GA Supreme Court Tosses Teacher's Conviction For Sex With Student


Melissa Lee Chase

Melissa Lee Chase was a 28-year-old Harlem, Georgia high school teacher and softball coach in August 2006 when she began spending free-time with a 16-year-old former student. Chase even allowed the young woman, Christy Elaine Garcia, to spend the night at her home. On one occasion they had a sexual encounter. In November 2006 Garcia's mother contacted the police after she found a romantic note written to her daughter by Chase. Although 16 is the age of consent in Georgia, Chase was arrested and charged with sexual assault under a state law that criminalizes sexual contact between a teacher and a student enrolled in school. (OCGA § 16-6-5.1 (b))

Chase's lawyer talked her into waiving her right to a jury trial. During her 2007 bench trial Garcia testified that she wasn't just a willing participant to having sexual contact with Chase, but that she "pushed" the relationship with Chase because she "had feelings for her."

The judge sustained the prosecution's objection to Garcia's testimony that she consented to the sexual contact, ruling that consent was not a defense to the crime. The judge found Chase guilty and sentenced her to 10 years in prison and 5 years probation. She would also have to register as a sex offender.

After the Georgia Court of Appeals affirmed Chase's conviction, the state Supreme Court accepted her case for review. On June 15, 2009, the Court issued its ruling in *Chase v. The State*, No. S09G0139 (GA Sup Ct., 06-15-2009). The 5-2 majority wrote:

> "The age of consent in Georgia is 16. … Thus, generally speaking, it is not a crime in Georgia to have physical sexual contact with a willing participant who is 16 years of age or older. (5) … The plain language of the statute does not in any way indicate that the General Assembly intended to remove consent as a defense to a charge of violating subsection [OCGA § 16-6-5.1] (b). (6)
> …
> If consent is no defense to a charge of sexual assault of a person enrolled in school, then the age of the teacher and the student have no effect on whether a crime has been committed. Consequently, a 30-year-old law school professor who engaged in a fully consensual sexual encounter with a 50-year-old law school student embarking on a second career would be guilty of a felony and subject to punishment of 10-30 years in prison. That result – not the situation in this case – would be truly absurd and unjust. But that is precisely what the statute would mean were we to accept the reading adopted by the trial court and the Court of Appeals. (9-10)
> …
> As the District Attorney concedes, the plain language of the statute does not eliminate consent as a defense to prosecutions under subsection (b). We agree with the United States Supreme Court's recent pronouncement, made in a unanimous decision, that "prosecutorial discretion is not a reason for courts to give improbable breadth to criminal statutes. Judgment reversed." (11)

On July 7, 2009 the Court declined to reconsider its decision. Since the Court ruled Garcia's consent is a defense for Chase, the prosecution cannot prove a crime occurred. The charge was dismissed and Chase was released on July 31 after 22 months of imprisonment.

The ruling had an immediate effect on another Georgia case. On July 8 charges of sexual contact with a student were dismissed against a female high school teacher in Baldwin County. She was 29 when charged in October 2008 with having sexual contact with two consenting male students, one 17 and the other 18, in different incidents.

Additional sources:
Sex charges dropped against Baldwin teacher, *The Telegraph* (Macon, GA), July 8, 2009.
Former teacher freed from prison, *Augusta Chronicle*, August 4, 2009.

U.S. Supreme Court Rules Right To Confront Witness Applies To Forensic Analysts

Luis Melendez-Diaz was tried in Boston, Massachusetts on state charges of distributing cocaine and trafficking in cocaine. The charges were based on several bags of a white substance seized as a result of searching a car in which Melendez-Diaz was a passenger.

The prosecution introduced three "certificates of analysis" as *prima facie* evidence the substance in the seized bags was cocaine. Melendez-Diaz's lawyer objected to admittance of the "certificates" as evidence without the testimony of the analyst who conducted the tests. He argued that Melendez-Diaz had the right under the federal constitution to cross-examine the laboratory technician who performed the tests. The lawyer relied on the U.S. Supreme Court's decision in *Crawford v. Washington*, 541 U. S. 36 (2004). The judge over-ruled the objection, so the jury relied on the "certificates" to find Melendez-Diaz guilty.

After Melendez-Diaz's conviction was affirmed by the Appeals Court of Massachusetts in 2007 and the Supreme Judicial Court denied review, he filed a writ of certiorari with the U.S. Supreme Court.

On June 25, 2009 the USSC issued is 5-4 ruling in *Melendez-Diaz v. Massachusetts*, 557 U.S. ___ (2009). Justice Scalia wrote the majority opinion:

> The Sixth Amendment to the United States Constitution, made applicable to the States via the Fourteenth Amendment, … provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." In *Crawford*, … we held that it guarantees a defendant's right to confront those "who 'bear testimony' " against him. A witness's testimony against a defendant is thus inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination.
> …
> The documents at issue here … are quite plainly affidavits: "declaration[s] of facts written down and sworn to by the declarant before an officer authorized to administer oaths." … They are incontrovertibly a "'solemn declaration or affirmation made for the purpose of establishing or proving some fact.'" … The "certificates" are functionally identical to live, in-court testimony, doing "precisely what a witness does on direct examination."
> …
> In short, under our decision in *Crawford* the analysts' affidavits were testimonial statements, and the analysts were "witnesses" for purposes of the Sixth Amendment . Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to " 'be confronted with' " the analysts at trial.
> …
> This case involves little more than the application of our holding in *Crawford v. Washington*. The Sixth Amendment does not permit the prosecution to prove its case via *ex parte* out-of-court affidavits, and the admission of such evidence against Melendez-Diaz was error. We therefore reverse the judgment of the Appeals Court of Massachusetts…

For a copy of the *Melendez-Diaz* decision, send $4 (stamps OK) to: Justice Denied; PO Box 68911; Seattle, WA 98168