

**IN THE COURT OF APPEALS
OF THE STATE OF ARIZONA**

DIVISION ONE

STATE OF ARIZONA, ex rel. WILLIAM)	Court of Appeals No.
G. MONTGOMERY , Maricopa County)	1 CA-SA 13-0227
Attorney,)	DEPARTMENT E
))
Plaintiff/Petitioner,))
)	Maricopa County Superior
v.)	Court No.
)	CR-2010-114002-001-DT
THE HONORABLE WARREN J.))
GRANVILLE, Judge of the SUPERIOR))
COURT OF THE STATE OF ARIZONA,))
in and for the County of MARICOPA,))
))
Respondent Judge,))
))
JACK DOUGLAS ROSE,))
))
Real Party In Interest.))

**BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL
JUSTICE IN SUPPORT OF REAL PARTY IN INTEREST**

David J. Euchner, No. 021768
33 N. Stone Ave. #2100
Tucson, Arizona 85701
(520) 724-6800
David.Euchner@pima.gov
Attorney for **Arizona Attorneys for
Criminal Justice**

TABLE OF CONTENTS

	Page
TABLE OF CASES AND AUTHORITIES	ii
INTRODUCTION	1
INTERESTS OF <i>AMICUS CURIAE</i>	2
ARGUMENT	3
I. Neither the Victims’ Bill of Rights nor the legislative and rule-based implementation of those rights express or even imply that a corporate entity may invoke the right to refuse an interview or deposition.....	3
CONCLUSION	9

TABLE OF CASES AND AUTHORITIES

CASES	PAGES
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	6
<i>State v. Roscoe</i> , 185 Ariz. 68, 912 P.2d 1297 (1996)	7
<i>State v. Thompson</i> , 204 Ariz. 471, 65 P.3d 420 (2003)	7
<i>Wells v. Fell</i> , 231 Ariz. 525, 297 P.3d 931 (App. 2013)	6

ARIZONA REVISED STATUTES

A.R.S. § 13-4401	4
A.R.S. § 13-4404	4, 7-8

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 15	2, 6
Rule 39	4

ARIZONA CONSTITUTION

art. II, § 2.1	3-4, 8
----------------------	--------

OTHER AUTHORITIES

http://www.azsos.gov/election/1990/Info/PubPamphlet/PubPam90.pdf	5
---	---

INTRODUCTION

¶1 In this case, the Maricopa County Attorney’s Office (“MCAO”) seeks to expand the definition of “victim” beyond anything the voters, the legislature, or the Supreme Court ever could have imagined when they put in place the Victims’ Bill of Rights and the statutes and rules implementing the Victims’ Bill of Rights. MCAO argues that a natural person with some undefined ownership interest in a corporate entity may refuse a pre-trial defense interview when the corporate entity is the “victim” under the applicable constitutional and statutory provisions. It has filed a special action in this Court claiming that the legislature has “abolished” a constitutional right, and that the Supreme Court “follow[ed] suit” by adopting rules that implement legislative enactments. It has utterly failed, however, to show that such a constitutional right ever existed in the first place – because it does not.

¶2 In the very first sentence of its petition, MCAO acknowledges that John Abel, William Patterson, and Patricia Patterson are owners of ACV, a limited liability company and the entity that MCAO designated as the victim in its indictment of the Real Party In Interest. By the fourth sentence of its petition, MCAO is *equating* these three persons with ACV – a logical leap wholly at odds with the law governing corporate entities. This non-sequitur is the root cause of the flawed reasoning that MCAO employs in its attempt to prevent the pre-trial discovery to which the Real Party In Interest is entitled. If the Court were to

sanction this approach, which was rejected by the Respondent Judge, it would undermine the public policy of full disclosure and preventing “trial by ambush” underlying Arizona Rule of Criminal Procedure 15 and establish an unworkable rule fostering litigation every time a corporate entity is the victim of a crime. The Court should refuse to adopt MCAO’s expansive reading of victims’ rights, which was not intended by the voters, the legislature, or the Supreme Court.

INTEREST OF *AMICUS CURIAE*

¶3 *Amicus curiae* Arizona Attorneys for Criminal Justice is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens’ rights, the criminal justice system, and the role of the defense lawyer. *Amicus* offers this brief in support of the Real Party in Interest because an integral part of presenting an effective defense for the criminally accused is engaging in the interview and deposition procedure laid out in Ariz. R. Crim. P. 15 so that defense counsel may adequately prepare for trial.

ARGUMENT

I. **Neither the Victims' Bill of Rights nor the legislative and rule-based implementation of those rights express or even imply that a corporate entity or its owners may invoke the right to refuse an interview or deposition**

¶4 Article II, section 2.1(A)(1) of the Arizona Constitution protects a victim's right "to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." More specifically, section 2.1(A)(5) protects the right of a victim "to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant." The legislature is vested with "the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed by this section." *Id.* § 2.1(D).

¶5 "Victim" is defined in § 2.1(C) as "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative" The legislature adopted a similar, but *more expansive*, definition: "a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree

or any other lawful representative of the person” A.R.S. § 13-4401(19).¹

¶6 Exercising its constitutionally-granted authority to “define” and “implement” the rights of victims, the legislature placed a common-sense limitation on the ability of “legal entities” to claim certain rights. A.R.S. § 13-4404. It narrowed the scope of victims’ rights for legal entities to the right to appear and be heard at proceedings relating to restitution and sentencing. The law has not been amended or challenged in more than twenty years. In enacting its rules relating to victims’ rights, the Arizona Supreme Court reflected the legislative distinction between natural persons and corporate entities in defining “victim” and the scope of victims’ rights:

As used in this rule, a “victim” is defined in accordance with the definition provided in the Arizona Revised Statutes. . . . The victims’ rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

Ariz. R. Crim. P. 39(a)(1). This rule acknowledges the legislative limitation on victims’ rights in the context of corporate entities.

¶7 Limiting victims’ rights for corporations, LLCs, and other legal entities in this manner is sound policy. The cornerstone of the Victims’ Bill of Rights, the right “to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse,” Ariz. Const. art. II, § 2.1(A)(1), is based

¹ Unless otherwise stated, all statutory and rule citations refer to the current version.

in protecting the emotions of natural persons who have already suffered emotional trauma as crime victims. The policy underlying the Victims' Bill of Rights is that such persons should not be re-victimized or re-traumatized by the criminal justice process, and every reasonable step should be taken to ensure that the defense of the criminally accused does not unnecessarily tread on the dignity of the victim.

¶8 The publicity pamphlet for the 1990 general election² shows that Proposition 104 supporters who submitted arguments focused on the traumas suffered by victims of violent crimes and their family members who survive them. Nine arguments were published in favor of enacting the Victims' Bill of Rights; one was submitted by then-Maricopa County Attorney Richard Romley and refers generally to placing the rights of victims on par with those of defendants. The other eight arguments were submitted by other groups supporting victims' rights and family members of murder victims, and all eight without exception refer to the suffering of victims of violent crimes such as murder, rape, and vehicular homicide related to drunk driving. Not one suggests that a legal entity such as an LLC should be afforded any protection under the Victims' Bill of Rights, much less the same rights as a natural person. This further demonstrates that the position now taken by MCAO – that owners of an LLC can claim a victim's right to refuse an interview or deposition – is far outside the boundaries of the protections provided by the

² <http://www.azsos.gov/election/1990/Info/PubPamphlet/PubPam90.pdf> (last accessed October 2, 2013).

Arizona Constitution.

¶9 The legislature has properly recognized that corporations can be victimized; common sense dictates this in the context of financial crimes. For example, Wal-Mart may be able to weather the losses from shoplifting better than a mom-and-pop store, but Wal-Mart is no less entitled to protections under the Victims' Bill of Rights to receive restitution and to be heard at sentencing. Logically, however, neither a large multinational corporation nor any smaller, less complex legal entity can have the same type of victims' rights as a natural person who is victimized.

¶10 MCAO correctly notes that there is no constitutional right to conduct discovery in a criminal case except for the right to exculpatory information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). Petition at 2. Nor is there a constitutional right, however, for a legal entity to refuse a pre-trial interview. To hold otherwise would be a far stretch from the intent of the voters and the language of the applicable constitutional provisions and would undermine the purpose of Rule 15, which is to avoid "trial by ambush" and "to assist the search for truth by providing the parties with all the evidence possible so that the crucial facts may be presented at trial and a just decision made." *Wells v. Fell*, 231 Ariz. 525, ¶¶ 12-13, 297 P.3d 931, 934-35 (App. 2013) (cites and quotes omitted).

¶11 In addition, MCAO's proposed definition of "victim" is not only

unsupported in law, but it is also impractical. It attempts to draw a distinction between the multinational corporation and “the quintessential American small business.” Petition at 11. What matters, as the Respondent Judge correctly pointed out, is that the victim is a legal entity and not a natural person. It would not matter if the named victim was a corporation that was entirely owned and operated by a single person. MCAO is implicitly asking the courts to draw a line between corporate entities that are small enough to allow officers, principals, or members to refuse interviews and those that are too big for owners or employees to exercise victims’ rights. If the courts accepted this distinction, however, any line is doomed to be arbitrary. Such considerations are best left to the legislature, not the courts.

¶12 MCAO’s argument asking this Court to strike down A.R.S. § 13-4404 as unconstitutional is essentially an admission that the statute does in fact restrict the rights of owners of a corporate entity to refuse an interview. This argument, however, also fails under all accepted methods of statutory interpretation. *See State v. Thompson*, 204 Ariz. 471, ¶ 27, 65 P.3d 420, 427 (2003) (“We are ... mindful of our duty to construe this statute, if possible, in a way that not only gives effect to the legislature’s intent ... but also in a way that maintains its constitutionality.”) (internal cites omitted). Under *State v. Roscoe*, 185 Ariz. 68, 912 P.2d 1297 (1996), the court must strike down any portion of the statute that conflicts with the Victims’ Bill of Rights; but first, there must be an actual conflict. In *Roscoe*, our

Supreme Court found a conflict between § 13-4404 and the right to refuse an interview enshrined in article II, § 2.1(A)(5), because police officers are “persons” and the Constitution made no room for an exception for police officers who are victimized in the course of exercising their law enforcement duties. The Constitution makes no provision, however, for victims who are not natural persons.

¶13 Corporate entities such as the LLC in this case have no protection under the Victims’ Bill of Rights. The legislature recognized that corporations and other legal entities should have notification of court hearings and the opportunity to be heard in court, and so, by an act of legislative grace, legal entities were given such rights. The legislature has the power to limit or take that away.

CONCLUSION

¶14 Corporate entities have no constitutional rights under the Victims' Bill of Rights. The Respondent Judge correctly concluded in this case that the owners of an LLC have no legal basis for refusing to give pre-trial interviews to defense counsel. AACJ asks this Court to decline jurisdiction, or alternatively, to grant jurisdiction and deny relief.

RESPECTFULLY SUBMITTED this 7th day of October, 2013.

ARIZONA ATTORNEYS FOR
CRIMINAL JUSTICE

By /s/ David J. Euchner

David J. Euchner
33 N. Stone Ave. #2100
Tucson, AZ 85701
Attorney for **Arizona Attorneys for
Criminal Justice**