

INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
TRIO GROUP



INDIANA STATE POLICE v. CHAD ARNOLD

**Appeal from:**  
Marion Superior Court  
The Honorable Robert  
Altice, Judge

**Oral Argument:**  
Thursday, February 14, 2008  
2:30–3:10 p.m.  
20 minutes each side

**CRIMINAL LAW**

Did the trial court err when it denied the State's motion requesting relief from the trial court's order that the Indiana State Police expunge the arrest record of Chad Arnold?

**CASE SYNOPSIS**

**Facts and Procedural  
History**

On May 1, 1993, an officer with the Lawrence Police Department arrested Chad Arnold for robbery. On April 13, 2006, Arnold filed a verified petition for **expungement** of his arrest record pursuant to **Indiana Code section 35-38-5-1**. (According to Arnold's petition, charges were never filed.) In his petition, Arnold acknowledged that the Marion County Prosecutor's Office opposed the expungement. The records division of the Indiana State Police received a copy of Arnold's petition on April 26, 2006.

The trial court held a hearing on Arnold's petition on May 31, 2006. The Indiana State Police, however, did not receive notice of the hearing scheduled for May 31, 2006. Neither the Indiana State Police nor

the City of Lawrence appeared at the hearing.

During the hearing, Arnold testified that he had been arrested twice for operating while intoxicated since the 1993 arrest. Moreover, according to Arnold's arrest record maintained by the Indianapolis Police Department, Arnold had been convicted of operating a vehicle while intoxicated, a class A misdemeanor, in 1998; and possession of alcohol by a minor, a class C misdemeanor, in 1990.

On May 31, 2006, the trial court entered its order, granting Arnold's petition and ordering the Indianapolis Police Department, the Indiana State Police and the Court Administrator's Office to "destroy all fingerprints, photographs, and/or arrest records in their respective possessions including complete deletion of all information, material and references maintained electronically in the Marion County Criminal Justice System (JUSTIS) pertaining to" Arnold. (App. 3-4).

*Indiana State Police v. Chad Arnold*

## CASE SYNOPSIS



The records division of the Indiana State Police received the trial court's order on June 7, 2006. The Indiana State Police then referred the matter to the Office of Attorney General.

In July of 2006, the State filed a motion to set aside the trial court's order pursuant to Indiana Trial Rule 60(B)(1) and (8). The State argued that prior convictions and arrests made Arnold ineligible to have his arrest record expunged. (The State's motion to set aside the order states that it was "being filed on July 7, 2006." (App. 24). Arnold's motion to strike states that the motion to set aside the order "was not filed until July 20, 2006." The State filed its motion to set aside the order no more than 43 days subsequent to the Indiana State Police's receipt of the trial court's order. (App. 39.))

On August 9, 2006, Arnold filed a motion to strike and requested attorney's fees. The trial court held a hearing on August 30, 2006, after which it denied the State's motion and denied Arnold's request for attorney's fees.

### **Parties' Arguments**

#### **Timeliness of Motion**

Arnold contends that the State's motion to set aside the expungement order was not timely. The State asserts that it filed its motion to set aside the expungement order within a reasonable time.

#### **Expungement**

State asserts that the trial court erred in expunging Arnold's arrest record because Arnold had a record of arrests for other offenses. Arnold contends that "having a record of arrests other than minor traffic offenses does not preclude the court from ordering expungement ...." Arnold's Br. 4.

## GLOSSARY



### **Expungement of Record**

The process by which the record of criminal conviction is destroyed or sealed after the expiration of time.

### **Indiana Code Section 35-38-5-1**

Whenever:

- (1) an individual is arrested but no criminal charges are filed against the individual; or
- (2) all criminal charges filed against an individual are dropped because:
  - (A) of a mistaken identity;
  - (B) no offense was in fact committed; or
  - (C) there was an absence of probable cause;

the individual may petition the court for expungement of the records related to the arrest.

(b) A petition for expungement of records must be verified and filed in the court in which the charges were filed, or if no criminal charges were filed, in a court with criminal jurisdiction in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest;
- (2) the charge;
- (3) the law enforcement agency employing the arresting officer;
- (4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
- (5) the date of the petitioner's birth; and
- (6) the petitioner's Social Security number.

(c) A copy of the petition shall be served on the law enforcement agency and the state central repository for records.

(d) Upon receipt of a petition for expungement, the law enforcement agency shall notify the court of the name and address of each agency to which any records related to the arrest were forwarded. The clerk shall immediately send a copy of the petition to

each of those agencies. Any agency desiring to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals who represent the agency that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Trial Procedure. The court shall:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:

(A) the petition is insufficient;

or

(B) based on information contained in sworn statements submitted by individuals who represent an agency, the petitioner is not entitled to an expungement of records.

(e) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(f) After a hearing is held under this section, the petition shall be granted unless the court finds:

- (1) the conditions in subsection (a) have not been met;
  - (2) the individual has a record of arrests other than minor traffic offenses;
- or
- (3) additional criminal charges are pending against the individual.

## GLOSSARY

### **Trial Rule 60**



**(A) Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the trial court clerk issues its Notice of Completion of Clerk's Record. Such corrections may be made by the trial court on its own initiative or on the motion of any party and after such notice, if any, as the court orders. After the filing of the Notice of Completion of Clerk's Record, such mistakes may be so corrected with leave of the court on appeal.

**(B) Mistake--Excusable neglect--Newly discovered evidence--Fraud, etc.** On motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
  - (a) at the time of the action he was an infant or incompetent person, and
  - (b) he was not in fact represented by a guardian or other representative, and
  - (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that

the judgment was procured against an infant or incompetent, and

- (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
- (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
- (f) the motion alleges a valid defense or claim;

- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in subparagraphs (1), (2), (3), and (4).

The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court. Writs of *coram nobis*, *coram vobis*, *audita querela*, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

## TODAY'S PANEL OF JUDGES

### Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

**John G. Baker** is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

### *“Appeals on Wheels”*

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

**The Court of Appeals has heard 202 cases “on the road” since early 2000.**

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### Hon. Carr L. Darden (Marion County)

- Judge of the Court of Appeals since October 1994

**Carr L. Darden** was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

He is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife, Lundy Marie, recently celebrated their 50<sup>th</sup> wedding anniversary.

Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation, and in May 2006, the Distinguished Alumni Award at the annual IU Law Alumni Association reception. He is also the recipient of two Sagamores of the Wabash, Indiana's highest distinguished citizen award.

Judge Darden is deeply involved in his church and community, serving on the boards of numerous charitable organizations. He has participated in several legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association, and the American, Indiana State, and Marion County bar associations. One of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



## TODAY'S PANEL OF JUDGES

### Hon. Cale J. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007



**Cale J. Bradford** was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

## **ATTORNEYS FOR THE PARTIES**

### **For Appellant, Indiana State Police:**

**David Steiner**

**Deputy Attorney General  
Indianapolis**

**David Steiner**, a native of Evansville, is married and has two children. He has a Bachelor of Arts degree in Political Science and History from Indiana University-Bloomington and a JD, also from Indiana University-Bloomington. His primary interests include travel, a variety of sports activities and gardening.

Mr. Steiner was a member of the Indiana Army National Guard for six years. He is a member of the Indiana State Bar Association, and during the majority of his 30-year legal career, he has been a civil litigator, primarily focusing on tort, civil rights, constitutional, agency, employment and labor matters. He has been lead counsel in numerous bench and jury trials in both Indiana state and federal courts and has presented oral arguments in dozens of cases in the United States Court of Appeals for the Seventh Circuit, as well the Indiana Court of Appeals and the Indiana Supreme Court.

For the past six years, Mr. Steiner has been the Section Chief for civil appeals in the Office of the Indiana Attorney General. In that position, he has been responsible for managing much of the civil appeal litigation for the State of Indiana. The primary areas of focus for civil appeals involving the State include agency actions, tort and civil rights litigation, labor and employment matters, real estate and condemnation, environmental matters, contracts, child support, habeas corpus and the defense of the constitutionality of state statutes.

Mr. Steiner's volunteer activities are primarily associated with his membership and active participation in the Southport Presbyterian Church.



### **For Appellee, Chad Arnold:**

**Jason Reyome**

**A. Demos & J. Reyome, L.L.C  
Indianapolis**

**Jason Glenn Reyome** is one of two principal members of A. Demos & J. Reyome, L.L.C., a practice which focuses on criminal defense, personal injury and family law in both state and federal courts.

Mr. Reyome completed his undergraduate work as a National Merit Scholar at the University of Oklahoma, where he majored in Business Administration. He obtained his law degree from Indiana University School of Law-Indianapolis in 2000. After graduating law school, he worked for two years as a full-time Public Defender for Marion

County in both misdemeanor and felony courts.

Mr. Reyome is a member of the Indianapolis Bar Association and Indiana Public Defender Commission and currently serves as a Legal Advisor to the Mexican Consulate in Indianapolis. He volunteers frequently for the Neighborhood Christian Legal Clinic, is a member of the Steering Committee for Cadeaux Ball, which benefits Catholic Charities of Indianapolis, and often sits as Judge Pro Tempore in Marion County Criminal and Circuit Courts. In his spare time he enjoys golf and fishing.