

## Bergeron Case

# WITCHHUNT!

## ***Tamara Schmidt sent to prison for a crime she didn't commit***

Bad parent? Maybe.  
Bad justice?  
Definitely.

By GLENN CAMPBELL

The State screwed up, and Tamara Schmidt has gone to prison for it.

Back in 2003, DCFS made the fateful decision to give Schmidt a case plan to get her daughter back. In doing so, it was saying that Schmidt was not an "unfit parent" but a redeemable one.

By all accounts, Schmidt then fulfilled her case plan and proved the State right. What did she get for it?

4 to 12 years in prison.

Her crime? Leaving her children unattended in a small-town trailer park while she went to an adjoining casino and gambled.

Bad judgment, absolutely. Worthy of four years in prison? Not by any consistent standard of justice in this state.

This is Nevada, the gaming capital of the world. If we sent every parent to prison who left their children alone to gamble, our prison population would double and our precious casinos could lose a substantial portion of their revenue. Every parent who leaves their kids in their hotel room while they go down to the slots would be equally guilty.

Let's not fool ourselves. Schmidt was prosecuted and harshly sentenced for purely political reasons, because she refused to surrender her parental rights. Not only did she lose one daughter and see the other maimed, she is now in prison for the crime.

The criminal charges appear to be a backdoor Termination of Parental Rights (TPR) when the Family Court declined to do it. Four years is just long enough to ice Schmidt until her crippled daughter turns 18.

Maybe a greater good was served: The daughter now gets to stay with her remarkable foster parents where she and everyone other than Schmidt want her to be.

The only thing being sacrificed here is the rule of law.

Piddling little thing: the rule of law. It's not important is it?

### **The Bergeron Case**

Of course, the Bergeron case has plenty of emotional and political baggage. Let's go through it, shall we?

On Jan. 22, 2003, an angry drug addict, Beau Maestas, along with his sister, broke into Schmidt's Mesquite trailer and viciously stabbed her two daughters, killing a 3-year-old and crippling then-10-year-old Brittney.

The brutal crime outraged the community. Action News, the I-Team and our other fine media were all over it—which is often a dangerous environment for justice.

Let's note the obvious:

1) Tamara Schmidt didn't stab the children; Beau Maestas did.

2) At the time of the crime, Schmidt was a drug addict with a dubious history who was clearly not an exemplary mother. However, her only crime at the time was leaving the kids alone to go gambling.

3) Somebody ripped off Maestas by passing off rock salt as meth,

although Schmidt denies it was her.

4) Maestas was pissed and drug-crazed (from someone else's drugs) and was apparently bent on vengeance.

5) If Schmidt had been present, it is not clear whether she could have saved her children. Maybe she would have just become the third victim.

6) Schmidt could not have predicted Maestas' actions when she left the children. Who could have guessed that even an enraged addict would do such a thing?

The surviving child, severely injured, was taken into custody by the county (CPS) and later passed into the control of the State (DCFS). At the time of the transfer, the State made the critical decision, based on the extensive information at its disposal, to give Schmidt a case plan.

Because one child died while in Schmidt's care, the State could have pushed immediately for TPR under Nevada law, but it chose not to. The case plan was an implicit statement by the State that it felt Schmidt was redeemable.

What evil did Schmidt do thereafter? None. She kicked drugs. She fulfilled her case plan. She wanted her child back.

Just one little problem: Her child didn't want to go back.

## The Parental Preference

Why would the government give a child back to her birth parents when the child herself doesn't want to go? It's that irritating rule of law again.

Given a choice between stable, loving, resourceful foster parents and less-than-adequate birth parents, every intelligent child is going to recognize the obvious: the foster parents are better.

The only problem is that we will never have enough of them.

It would be nice if every child could live with the best parents possible, but that isn't how the law works. Family law is based on a simple principle: that the parents who produce a child are the best ones to raise her. This is called the "Parental Preference," and it is a nasty legal philosophy that we can't live without.

The Parental Preference may be bad in this case, but you will thank God for it the next time the State comes to your door to take away your kids. Parents have rights as

well as responsibilities, and one of those rights is custody of their children.

Under extraordinary circumstances, parental rights can be terminated, but the standards are high. The burden is on the State to show that the parent is not just inadequate, but grossly unfit and that all attempts at redemption are futile.

Early in the Bergeron case, the state chose not to pursue this avenue. The decision to seek TPR happened much later in response to political pressure.

Brittney has said that she wants to stay with her foster parents. This tugs at the heartstrings of every TV viewer. Look at everything this child has been through. Doesn't she deserve to get her wishes?

Under the law, however, the wishes of the child have no relevance. We don't ask children who their parents should be. None of us have that choice.

Schmidt refused to relinquish her rights for whatever reason (pigheadedness, selfishness, attachment, love), but the raw emotions of the public—i.e. the voters—say that Brittney should stay where she is.

Normally, this isn't a matter of contention in Family Court, but Schmidt was hung by the viciousness of Maestas' actions and the public outcry for more scapegoats. The announcement of a big financial settlement for the child also condemned Schmidt. Even though she would have no access to the money, the cynical public assumed she was after it.

The State knows what it has to do: terminate parental rights. If the law won't let it happen, than to Hell with the law. There are reelections at stake.

When the Family Court declined to terminate rights based on the reversed position of the State, the D.A. turned to the criminal court for a second opinion.

## Prosecution is Rare

Child neglect is a crime, but parents whose lose their children for drug-related neglect are rarely prosecuted. Instead, the case is handled through Family Court, which tries to repair the deficiency rather than seeking retribution. The only punishment, if the parents continue to fail, is TPR.

The reasons are practical. In an overburdened foster care system, the state desperately needs to give children back to their parents. If every parent was given a 4-

year sentence for crimes equivalent to Schmidt's, it would force these children to remain in custody for five years at minimum. Imagine the burden to the system!

If Schmidt had been TPR'ed or relinquished her rights, would she have been prosecuted? Not likely, especially in a less publicized case.

The criminal prosecution proceeded only after the civil action failed. If Schmidt's crime was so heinous, why did the state wait two years to prosecute? If this is impartial justice, why did the D.A. need to wait for the outcome of the TPR?

From the sequence of events, it appears that this criminal prosecution was intended to reverse a decision of the Family Court, which sets a dubious precedent. Is this what we should expect whenever the Family Court makes a politically unpopular decision?

Schmidt was prosecuted because she completed her case plan and refused to relinquish her rights and because the State had already screwed up its own case so badly that it couldn't pursue TPR through the normal course.

And where did that 4-year sentence come from?

In another well-publicized case, a father was accused of criminal neglect for not locking up his guns and thus allowing his son to shoot himself. Same charge: criminal neglect leading to bodily injury. That father was sentenced to probation. Why not 4 years?

We wonder: Has there ever been another case in Nevada—even one—where a parent has been sentenced to 4-to-12 years for leaving their children alone for a few hours?

This is an important question for the gaming industry. If this sentence is now the standard, maybe our responsible casino establishments should be required to post it in all of their rooms so the parents don't leave.

That would turn Bergeron into a very hot case, wouldn't it?

—GC

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