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

STATE OF ARIZONA,

Plaintiff,

vs.

ARLENA WILLES,

Defendant,

J.Z.,

Minor Crime Victim.

Maricopa County Superior Court No.
CR2019-005397-001

**CRIME VICTIM'S MOTION FOR
PROTECTIVE ORDER RE: VICTIM'S
MEDICAL RECORDS**

**(Assigned to the Hon. Judge Geoffrey
Fish)**

Minor Crime Victim J.Z., respectfully requests that the Court enter a protective order preventing the Maricopa County Attorney's Office from disclosing the victim's medical documents, reports, and information to media outlet *Freedom Public Press News* and/or Shara Michelle Wolf because a crime victim has a constitutional right to privacy and to be treated with fairness, respect, and dignity. Ariz. Const. art. II, § 2.1(A)(1); *see also Whalen v. Roe*, 429 U.S. 589, 599 (1977). The victim takes no position regarding the remainder of the request.

BACKGROUND

On June 28, 2019, Defendant Arlena Willes was indicted for two counts of child abuse, each a class two felony. The nature of the charges includes documents and medical information about the victim's treatment at hospitals throughout the valley and his medical diagnoses. Shara Michelle Wolf, a reporter from *Freedom Public Press*, recently requested the entire file from the Maricopa County Attorney's Office.

Previously, on May 4, 2021, a video was uploaded to YouTube which contained the audio recordings of an interview between Shara Michelle Wolf and Defendant Arlena Willes. During this discussion, the parties used the victim's first name and discussed his medical history, diagnoses, and treatments at various hospitals. This interview also contained audio recordings of the defense interviews with doctors and medical professionals associated with this case.

The County Attorney's Office filed a Petition to Modify or Revoke the Defendant's Release on May 6, 2021. Exhibit 1. At a hearing on May 10, 2021, the Court admonished Defendant Willes to not post any further information about the victim online, or put any information about the victim's medical or identification information online through a third party. Exhibit 2. The Court then sealed the interviews in the case. *Id.*

ARGUMENT

A. The Court should enter a protective order because disclosure would violate J.Z's constitutional rights to privacy and to be treated with fairness, respect, and dignity.

A victim¹ has standing to seek an order seeking to enforce any right guaranteed to crime victims. A.R.S. § 13-4437(A). One such right is the right to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, and abuse throughout the criminal justice process. Ariz. Const. art. II, § 2.1(A)(1); *see also* Ariz. R. Crim. P. 39(b)(1) (granting victims the same rights). The purpose behind victims' rights is to "provide crime victims with the basic rights of respect, protection, participation, and healing of their ordeals." *Champlain v. Sargent*, 192 Ariz. 371, 375 (1998).

The release of the medical report and medical information would violate J.Z.'s right to be treated with fairness, respect, and dignity. Few things are more personal than the details of one's medical history and treatment and are private matters not generally shared with the public. Keeping certain medical information private thus helps maintain the dignity of the individual and protects his privacy. When previously asked about prior postings online, the victim stated he did not want his information posted on Facebook or YouTube. In the present scenario, the victim again explicitly stated his concern about his safety and privacy if his medical and personal information is released. The victim's Father, and guardian, stated a similar concern and request. Given the prior discussions online between the Defendant and the current individual requesting the information, there is a concern the information would be further discussed publicly if disclosed to the third party. Such a disclosure would violate the victim's privacy interest.

¹ "Victim" includes 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[.]" A.R.S. § 13-4401(19). Mr. Zeek is the Victim's father and has a guardianship over J.Z. and, thus, qualifies as a victim representative.

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B. The Court should enter a protective order because access to public records is not absolute.

The victim J.Z.'s medical records are private and confidential by nature, and the privacy interest of the victim outweighs the public interest in disclosure. In the present case, releasing the victim's medical information to a public record request would not serve the purpose behind the public records law. Therefore, this court should enter a protective order for all of the victim's medical information.

Access to public records in Arizona is not absolute. *Carlson v. Pima Cnty.*, 141 Ariz. 487, 490 (1984) ("[d]espite the unlimited disclosure expressed by the wording of § 39-121, the availability of records for public inspection is not without qualification."). Public records cannot be disclosed when: (1) they are made confidential by statute; (2) privacy concerns outweigh the public interest in disclosure; and (3) the best interests of the state outweigh the right to disclosure. *Schoeneweis v. Hamner*, 223 Ariz. 169, 173 (App. 2009). Additionally, the right to disclosure may be limited in the interest of "confidentiality, privacy, or the best interest of the state." *Carlson*, 141 Ariz. at 490.

"The primary purpose of the public records law serves to ensure that people are able to monitor the activities of their government, not the lives of their fellow citizens." *Schoeneweis*, 223 Ariz. at 175 (citing *Lake v. City of Phoenix*, 222 Ariz. 547, 549 (2009)). Therefore, the public interest in disclosure is strong only when records involve the performance of important government functions. *Id.* Conversely, privacy interests weigh

more heavily when “records of government action are merely incidental to an otherwise private matter, including the death of an individual[.]” *Id.*

Here, J.Z.’s privacy interest outweighs the public interest in disclosure. Privacy interests are inherent in medical records and information. Additionally, J.Z.’s medical records are inherently confidential. *See* A.R.S. § 12-2922 (“[u]nless otherwise provided by law, all medical records and payment records, and the information contained in medical and payment records, are privileged and confidential.”).

But the importance of J.Z.’s medical report and information to the media (and by extension to the general public) is unclear. Rather, it appears that the actions and the records of the state are merely incidental to an otherwise private matter--J.Z.’s medical information. The Court should therefore issue a protective order preventing the disclosure of J.Z.’s medical reports and information.

CONCLUSION

The disclosure of the victim’s medical reports and information to media outlets, including *Freedom Public Press News*, would violate J.Z.’s constitutional rights to privacy and to be treated with fairness, respect, and dignity. These rights outweigh any right of access that may exist. Moreover, *Freedom Public Press News* previously discussed J.Z.’s personal and medical information and diagnoses online. The Court should thus enter a protective order preventing the Maricopa County Attorney’s Office from disclosing J.Z.’s medical documents, reports, and information to any media outlet. The victim takes no position regarding the other information requested in the public records request.

Respectfully submitted this 28th day of May, 2021.

By: /s/
Robert Swinford
Attorney for Minor Victim

Motion filed with the Clerk of the Court
on this 28th day of May, 2021.

Copies also e-mailed to:

Honorable Judge Geoffrey Fish
Judge of the Superior Court
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EXHIBIT 1

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

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Deputy County Attorney
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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

STATE'S PETITION TO MODIFY OR REVOKE
DEFENDANT'S RELEASE

(Assigned to the Honorable Geoffrey H
Fish, Div. CRJ26)

The State of Arizona, pursuant to Rule 7.5, Arizona Rules of Criminal Procedure, asks this court to address Defendant's violation of release conditions at the hearing set for May 10, 2021.

The Court established Defendant's conditions of release including complying with the law regarding victim's rights. Defendant has been repeatedly warned by the Court to abide by Court orders not to discuss the minor victim on social media, or put the minor victim's

identifying information on documents she has filed with the Court. As this court is aware, as recently April 15, 2021 during a court hearing regarding several motions the court had to remove Defendant from the proceedings due to her behavior including holding up Victims image.

Despite numerous admonishments by the Court, Defendant has failed to observe those conditions by participating in a four-and-a-half-hour interview/statement which was posted on YouTube and Facebook on May 4, 2021. In that interview, Defendant discusses the case in detail with an “independent journalist” named Shara Michelle. In this recording, they play approximately thirty-five clips of defense interviews with medical professionals involved in the case and law enforcement interviews with treating doctors, both involving extensive details about the minor victim’s medical treatment. A picture of the minor victim and the Defendant is prominently displayed as the background to the audio interview for the entirety of the four and half hour video.

At one point in the recording, Ms. Michelle states, “Arlena gave me all these audios.” (2:09:00). Ms. Michelle is not corrected by Defendant. At another point, Defendant admits to posting the minor victim’s records from Southwest Human Development online (2:24:21).

Based upon the above, the State respectfully requests the Court address Defendant’s release conditions and revoke Defendant’s release at the hearing set for May 10, 2021.

Submitted May 6, 2021.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY:



/s/ Frankie Grimsman
Deputy County Attorney

Copy mailed/delivered May 6, 2021, to:

The Honorable Geoffrey H Fish
Judge of the Superior Court

Rick G. Tosto
P O Box 24397
Phoenix, AZ 85074
Attorney for Defendant

BY: 

/s/ Frankie Grimsman
Deputy County Attorney

tg

EXHIBIT 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2019-005397-001 DT

05/10/2021

HONORABLE GEOFFREY FISH

CLERK OF THE COURT
A. Dvornsky
Deputy

STATE OF ARIZONA

FRANKIE LYNN GRIMSMAN
TRACEY GLEASON

v.

ARLENA M WILLES (001)

RICK G TOSTO

JUDGE FISH

ROBERT SWINFORD

MINUTE ENTRY

2:37 p.m.

Courtroom SCT 7B

State's Attorney: Frankie Grimsman and Tracey Gleason
Defendant's Attorney: Rick Tosto
Defendant: Present (virtually)

Court Reporter, Mike Babicky, is present.

A record of the proceedings is also made digitally.

This is the time set for Trial Procedure Conference.

THE COURT NOTES the Defendant came to the courthouse and was unable to enter due to being sick. Therefore Defendant is virtually present.

Discussion is held regarding jury schedule.

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The jury will be screened through June 15th.

Court and counsel review the Preliminary Instructions.

The Court addresses the Defendant and advises her if she portrays any negative behavior or outbursts she will be removed from the Court and will have to watch trial from a different location.

The Court is in receipt of the State's Petition to Modify or Revoke Defendant's Release filed 05/06/2021.

Discussion is held regarding same.

The Court has reviewed the Youtube video posted by the Defendant.

IT IS ORDERED prohibiting the Defendant to put any information of the victim on the internet in any way. If the Defendant does this the Court will consider this jury tampering and the Court will be inclined to place Defendant in custody.

IT IS FURTHER ORDERED prohibiting the Defendant or Defendant through a third party put any information of the victim's medical or identification on the internet.

IT IS FURTHER ORDERED all interviews conducted in this matter shall be sealed and neither party shall distribute without further order of the Court.

As stated on the record,

The Court grants in part the State's motion.

IT IS FURTHER ORDERED the parties filed their Joint Pretrial Statement by close of business today.

IT IS FURTHER ORDERED the parties email the division by 05/21/2021 to confirm there are no Covid issues.

The parties waive any conflict and proceed with an informal Settlement Conference.

Discussion is held.

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05/10/2021

LET THE RECORD REFLECT, pursuant to the Donald opinion, the Court informs the Defendant of the penalties if convicted and the plea agreement that is being offered at this time.

IT IS ORDERED setting a Status Conference 05/12/2021 at 8:30 a.m. before this division.

IT IS FURTHER ORDERED affirming Trial on 05/24/2021 at 9:30 a.m. before this division.

Defendant is directed to appear at all scheduled court hearings and advised of the potential consequences should he/she fail to appear.

3:34 p.m. Matter concludes.

FOR ALL IN-PERSON APPEARANCES. Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-197 and Superior Court Administrative Order 2021-013 requires all individuals entering a court facility to wear a face mask at all times they are in the court facility. With limited exceptions, the court will not provide face masks. Therefore, any individual attempting to enter the court facility must have an appropriate mask to be allowed entry to the court facility. Any person who refuses to wear a face mask as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.