶

The statute in question in this case held consensual sex unconstitutional, not just coerced sex.³⁷ Thus, this statute infringes on a fundamental right to privacy.³⁸

The court then looked to determine if the State had a compelling interest that was advanced by the statute using the least restrictive means.³⁹ The State asserted that it must protect students through age twenty-one in its schools "from people who have power, authority, or control over them on a

27. *Id.*

28. *Id.* at 8, 388 S.W.3d 434.

29. *Id.*, 388 S.W.3d 434 (citing *Jefferson v. State*, 372 Ark. 307, 276 S.W.3d 214 (2008)).

30. *Id.*, 388 S.W.3d 435 (quoting ARK. CODE ANN. § 5-14-125(a)(6) (Supp. 2009)).

31. *Paschal*, 2012 Ark. 127, at 9, 388 S.W.3d 435 (citing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

32. *Id.* at 9, 388 S.W.3d 435 (citing *Jegley v. Picado*, 349 Ark. 600, 632, 80 S.W.3d 332, 350 (2002)).

33. 367 Ark. 262, 239 S.W.3d 504 (2006).

34. *Paschal*, 2012 Ark. 127, at 9, 388 S.W.3d 435.

35. *Id.* at 10, 388 S.W.3d 435 (quoting *Talbert*, 367 Ark. at 269, 239 S.W.3d at 511).

36. *Id.*, 388 S.W.3d 435 (quoting *Talbert*, 367 Ark. at 270, 239 S.W.3d at 512).

37. *Id.* at 11, 388 S.W.3d 436.

38. *Id.* at 11–12, 388 S.W.3d 436.

39. *Id.* at 12, 388 S.W.3d 437 (quoting *Picado*, 349 Ark. at 632, 80 S.W.3d at 350).

day-to-day basis.”⁴⁰ This, however, was not the least restrictive method.⁴¹ As well, the court pointed out that the State has already protected students from this harm by prohibiting mandated reporters—like school teachers—from using their power or authority to coerce a person into sexual activity.⁴²

Since this statute infringed on Paschal’s fundamental rights, and was also not the least restrictive method to do so, the court held Arkansas Code Annotated Section 5-14-125(a)(6) unconstitutional as applied to Paschal.⁴³

This decision restricted the opinion in *Talbert* by requiring that the person use their position of power or authority to coerce another person into sexual acts. If two adults both consent to a sexual relationship, then there is no fault. It is when one party coerces the other party when the situation can become a crime.

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40. *Paschal*, 2012 Ark. 127, at 12–13, 388 S.W.3d 436–37.

41. *Id.* at 13–14, 388 S.W.3d 437.

42. *Id.* at 14, 388 S.W.3d 437 (citing ARK. CODE ANN. § 5-14-126(a)(1)(C) (Supp. 2011)).

43. *Id.* at 14–15, 388 S.W.3d 437.