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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

ARLENA M WILLES,

Defendant.

CR2019-005397-001

BRIEF IN SUPPORT OF THE ADMISSIBILITY
OF VICTIM'S STATEMENTS TO OLIVIA
DOUMA
(Assigned to the Honorable Geoffrey H
Fish, Div. CRJ26)

The State of Arizona, by and through undersigned counsel, by and through her undersigned deputy, respectfully moves this Honorable Court to admit the September 7, 2018, statements of Victim to Department of Children's Services, hereafter (DCS), case worker Olivia Douma.

This brief is supported by the attached Memorandum of Points and Authorities.

Submitted May 25, 2021.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY:

A handwritten signature in black ink, appearing to read 'Frankie Grimsman', written over a horizontal line.

/s/ Frankie Grimsman
Deputy County Attorney

Memorandum of Points and Authorities

I. FACTS

On September 5, 2018, Defendant removed her seriously ill son, Victim, from Banner Thunderbird Hospital against medical advice. Defendant was informed by Banner that they would be contacting DCS if Defendant left the hospital with Victim. Defendant chose to leave with Victim, and DCS was contacted.

On September 7, 2018, DCS caseworker Olivia Douma responded to the residence of Defendant. When she arrived, Defendant initially refused to let her in the house because she would “see how sick he (Victim) is”. Ms. Douma was eventually allowed into the home, and she saw Victim on the couch with a heating pad. She described him as “visibly in pain”, very thin with little or no muscle tone, with eyes that were sunken with bags underneath them. Victim said, “Ow, my hiney”, and “I don’t want to die anymore”. Victim told Defendant and Ms. Douma he didn’t feel good and wanted to go to the doctor, and he wanted to go to the hospital.

Attached is the transcript of a recorded interview Olivia Douma. All Victim’s statements discussed below are referred to on page three (Exhibit A). Audio recording is available.

II. Law and Argument

a. Victim’s Statements are Admissible as an Excited Utterance

Evidentiary Rule 803(2) provides a hearsay exception for statements “relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.” A court must find three factors in order to admit statements under this exception: 1)

a startling event, 2) words spoken soon after the startling event so there is little to no time for the declarant to fabricate or reflect on the event, and 3) words must relate to the startling event. *State v. Cruz*, 218 Ariz. 149, 161, 181 P.3d 196, 208 (2008) (citing *State v. Rivera*, 139 Ariz. 409, 411, 678 P.2d 1373, 1375 (1984)).

The court must take a totality of the circumstances approach to determine whether the statements are made while still under the shock of the event or whether the declarant's demeanor has altered, even if the statements were not made immediately after the event. *State v. Barnes*, 124 Ariz. 586, 589-90, 606 P.2d 802, 805-06 (1980). In fact, Arizona courts have held that "the physical and emotional condition of the declarant at the time of the statement" is more important in determining if the statements fall under excited utterance than the time elapsed between the words and the event. *State v. Parks*, 211 Ariz. 19, 27, 116 P.3d 631, 639 (Ct. App. Div. 1, 2005) (citing *State v. Anaya*, 165 Ariz. 535, 538-39, 799 P.2d 876, 879-80 (Ct. App. Div. 1, 1990)).

Here, Victim's statements clearly meet each factor in the analysis. Victim had been taken home from the hospital and was in obvious pain and appeared very sick. Victim was communicating he was in pain through his statements. Victim was asking to go to a doctor or to the hospital. Victim was clearly under the stress of the event - his illness and separation from medical treatment. Therefore, the statements would be admissible under the excited utterance exception.

b. Victim's Statements are Admissible as a Present Sense Impression

Victim's statements are also admissible under Evidentiary Rule 803 (1). This Rule provides that a "statement describing or explaining an event or condition, made while or immediately after the declarant perceived it". In this case, as noted above, Victim was in pain and telling Defendant and Ms. Douma, "Ow my hiney" as he clutched a heating pad and asked to go back to the hospital and to see a doctor, and that he didn't want to die. His statements coupled with his clearly apparent illness and poor health satisfy this exception as well.

**c. Victim's Statements are Admissible as Statements Made for Medical
Diagnosis or Treatment**

Evidentiary Rule 803 (4) states that "A statement that (A) is made for-and is reasonably pertinent to-medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause" is admissible. Victim's statements which the State seeks to introduce meet both prongs of the test. Victim was asking to go back to the doctor and to go back to the hospital for treatment and diagnosis. He was also clearly describing his present symptoms when he complained of pain. Victim also told Defendant and Ms. Douma that he needed to see a doctor "right now" and "couldn't make it another day", conveying what he felt was the immediate need for medical care. Victim's statements are therefore admissible under this exception as well.

III. Conclusion

As Victim's statements clearly fall within three separate exceptions to Evidentiary Rule 803, the State respectfully requests the Court admit the statements at trial.

BY:



/s/ Frankie Grimsman
Deputy County Attorney

TG

Copy mailed/delivered May 25, 2021, to:

The Honorable Geoffrey H Fish
Judge of the Superior Court

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State of Arizona v Arlena Willes - Defense Interview with Dr. Hale Transcript

DB: God what day is it? May 24th 2019 approximately ten to three pm contact with former D-C-S investigator Olivia Douma.

O: This is Olivia.

DB: Hey Olivia, this is Detective Christy Britt with Glendale P-D, how you doing?

O: I'm good, how are you?

DB: I am good um, thank you for speaking with me, regarding a case. So you...

O: Absolutley.

DB:. ...are no longer with D-C-S?

O: That is correct.

DB: Oh well good for you um...

O: Hahah

DB: ... I wonder where are you working now?

O: Um, I work for Sky View Charter High School in Buckeye.

DB: Oh, ok. What are you doing for them?

O: I'm a special education paraprofessional.

DB: Very cool, well good for you. So, I'm I'm sure it's probably a a nice change.

O: It absolutely is.

DB: Haha um, so I wanted to talk with you about the [REDACTED] case since you were the initial D-C-S investigator involved and were the one the person who went out to the house. Um before that tell me a little about your education, an and training, and work experience.

O: Ok, I have a bachelor's degree in Criminal Justice, um and then I've completed all the core training for the Department of Child Safety for their employment, um as well as I completed additional on the job training um with them as well.

DB: And when did you start working for the Department of Child Safety?

O: uh November of 2016.

DB: Mk, and then when you leave?

O: Uh, April of this year 2019.

DB: Gotcha.

O: I'm sorry I think it was November of 2017? I I was employed with them for two and a half years.

DB: Gotcha. Ok. Um So how did you become involved with uh the [REDACTED] case?

O: Um I was assigned the investigation um in September; I believe it was somewhere around the 5th.

DB: Ok. And do you recall what that initial report was or what the general um uh I guess allegations were?

O: Yeah, so we have a total of two reports open with the family. Um the first report was regarding concerns regarding [REDACTED] health and [REDACTED] mother leaving the hospital with [REDACTED] against medical advice.

DB: Ok. Do you recall what the other report was regarding?

O: Um and then the second report was also concerning [REDACTED] medical condition, and then mom interfering with [REDACTED] medical treatment while at Phoenix Children's Hospital.

DB: Ok. Um so my understanding is that you responded to um their residence um which is [REDACTED] [REDACTED] in Glendale um on September 7th is that correct?

O: That is correct.

DB: Ok. Tell me from the beginning to the end what you did there from time you got there to when you left.

O: ok, Um when I arrived at the home, I knocked on the door, and mother answered the door. I explained to her who we were and what the purpose of our visit was. Um initially, mom did not want to allow us into the home, she stated I would need a warrant to enter her home um I began reading to her our P-S-O 45 which is just a notification of rights to let mom know what her rights are with the Department of Child Safety.

DB: Ok.

O: Um I let mom know that she didn't have to speak with me, but, I at least needed to observe ██████ to see that ██████ was alive and ██████ was well. Um eventually mom did allow me into the home, um she had stated that, she didn't want to let me into the home because she I would see how sick ██████ was at that point.

DB: Mmhmm

O: Um but when I entered the home, I observed ██████ on the couch um ██████ was visibly in pain um evidenced by ██████ statements saying "ooww my hiney", um ██████ was also stating things like "I don't want to die anymore". Um ██████ was expressing to ██████ mom that ██████ wanted to go to the doctor and um Mom was saying that, ██████ could wait until the appointment that she made on September 18th um ██████ was very thin liter little to no muscle tone, eyes were sunken in, um bags under ██████ eyes, ██████ ke an an ██████ kept saying to ██████ mom he didn't feel good, ██████ wanted to go the doctor. Um ██████ made statements that ██████ didn't wanna have diarrhea anymore because then ██████ have constipation.

DB: Hm

O: Just overall jus did not feel good at all.

DB: Ok.

O: Um we finally had mom agree to take ██████ to the hospital. Um this agreement finally came after mom asked ██████, "████████ do you want to go to the hospital?" ██████ said yes, um so when mom said "ok let's go", ██████ ran to ██████ room put a shirt on um and, and came back out and to me, seemed excited to get to go back to to a doctor.

DB: Mhmm

O: um I let mom know that I'll allow her some time to get some things together and I'll be outside and I'll follow them to the hospital. We gave mom the option of what children's hospital she wanted to take ██████ to um I believe the closest ones were Banner Thunderbird and P-C-H, um Phoenix Children's Hospital so mom chose Phoenix Children's Hospital over Banner Thunderbird because she

felt that Banner Thunderbird was just going to force steroids on [REDACTED]. Which is a medical treatment that she did not agree with.

DB: OK

O: So at that point I went out and waited um in my vehicle. [REDACTED] came outside um followed by mom. Mom had a suitcase in her hand, um mom asked if we were going to drive her. I let her know that legally I could not transport her or [REDACTED], her or [REDACTED] to the hospital um just because of state insurance purposes.

DB: Yeah

O: Um so she had stated that she would tell her husband to call a cab so, we waited for the cab to come. When mom went back inside, [REDACTED] asked me if I was going to the hospital with [REDACTED] and if I was going to drive [REDACTED] to the hospital, I explained to [REDACTED] again that I was not driving [REDACTED], but I would go with [REDACTED] and that we would be there, um and Jonathon made me promise that I would be there at the hospital with [REDACTED].

DB: Mhm

O: Um when the taxi arrived, we followed them to Phoenix Children's Hospital.

DB: Ok and then, you were at Phoenix Children's with mom for a little bit to get like background and history is that right?

O: Um so, I let mom um do the triage and check-in information by herself, um we didn't want to hover too much, but I was still within an ear shot of hearing the conversation. Um so she did, we did, checked in with [REDACTED] and they took [REDACTED] back to the vitals at that time. I verified with the social worker on duty at Phoenix Children's Hospital um that [REDACTED] was checked in I then informed them of what our concerns were...

DB: Mhm.

O: ...um regarding [REDACTED], um and to let them know that if anything were to occur or if mom had attempted to leave again, that we would have to be called again.

DB: Ok, and at that point did you leave?

O: That is correct.

DB: Ok um I think in the D-C-S case notes or the C-S-R-A eh there was a note about mom doing the intake and she provide the intake person with the fact that [REDACTED] had been having bloody diarrhea for almost two years?

O: That is correct.

DB: Ok, um so you leave then that day that would be September 7th. When what do you next in your case?

O: I'm sorry, can you say that again?

DB: Wha, what happens next in your case? Did you have additional contact with the mother Arlena?

O: I did have additional contact with her, yes.

DB: Tell me about that.

O: I spoke with Arlena again the morning um within that Monday.

DB: Mk

O: Um so I'm mapping here the 9th? No what day was that? Um the 11th ...

DB: Ok.

O: ...by phone, is when I had next spoken with her. And between the time that I had spoken with her um she did have additional contact with other employees from D-C-S.

DB: Do you know who those were, by chance?

O: Um Jessie Hillhouse...

DB: Ok.

O: ...was the A-hit worker that responded, and I believe Belinda Torres was the A-hit supervisor that um...

DB: Did you Belinda or Melinda?

O: That was involved. Belinda with a B.

DB: Ok. Um, what was the purpose of the phone contact?

O: Um so I spoke with mother um in the morning, due to temporary custody being taken of [REDACTED] over the weekend.

DB: Ok and that happens after she removes [REDACTED] T-P-N correct?

O: I'm sorry?

DB: That happens after she removes [REDACTED] T-P-N is that correct?

O: To my knowledge, that is correct yes.

DB: Ok, um who is the D-C-S worker investigator that uh served her the T-C-N ? Do you know that?

O: I believe it was either Jessie Hillhouse or Belinda Torres.

DB: Ok. So, it was A-hit then?

O: Correct

DB: Um after that phone contact, did you have an additional contact with Arlena?

O: Uh, I did, I had in-person contact with Arlena at the, our team decision making meeting.

DB: Mhm

O: Um and then I've had several email contacts with her throughout the time that I had had the case.

DB: Ok and then what about any additional in-person contact other than that initial um September 7th contact?

O: The only ...

DB: (inaudible)

O: The only other time I would have had in-person contact with her was when we had our preliminary protective hearing um and then I believe two other court hearings after that.

DB: Um any contact in which you obtained any sort of history from Arlena?

O: Uh

DB: In terms of..

O: The..

DB: ...the medical history, what's been going on with [REDACTED]?

O: Um I was I did obtain some of the information via phone from, from mom.

DB: Mhm.

O: um but any in-person medical documentation was gathered by uh our office of child welfare investigations team.

DB: Ok. So, you didn't deal much with the medical records or medical history then?

O: Um, I did request the records from Phoenix Children's Hospital and obtained certical copies of those records um just so we could pass those along to ongoing worker.

DB: Gotcha. Um shhh, I'm trying to think if I have any other questions. Um don I guess, describe to me how your communication was with Arlena.

O: Communication with Arlena was always very erratic, um...

DB: Mk.

O: She was always very upset; she had a hard time maintain a solid thought um path. She would start on with one coherent thought but then go off into a tangent that had nothing to do with our original conversation.

DB: Mhm.

O: Um just overall very irrational.

DB: Ok so wa was it very difficult to keep her on task in terms of what you were talking about in the conversation?

O: Correct.

DB: Ok, um and what about any additional interaction with [REDACTED] did you have any other additional interaction with [REDACTED] besides that initial contact on September 7th?

O: I did. I spoke with [REDACTED] in person at Phoenix Children's Hospital.

DB: Mhm.

O: Um I saw [REDACTED] a couple times I believe. Or no it was just once and that was on the 12th.

DB: And tell me about that visit.

O: Um, so [REDACTED] had some color back, um, to [REDACTED] skin, [REDACTED] did look a little better. [REDACTED] was upset. [REDACTED] didn't want to be at the hospital, [REDACTED] was upset that [REDACTED] mother wasn't there. Um the conversation itself was difficult in the aspect of [REDACTED] was very focused on what medications were being given to [REDACTED], what was in the nutrition line, um at one point [REDACTED] had asked me to read off the ingredients in the in his I-V and nutrition line. Um [REDACTED] kept saying the hospital was treating [REDACTED] as a cash cow that they were poisoning [REDACTED]. [REDACTED] said that [REDACTED] was going to try to escape, um at one point [REDACTED] did get up and walk towards the door,

DB: Mhm.

O: in an attempt to walk out of the room. Um, [REDACTED] was being difficult with the nursing staff, [REDACTED] wouldn't let them collect [REDACTED] stool um to measure the amount of blood loss.

DB: Mhm.

O: Um, but overall regarding questions about [REDACTED] home life, um [REDACTED] really didn't know like what prompted when she was angry. Um, [REDACTED] said he doesn't accept physical (inaudible) but [REDACTED] gets [REDACTED] things taken away. Um, that anytime we would ask about um [REDACTED] stepdad he said that [REDACTED] didn't want to talk about him because [REDACTED] didn't want to get him in trouble. [REDACTED] would say that his mom and stepdad argue but marriage is argument.

DB: Mhm

O: Um and [REDACTED] was very focused on getting food that day because being the staff had mentioned about, I guess solid foods, and so [REDACTED] was very excited about it. Um and was very interested in getting his chicken nuggets, french fries, ketchup and strawberries.

DB: Hm and at that point [REDACTED] was on just a like a liquid diet correct?

O: That is correct.

DB: Ok. Um those statements that you had heard [REDACTED] make the whole cash cow and that you're poisoning, had you heard that from Arlena prior or was that the first-time hearing statements like that?

O: No, I had heard that from Arlena prior.

DB: Ok um...

O: But it would have been in one of our several phone conversations.

DB: Gotcha. Um anything else that you can think of that you feel I should know about, or anything about this particular case that sticks out to you?

O: Um not really, um I know when I did do a walk through of the home, um [REDACTED] room was in very much so in a disarray. Um you couldn't walk through it without stepping on clothes, toys, piles of everything on the floor. Um I eh It's stated that [REDACTED] was home schooled we didn't notice anything that would allude to [REDACTED] having an education at home um ...

DB: Oh gosh, that's what...

O: (inaudible)

DB: ... I was going to ask you, if there was any sort of designated area uh in the home or evidence, whether it be books uh scholastic type books, a white board or something of that nature did you see any of that?

O: Eh No.

DB: Ok um I think that is those are all the questions I have. Um if I have any additional questions, I'll give you a holler. Uh thanks so much for uh speaking with me, I appreciate it.

O: Absolutely no problem, anytime.

DB: Alright, take care.

O: Thank you, you have a good day.

DB: You too. Bye, bye.