

No. 94-100232

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

PEOPLE OF THE STATE OF DAVIS,  
Petitioner,

vs.

CARLA DEVILLE,  
Respondent.

ON WRIT OF CERTIORARI  
TO THE SUPREME COURT OF  
THE STATE OF DAVIS

IN THE CIRCUIT COURT OF NEWAGE COUNTY  
STATE OF DAVIS

PEOPLE OF THE STATE OF DAVIS,  
Plaintiff,

vs.

CARLA DEVILLE,  
Defendant.

No. 92-CR-7895

INFORMATION

The people of the State of Davis, by and through Stephen Operaman, the District Attorney for the County of Newage, charge that on or about July 1, 1993, the defendant, Carla DeVille, committed the offense of child abuse in violation of Dav.Rev.Stat. ch. 13, par. 3.2, in that she offensively struck the faces of her minor children, Gregory DeVille and Marcia DeVille, at a the K-Mart store located at, 60 Center Street, Selfesteem, Davis.

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District Attorney for the County of Newage

M E M O R A N D U M

TO: The Honorable Charles McElroy  
FROM: Jeffrey Branson, Newage County Adult Probation Department  
DATE: July 24, 1993  
RE: Carla DeVille

Pursuant to your order, the Department has conducted a presentence investigation of Carla DeVille to determine if she is a suitable candidate for probationary supervision and/or other forms of punishment short of confinement to the penitentiary. I interviewed the defendant, family members, her children's teachers and neighbors to investigate the family and social history of Ms. DeVille.

Childhood History and Background

Carla DeVille, a white female, was born Carla Teltori on April 23, 1969, in the City of Selfesteem. Her mother was divorced from her father when Carla was an infant. She has three older siblings.

Her mother supported the family as a cocktail waitress at Spanky's Bar & Grill until she remarried. Carla's stepfather, a truck driver, allegedly abused her mentally and, starting at approximately age 11, sexually. Carla ran away from home at age 14. She claims to have lived in several East Coast states, supporting herself through panhandling, odd jobs, and, when desperate for money, prostitution. She denies abusing alcohol or drugs at that time. She underwent abortions in Charlotte in 1984 and in Richmond in 1985.

Carla returned to Selfesteem after her 1985 abortion. She attempted to start high school as a freshman, but quickly dropped out and took a job at the checkout counter at the Harris Teeter grocery store. It was there that she met her future husband, Cadwell (Caddy) DeVille, who had ascended to the position of frozen food manager by age 22. The DeVilles married in December 1986 after Carla learned that she was pregnant. Until Caddy moved out just recently, the DeVilles resided in a small rented home on the south side of Selfesteem.

Home Investigation

Neighbors report that the DeVilles seemed like a happy couple who rarely quarreled. I attribute this to Caddy DeVille's extremely passive demeanor and, until recently, his desire to please Carla at all costs. This includes working 50-60 hours a week at the Harris Teeter and approximately 20 hours per week

driving a cab.

The DeVilles have four children Greg, 7, Marcia, 5, Peter, 3 and Janet 1. The DeVille's house appeared somewhat in disarray when I visited on two separate occasions. This is consistent with the neighbors' reports that the house is rarely clean, and that the children are fed a less-than-nutritious diet of instant and processed foods, with special emphasis on instant oatmeal and processed macaroni and cheese. The children sometimes are dressed in torn or dirty clothes. The neighbors report that the defendant tends to leave them home alone for hours at a time.

Further investigation reveals the reasons for DeVille's unexplained absences. The local off-track betting parlor manager reports that Carla attends at least three times a week, betting between \$25-\$50 per race. The Northern Queen Riverboat Casino, which opened approximately one year ago, has provided computer records showing that DeVille travels on several cruises per week, playing craps and roulette. Neighbors say she has been known to slip off to St. Patrick's on Wednesday nights for bingo if she does not have enough money for sophisticated games of chance.

The DeVille joint income tax return for 1992 shows \$55,000 in taxable wages. Gregory and Marcia attend public school, and Peter is too young to attend preschool. The DeVilles pay only \$300/month in rent for their house. Caddy drives a green 1979 Plymouth Volare with over 120,000 miles on it. While neither adult currently drinks or uses drugs, Carla admits that she had a cocaine problem between 1988 and 1990. She was hospitalized for six months, but appears to now be off drugs. They have never taken a vacation away from home for more than a weekend. Accordingly, it is my conclusion that all spare money in the DeVille household goes to Carla's gambling proclivities.

#### Child Disciplinary History

Carla has been investigated pursuant to neighbor complaints concerning violence in the past. They have heard screams and crying from the older children almost weekly. Once, a Newage social worker had to take custody of the children for a day after Carla began throwing items around the house.

Carla's sister-in-law, Kristin Logan, says that she has been present on two occasions when Carla has lost her patience with her children and chased them around the house with a belt. Ms. Logan helped calm the frightened children after interceding with Carla.

Gregory's teacher, Jessica Crawford, finds Gregory to be withdrawn and lacking confidence. She reports that this is characteristic of children who suffer physical and emotional abuse from their parents. Marcia's kindergarten teacher found much of the same behavior with her.

## Prior Criminal History

Carla pled guilty in 1988 to possession of a small amount of cocaine. She served a one-year term of probation for that offense. She pled guilty to a charge of prostitution in Virginia when she was 17, just before returning to Davis.

More importantly, Carla pled guilty to a charge of child abuse in Virginia at or about the time she was charged with prostitution. The Virginia juvenile authorities report that Carla was living with a man who was alleged to be her pimp, and the man's two-year-old daughter. Carla supposedly hit the child with an electric cord after a toilet training accident.

## Conclusion

Because Carla has a prior criminal history, she appears to be a borderline candidate for ordinary conditions of probation. However, she clearly suffers from some form of gambling addiction, has a history of cruelty to children, and lacks basic parenting skills. It is the Department's recommendation that any probationary supervision granted to Carla include parenting classes as regularly conducted by the Department, and counseling from a professional skilled in treating people with gambling addictions.

I also discussed the possibility that Judge McElroy may order her to undergo some form of medical contraceptive therapy, as Judge McElroy has been known to consider this for child-abusing mothers. She appeared to understand and did not have any problems with the idea.

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Jeffrey Branson,  
Newage Adult County Probation Department

IN THE CIRCUIT COURT OF NEWAGE COUNTY  
STATE OF DAVIS

PEOPLE OF THE STATE OF DAVIS,  
Plaintiff,

vs.

CARLA DEVILLE,  
Defendant.

No. 92-CR-7895

SENTENCE

This Court, having reviewed the evidence of record, the statement of defendant, arguments of counsel and the County of Newage's Adult Probation Department presentence investigation report, sentences defendant as follows:

1. Defendant shall serve a term of probation of three years, during which she shall report regularly to the Newage County Adult Probation Department. She shall also observe all of the statutorily-mandated conditions for those convicted of misdemeanor offenses.

2. Defendant shall attend meetings of Gamblers Anonymous until the director of the local chapter certifies that she has successfully completed treatment.

3. Because I find the defendant lacks the necessary skills to raise children in an uplifting and positive fashion, I am ordering that she attend one year of parenting classes, to be conducted by the Davis Department of Child Welfare.

4. I further find, based upon the abusive psychological and physical conditions to which defendant's small children have been exposed, it would be in the best interest of defendant, her children and any children she might bear while gaining maturity and parenting skills, that defendant be prevented from conceiving and bearing children while on probation. Accordingly, by undergoing medical contraceptive therapy, I advised defendant in open court that she would serve no time in jail. Therefore, defendant will undergo a complete physical examination, at the county's expense, to determine if she is a suitable candidate for the implantation of the contraceptive Norplant. If the physician determines that Norplant is not medically contraindicated, she will undergo the implantation procedure, again at county's expense. Should defendant experience deleterious side effects, the implant may be removed, and this Court will retain jurisdiction to consider alternative conditions of probation.

The Honorable Charles McElroy  
District Judge    October 10, 1993

IN THE CIRCUIT COURT OF NEWAGE COUNTY  
STATE OF DAVIS

PEOPLE OF THE STATE OF DAVIS,  
Plaintiff,

vs.

CARLA DEVILLE,  
Defendant.

No. 92-CR-7895

MOTION TO MODIFY SENTENCE

The defendant, Carla Deville, by and through her attorney, Robert Dibble, moves to vacate the sentence of Norplant insertion.

Motion to Modify Sentence

1. The trial court has ordered defendant to undergo medical testing to determine if she is a candidate for the implantation of the contraceptive Norplant.

2. Since agreeing to that condition, defendant has decided that she wishes to exercise her constitutional right to decide for herself whether she wishes to bear children during the three years of her probation.

3. The forced implantation of Norplant violates defendant's fundamental right to decide to bear children. *Carey v. Population Services Int'l*, 431 U.S. 678 (1977). There is no compelling state interest justifying such an egregious intrusion into defendant's sphere of personal privacy. Accordingly, this Court should modify its sentence to eliminate this condition of probation.

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One of the attorneys for CARLA DEVILLE

Law Offices of Robert Dibble  
800 Nelson St.  
Selfesteem, Davis 34567  
(707) 727-9876

No. 858558

IN THE  
SUPREME COURT OF DAVIS

CARLA DEVILLE,  
Defendant-Appellant.

vs.

PEOPLE OF THE STATE OF NEWAGE,  
Plaintiff-Appellee,

On Appeal from the Circuit  
Court of Newage County,  
Davis , No 92-CR-7895  
The Honorable Charles McElroy,  
Judge Presiding

The Honorable Justice Rijo delivered the opinion of the Court. The defendant, Carla DeVille, appeals to this Court from her conviction in the district court of Newage County of the offense of public battery to a child. We remand for further consideration as to the appropriate sentence.

Facts

Carla DeVille was shopping with two of her four children, Greg and Marcia, ages 7 and 5, at the K-Mart in the City of Selfesteem, Davis. It was a long, hot day of shopping for the DeVilles, and the air conditioning was out at the K-Mart.

According to the testimony of K-Mart employees and customers, the DeVille children seemed to take great joy in creating disturbances. This included racing up and down the aisles making siren noises during "blue light specials," modeling lingerie from the racks and absconding with hamsters from the pet department and threatening to place them in a prominently-displayed microwave oven.

After rescuing the unsuspecting rodents from a tragic end, DeVille was heard to say "you are the most evil children God ever put on this earth." She then struck each on the right cheek, just below the eye. She ordered both of them into the shopping cart, where they remained until DeVille went through the check-out counter. Witnesses described the slaps as extremely hard, enough to leave bruises the children's faces. The children both cried loudly until DeVille took them to the car. DeVille was



arrested by the Selfesteem police later that afternoon at her home.

DeVilleville was charged with child abuse (Dav.Rev.Stat. ch. 13, par. 3.2), which makes it a Class 5 felony to:

Make an offensive contact with a child inflicting pain not reasonably related to discipline.

The jury found DeVilleville guilty of the charge. As part of a presentence investigation, Newage's probation officer learned that DeVilleville was often violent with her children when she became angry and frustrated with their behavior. On two occasions, family members had to summon the police because DeVilleville was chasing the children around the house with a leather belt. No criminal charges were filed on those occasions. DeVilleville has prior misdemeanor convictions for drug possession and prostitution.

Furthermore, the probation department home investigation revealed that DeVilleville often left the children at home alone for hours at a time while she frequented off-track betting parlors, bingo halls and Davis's recently-launched riverboat casinos. While the children did not appear to be in poor health, their home was often dirty and their clothes were not always clean. Their diet consisted largely of instant oatmeal and processed macaroni and cheese. Because of the debts attributable to DeVilleville's gambling, her husband was forced to take a second job, requiring him to be away from home for 12-16 hours per day. Defendant's attorney reports that her husband left the marital home and filed for divorce following the conviction.

The district court sentenced DeVilleville to 30 days in the county jail and a term of three years' probation. In addition to the usual conditions of probation, the district court ordered the following:

Defendant shall attend meetings of Gamblers Anonymous until the director of the local chapter certifies that she has successfully completed treatment. Because I find that defendant lacks the necessary skills to raise children in an uplifting and positive fashion, I am ordering that she attend one year of parenting classes, to be conducted by the Davis Department of Child Welfare.

I further find, based upon the abusive psychological and physical conditions to which defendant's small children have been exposed, it would be in the best interest of defendant, her children and any children she might bear while gaining maturity and parenting skills, that defendant be prevented from conceiving and bearing children while on probation. Therefore, defendant will undergo a complete physical examination, at the county's expense, to determine if she is a suitable candidate for the implantation of the contraceptive Norplant. If the physician determines that Norplant is not medically contraindicated, she

will undergo the implantation procedure, again at county's expense. Should defendant experience deleterious side effects, the implant may be removed, and this Court will retain jurisdiction to consider alternative conditions of probation.

Defendant filed a motion to modify her sentence to delete the Norplant implantation condition, having decided that she did not wish to undergo the procedure. She argued that the involuntary implantation of the contraceptive violated her constitutional right to privacy. The trial court denied the motion, and this appeal follows.

#### Constitutionality of Norplant Use as a Condition of Probation

The Supreme Court has held that individuals have a fundamental right to make decisions about procreation without interference from the government. *Carey v. Population Services Int'l*, 431 U.S. 678, 685 (1977). This gives rise to the second issue in this case: whether that fundamental right bars a judge from imposing the use of the contraceptive Norplant as a condition of probation. Because the forced use of a medical contraceptive plainly interferes with that right, it can only be imposed if it advances a compelling governmental interest using the least restrictive means. Otherwise, defendant's fundamental right to procreation may not be infringed. *Id.* at 686. The state asserts three compelling interests in this condition. First, the state seeks to protect defendant's current children from any further abuse. Second, Davis claims an interest in the protection of any future children defendant may have. Finally, the state asserts that it has a compelling interest in preventing habitual criminal behavior.

Even if the government's interests are considered compelling, they do not empower this court to infringe upon defendant's fundamental right to bear children. First, the imposition of Norplant as a condition of probation is not the least restrictive means of protecting defendant's current children from abuse. The link between child abuse and family size is tenuous, at best. Preventing defendant from having more children is a rather ineffective way to prevent future child abuse to her current children. Parenting classes, counseling, even a temporary loss of full custody, are all possible solutions less restrictive than denying defendant her fundamental right to bear children.

Next, the government does not have a compelling interest in the protection of unborn children not yet conceived. While the Supreme Court has recognized a state interest in protecting a fetus, that interest does not become compelling until the point of viability. *Planned Parenthood, --- U.S. ----, 120 L.Ed.2d 674, 710 (1992)*. Thus, it is difficult to imagine the government having a compelling interest in protecting a life that is not born, not viable, and, in fact, not yet even conceived. See, *id.* at 709.

Finally, while the state has a legitimate interest in preventing habitual criminal activity, this interest is insufficient to justify the substantial intrusion into defendant's rights. Although the probation report did point to conditions indicating violence against her children, defendant has only been convicted of one minor incident of child abuse before this incident. The government has a variety of methods, nearly all of them less restrictive than mandated surgical contraception, of ensuring that defendant never again faces child abuse charges. Furthermore, there is no reason to believe that just because defendant does not bear more children, she will never abuse her current children.

"If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Eisenstadt v. Baird, 405 U.S. 438, 453 (1972). Thus, this court finds that imposing the mandatory use of the contraceptive Norplant as a condition of probation violates Ms. DeVille's fundamental right to decide whether or not she will bear children. Accordingly, that portion of the sentencing requiring defendant to undergo Norplant treatment is vacated. This cause is remanded to the circuit court for consideration of alternative conditions of probation.

VACATED AND REMANDED.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1994

PEOPLE OF THE STATE OF DAVIS,  
Petitioner

vs.

CARLA DEVILLE,  
Respondent.

Case Nos. 94-400232

ORDER

The petition for writ of certiorari to the Supreme Court of the State of Davis is hereby granted that this Court may hear and consider all issues raised by the record. It is further ordered that this case be set down for an expedited hearing in the October 1994 term of this Court.

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Lawrence Melman, Clerk of the United  
States Supreme Court

Dated: August, 31 1994  
Washington, D.C.