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16  
17 **IN THE SUPREME COURT**  
18 **STATE OF ARIZONA**  
19

20 BETH FAY,  
21  
22                   Petitioner,  
23  
24           v.  
25  
26 THE HONORABLE DEWAIN D.  
27 FOX, Judge of the SUPERIOR  
28 COURT OF THE STATE OF  
ARIZONA, in and for the County  
of MARICOPA,  
                  Respondent Judge,  
and  
STATE OF ARIZONA; JORDAN  
MICHAEL HANSON,  
                  Real Parties in Interest.

Arizona Supreme Court Case No.  
CR-20-0306-PR

Court of Appeals, Division One  
No. 1 CA-SA 20-0123

Maricopa County Superior Court  
No. CR 2015-005451-001

**RPI HANSON'S  
SUPPLEMENTAL BRIEF ON  
REVIEW**

1 **I. INTRODUCTION**

2 In this case, supplemental briefing was invited on the issue: “Is a  
3 victim entitled to be heard on a Rule 32.1(f) Request for Delayed Appeal  
4 concerning restitution?” The answer lies, as it must, within the Victim’s  
5 Bill of Rights (“VBR”). Nothing within its provisions grants victims a right  
6 to be heard on whether a criminal defendant may exercise rights expressly  
7 afforded by the state and/or federal constitutions or the rules of criminal  
8 procedure. More specifically, as non-parties possessing neither a right to  
9 plead defenses nor a right to any particular outcome, crime victims lack the  
10 authority to be heard on the subject of whether a criminal defendant may  
11 exercise his constitutional, *albeit* delayed, right of appeal.

12 **II. PETITIONER HAS CONFLATED THE ISSUE**

13 Arizona’s Constitution provides that a criminal defendant has “the  
14 right to appeal in all cases.” Ariz.Const., art. 2, §24. Thus, “[a]fter  
15 pronouncing judgment and sentence, the court must inform the defendant  
16 of the right to appeal the judgment, sentence, or both.” Rule 26.11(a)(1)(A),  
17 Ariz.R.Crim.P. “A notice of appeal...must identify the order, judgment, or  
18 sentence that is being appealed.” Rule 31.2(c)(1). Such notice is unrelated  
19 to the merits of the anticipated appeal. Moreover, nothing in the VBR, the  
20 Victim’s Rights Implementation Act (“VRIA”) or the rules of criminal  
21 procedure permits victims to be heard regarding any aspect of a  
22 defendant’s timely exercise of his constitutional right of appeal.

23 A defendant’s failure to timely appeal divests an appellate court of  
24 jurisdiction. Rule 32.1(f) is the procedural vehicle designed to protect that  
25 constitutional right of appeal, precluding its unwitting or unintentional  
26 forfeit by providing a mechanism whereby a defendant can obtain  
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1 jurisdiction in an appellate court. *State v. Gagnon*, 236 Ariz. 334, 335 ¶5, fn. 1  
2 (App.2014); *State v. Rosales*, 205 Ariz. 86, ¶10 (App.2003). Where a criminal  
3 defendant fails to timely appeal he must demonstrate that “the failure to  
4 timely file a notice of appeal was not the defendant’s fault.” Rule 32.1(f).  
5 *The State* may respond to that contention. Rule 32.9(a)(2).<sup>1</sup> As in instances  
6 of a timely filed notice of appeal, the merits of a sought delayed appeal are  
7 not at issue, *State v. Stice*, 23 Ariz.App. 97, 99 (App. 1975)(“The only basis  
8 for permitting a delayed appeal is that the petitioner’s failure to appeal was  
9 without fault on his part.”), and neither the VBR, VRIA, nor court rules  
10 contain any provision permitting victims to be heard on the subject of  
11 whether a delayed appeal should be afforded.

12 In this case, Hanson appealed his conviction; it was upheld on  
13 appeal. Restitution orders were then entered by the trial court. Although  
14 separately appealable, *State v. Francher*, 169 Ariz. 266, 266 fn. 1 (App.1991),  
15 *State v. French*, 166 Ariz. 247, 248 fn. 3 (App.1990), the court did not inform  
16 Hanson of his right to appeal those orders.

17 Hanson timely filed a request for delayed appeal pursuant to Rule  
18 32.1(f), contending he was not advised of his right to appeal the restitution  
19 orders. *See, State v. Tapp*, 133 Ariz. 549, 551 (1982)(explaining the scope of  
20 Rule 32.1(f) “includes the situation in which the defendant fails to appeal  
21 because the trial court, despite the requirements of Rule 26.11, did not  
22 advise him of his appeal rights...”.); *see also, State ex rel. Neely v. Rodriguez*,

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24 <sup>1</sup> “Like most constitutional rights, the right to appeal may be waived,  
25 but only if the waiver is knowing, voluntary and intelligent.” *State v.*  
26 *Bolding*, 227 Ariz. 82, 88 ¶18 (App.2011). “The burden of proving waiver of  
27 a constitutional right typically falls on the State.” *State v. Raffaele*, 249 Ariz.  
474, 471 P.3d 685, 689 ¶12 (App.2020).

1 165 Ariz. 74, 78 (1990)(“Delayed appeals are allowed to criminal  
2 defendants to protect them from error in situations where the trial court  
3 has failed to advise them about their appeal rights or where their attorneys  
4 have failed to timely appeal.”). After setting forth the record and including  
5 an affidavit, Hanson’s Rule 32.1(f) claim concluded: “Petitioner [Hanson]  
6 respectfully requests an Order permitting the filing of a delayed appeal  
7 since his failure to appeal the restitution orders was through no fault of his  
8 own.” (Fay PFR Appx., Exhibit 16, at 6:10).

9 Victim’s counsel (“Petitioner”) filed a substantive response in  
10 opposition, stating: “Defendant’s Petition should be denied because  
11 nothing in it suggests that he allegedly had no notice of and would have  
12 timely appealed a decision on restitution that had previously been  
13 entered...”. (Hanson SA Response, Appx. Exhibit A, 1:16-21). Her pleading  
14 was chock full of “facts” existing outside the record—facts about which she  
15 certainly was not privy—absent affidavits or other documentary support.  
16 *But see*, Rule 32.9(a)(2). Because no procedural rule or other authority  
17 permitted victims to be heard by pleading defenses to Rule 32.1(f) claims,  
18 Petitioner followed no rules.

19 This notwithstanding, her responsive pleading derailed the sole issue  
20 presented under Rule 32.1(f)—a derailment permeating everything coming  
21 thereafter. While in truth Petitioner exerted her best effort to advance her  
22 claim that Hanson’s failure to timely appeal was his fault, she Trojan  
23 horsed that effort, conflating the issue with the aim of making it appear as  
24 one implicating victim rights. Despite the fact that a Rule 32.1(f) claim is  
25 unrelated to the merits of any anticipated appeal, she continues to insist  
26 that Hanson’s request for delayed appeal constitutes a “challenge to  
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1 restitution”; an effort to “vacate the restitution awarded”; a claim which  
2 “directly affects the court’s determination of restitution”; and a myriad of  
3 contentions of the identical sort<sup>2</sup>, allegedly implicating Petitioner’s  
4 constitutional right to receive prompt payment of restitution, Ariz.Const.,  
5 art. 2, §2.1(A)(8), along with her rights to dignity, fairness, respect and due  
6 process, art. 2, §2.1(A)(1).

7 The Rule 32.1(f) question itself belies Petitioner’s contention that it  
8 constitutes a “challenge to the amount or manner of restitution”,  
9 “involve[s] a determination of restitution for economic loss,”<sup>3</sup> or that the  
10 “requested remedy will eviscerate an enumerated right to a criminal  
11 restitution order”.<sup>4</sup> Indeed, as her own pleadings aptly demonstrate, she  
12 seeks “to be heard” to explain why Hanson’s failure to timely appeal was  
13 actually his fault. Both lower courts recognized Petitioner’s conflation of  
14 the issue; both determined the claim did not implicate any victim right.  
15 Consequently, Petitioner had no right to be heard on its merits.

### 16 **III. LAW AND ANALYSIS**

17 The issue is straightforward: Does the VBR, VRIA or court rules grant  
18 victims a right to “be heard” –or plead defenses to–a Rule 32.1(f) claim?  
19 Hanson agrees with Petitioner: “The proper consideration is whether  
20 Hanson asked for something that involves a determination of  
21 restitution...”. (Fay PFR Reply, 7:12). The path to the answer is equally

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23 <sup>2</sup> See, Hanson Response Appx., Exhibit A, Victim Response to  
24 Limited PCR, 3:14 (characterizing Rule 32.1(f) request as “this challenge to  
25 restitution”); See also, **Exhibit A hereto** (listing same on Review).

26 <sup>3</sup> See, Fay Petition for Review, 11:12-15.

27 <sup>4</sup> *Ibid.*, at 3:9.

1 straight...and short. Unquestionably, whether relief is afforded or not, a  
2 Rule 32.1(f) claim does not itself challenge, seek to vacate, affect, or involve  
3 a determination of restitution in any way. Try as it did, the appellate court  
4 failed to make Petitioner understand the point:

5 PETITIONER: ...the procedural step doesn't matter as long as  
6 the Defendant is requesting that the court vacate the criminal  
restitution order in –

7 JUDGE PERKINS: But in the limited PCR, the Defendant did  
8 not make that request.

\* \* \*

9 JUDGE GASS: Because I'm missing the point, I guess, of why  
10 it's essential to weigh in on the direct appeal...right now when  
there is no appeal pending yet.

11 PETITIONER: You're Honor, I appreciate the question and the  
12 reason why is because the motion [*sic.*] itself is requesting a  
remedy that affects the constitutional right to prompt payment  
of restitution, and we should be able to explain why it should  
13 not be granted.

14 (Hanson Combined Response Appx., Exhibit A, Oral Argument, 8/19/20,  
15 at 8:11-15; 10:25-11:8). Whether the failure to timely appeal was or was not  
16 Hanson's fault simply does not implicate any victim right "to be heard"  
17 about. Nothing in the VBR, VRIA or court rules grants victims a right "to  
18 be heard" on the merits of that claim.

19 Petitioner opts for a much longer, bumpier path down the wrong  
20 road leading to the wrong destination. Succinctly put, her argument goes  
21 like this: Because A.R.S. §13-4437(E) grants victims the right to completely  
22 take the prosecutor's place in restitution proceedings<sup>5</sup>, and to appeal any

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24 <sup>5</sup> See Fay PFR, at pp. 10-11. In the restitution proceedings below,  
25 Petitioner took over the entire restitution proceedings; the prosecutor was  
26 "excused" from the proceedings. Petitioner contends this was entirely  
27 permissible since *Lindsay R. v. Cohen*, 236 Ariz. 565 (App.2015) was  
"legislatively overruled".

1 restitution order(s) arising from those proceedings<sup>6</sup>, it implicitly grants  
2 victims “the right to urge courts to uphold [the restitution orders  
3 entered].”<sup>7</sup> Therefore, she argues, “[i]nterpretation of the constitutional  
4 right to prompt payment of restitution must be construed in a way that  
5 furthers and not silences victims no matter whether presented before the  
6 trial court, on appeal, or in a petition for post-conviction relief.”<sup>8</sup>

7 Each facet of her argument is, with all due respect, legally incorrect;  
8 consequently, her conclusion is also incorrect.

9 **A. Victims may not substitute for the prosecutor in proceedings.**

10 A defendant who has been convicted of a crime shall be ordered “to  
11 make restitution to the person who is the victim of the crime... in the full  
12 amount of the economic loss as determined by the court.” A.R.S. §13-  
13 603(C). Remedial in nature, this sentencing obligation exists whether a  
14 victim requests restitution or not, *see, State v. Iniquez*, 169 Ariz. 533, 535  
15 (App.1991), as well as for “victimless” crimes, *see State v. Guilliams*, 208  
16 Ariz. 48, ¶14 (App.2004). Its aim is reparation to the victim and

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18 <sup>6</sup> “Defendant could not have prevented [the victim] from ...seeking  
19 appellate relief should she have disagreed with the trial court outcome.”  
Fay PFR Appx., Exhibit 17, at 3:4-8.

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21 <sup>7</sup> *See* Hanson SA Response Appx., Exhibit D, Victim’s Response to  
22 Motion for Reconsideration Re: Motion to Strike, filed 2/24/20, at 3:27-4:3.  
23 *See also*, Fay PFR Appx. Exhibit 19, Victim Response to Motion to Strike,  
24 filed 1/26/20, 3:27 (“absurd to suggest [victims] do not also have the right  
25 to urge courts to uphold this constitutional [*sic.* statutory] right by rejecting  
26 a PCR.”); Fay PFR Reply, 4:23 (Nothing “prevents Petitioner from  
responding to and seeking an order to enforce restitution rights”  
concerning previously entered restitution orders).

27 <sup>8</sup> *Ibid.*, at 2:1-7.

1 rehabilitation of the offender. *State v. Wilkinson*, 202 Ariz. 27, 30 ¶13 (2002).

2       *The State* has the burden of proving a restitution claim by a  
3 preponderance of the evidence. *State v. Lewis*, 222 Ariz. 321, 324, ¶7 (App.  
4 2009). To meet that burden, “some evidence must be presented that the  
5 amount [requested] bears a reasonable relationship to the victim’s loss  
6 before restitution can be imposed.” *State v. Fancher*, 169 Ariz. 266, 268  
7 (App.1991). To assist the State in meeting its burden, crime victims have a  
8 right “to present evidence or information and to make an argument to the  
9 court, personally or through counsel, at any proceeding to determine the  
10 amount of restitution pursuant to §13-804”, A.R.S. §13-4437(E).<sup>9</sup> Such  
11 evidence, information and argument must pertain to “the extent of any  
12 economic loss or property damage” and the victim’s “need for and extent  
13 of restitution”. A.R.S. §§13-4426(A), 13-4410(C)(3). Thus, while a victim  
14 has a statutory right *to participate* in proceedings concerning restitution,  
15 they may not entirely usurp the prosecutor’s role. It is *the State* who must  
16 seek a restitution order in a manner consistent with the principles of due  
17 process—not the victim.

18       Contrary to Petitioner’s stance, A.R.S. §13-4437(E) does not permit  
19 crime victims to completely substitute for the prosecutor in restitution  
20 proceedings. Adopting Petitioner’s interpretation of the statute—and  
21 indeed, her stance that “[t]his legislative right was intended to *expand*

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23       <sup>9</sup> Prior to the statute’s passage in 2016, the VRIA provided victim  
24 evidence concerning restitution could be presented “through an oral  
25 statement, submission of written statement, or submission” through audio  
26 or video media, A.R.S §13-4428(B), or by the prosecutor. A.R.S. §13-804(G).  
27 The 2016 statute was amended to make clear victims could assert their  
28 rights “personally or through counsel”, “[n]otwithstanding any other law”.



1 victim rights”, (Fay PFR Reply, 4:8-9, *emphasis* in original)—would render  
2 the statute unconstitutional since the legislature may not *create* rights which  
3 do not exist within the VBR. *State v. Reed*, 248 Ariz. 72, 78, ¶20 (2020). The  
4 legislature is prohibited from creating a right to act as a private prosecutor  
5 in restitution proceedings, usurping the role of the sovereign.

6 The purpose of a criminal court is “to vindicate the public interest in  
7 the enforcement of the criminal law while at the same time safeguarding  
8 the rights of the individual defendant.” *Sandefur v. United States*, 447 U.S.  
9 10, 25 (1980). As *Lindsay R. v. Cohen* correctly observed, “[t]he purpose of  
10 restitution proceedings would be subverted if the victim’s counsel were  
11 allowed to take the prosecutor’s place—such an arrangement would  
12 essentially transform a criminal sentencing function into a civil damages  
13 trial.” 236 Ariz. 565, 567-68 (App.2015). Not only would it eviscerate *the*  
14 *State’s* ability to meet its burden of proof—which couldn’t possibly occur if  
15 *the State* did not participate—but it would give rise to an array of other  
16 constitutional improprieties. “Take the Due Process Clause. It guarantees  
17 particular rights in criminal proceedings because the prosecutor is a state  
18 actor, carrying out a ‘duty on the part of the Government.’” *Robertson v. U.S.*  
19 *ex rel. Watson*, 560 U.S. 272, 277 (2010)(Roberts, C.J. dissenting from  
20 dismissal of writ of certiorari)<sup>10</sup>, quoting *Kyles v. Whitley*, 514 U.S. 419, 433  
21 (1995). As was observed in *Lindsay R.* and *State v. Superior Court (Flores)*,  
22 181 Ariz. 378, 382 (App.1995), “[t]hough the prosecutor owes duties to  
23 victims, the prosecutor’s responsibility is to represent society’s interests  
24 and ‘see that justice is done on behalf of *both* the victim and the  
25 defendants.’” *Lindsay R., supra.*, at ¶9, quoting *Flores, supra.* This simply

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27 <sup>10</sup> Joined by Scalia, J., Kennedy, J. and Sotomayor, J. dissenting.  
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1 could not be accomplished if victims were permitted to substitute for the  
2 prosecutor in seeking a restitution order.

3         What about a prosecutor’s obligations pursuant to *Brady v. Maryland*,  
4 373 U.S. 83 (1963) and Rule 26.8(a), requiring State disclosure of  
5 information tending to reduce the amount of restitution claimed? A  
6 “private prosecutor is likely to have evidence pertinent to the proceeding—  
7 particularly if, as here, the private prosecutor is also the victim of the crime.  
8 But if the prosecutor is not exercising governmental authority, what would  
9 be the constitutional basis for any *Brady* obligations?” *Robertson, supra.*, at  
10 277-78.

11         This case exemplifies the point. For the restitution proceedings,  
12 Petitioner retained an expert economist who authored a report concerning  
13 the 21 year-old-decedent victim’s hypothetical prospective lost wages and  
14 benefits had he lived to retirement age. That report was provided to the  
15 court and defense counsel. Had the State retained the expert, disclosure of  
16 communications between counsel and that expert—as well as of the raw  
17 data provided to and relied on by the expert in forming his opinions—  
18 would have been required.<sup>11</sup> But as a victim, the private prosecutor lacked  
19 any such disclosure obligations. The facts and data remained undisclosed,  
20 leaving the court and defense counsel utterly incapable of intelligently  
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22         <sup>11</sup> See, e.g., *State v. Reid*, 114 Ariz. 16, 30 (1976)(non-disclosure of  
23 prosecutor’s notes from discussions with witness was error, as notes were  
24 not work product); *State v. Johnson*, 247 Ariz. 166, 193-94 (2019)(notes of  
25 witness interviews not work product and production properly ordered);  
26 A.R.E. 702(b)(requiring showing that the testimony is based on sufficient  
27 facts or data); A.R.E. 703 (expert may base opinion on facts or data in the  
28 case that the expert has been made aware of or personally observed).

1 analyzing the reliability of the expert's opinion.<sup>12</sup> The result: Forgoing the  
2 claim in the civil wrongful death jury trial which ultimately awarded  
3 Petitioner \$994,000–\$550,000 of which were punitive damages (**Exhibit B,**  
4 **hereto**)–Petitioner instead opted for the expedient method of claiming  
5 \$411,402.00 in hypothetical prospective wages and benefits lost over the  
6 decedent's lifetime as “restitution” –a claim unchallenged by defense  
7 counsel<sup>13</sup> and ordered by the court. (Fay PFR Appx., Exhibit 12).

8 In this same vein, Hanson's sentencing occurred in May, 2017.  
9 During the 2018 civil wrongful death trial, Petitioner testified that  
10 following her son's death in 2015 she was placed on medication and unable  
11 to work; she took leave from her employment and had not returned to  
12 work. (**Exhibit C, hereto**). Prior to closing argument, she withdrew her  
13 claim for lost wages totaling \$136,688 through June, 2018–and her claim for  
14 insurance premiums paid totaling \$2,008.44–in favor of presenting these  
15 claims in the criminal restitution proceedings. (**Exhibit D, hereto**, p. 3). By  
16 the time of the criminal restitution proceedings occurring in 2019–nearly  
17 four years following her son's death–she still had not returned to work.  
18 She sought and received \$143,636.00 in restitution for her lost wages  
19 through June, 2018, and \$2,044.56 for her insurance premiums (Fay PFR

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21 <sup>12</sup> See, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589  
22 (1993)(scientific testimony must be proven relevant and reliable); *Kumho*  
23 *Tire Co. v. Carmichael*, 526 U.S. 137, 146 (1999)(judicial obligation in ensuring  
24 reliability of expert testimony extends to all expert testimony).

25 <sup>13</sup> The doctrine of *res judicata* (issue preclusion) applies to claims that  
26 either were or *could have been brought* in former proceedings where a  
27 judgment on the merits was rendered by a court of competent jurisdiction  
28 between the same parties. *Hall v. Lalli*, 194 Ariz. 54, 57, ¶7 (1999).

1 Appx., Exhibit 12); all absent objection or challenge by defense counsel who  
2 remained uninformed of Petitioner’s posture in the civil proceedings.<sup>14</sup>

3 Petitioner also claimed and was awarded \$4,863 for a car “loan” she’d  
4 made to her son, absent disclosure that shortly following his death she’d  
5 transferred title to herself and maintains ownership, possession and use to  
6 date. (Fay PFR Appx., Exhibit 12).

7 Additionally, while crime victims “may” provide a statement  
8 including “[w]hether the victim has applied for or received any  
9 compensation for the loss or damage” suffered as a consequence of the  
10 crime, A.R.S. §13-4410(C)(4), *the State* had an obligation to report payments  
11 made to the victim through the Maricopa County Attorney’s Victim’s  
12 Compensation Fund in order to avoid the prohibited windfall born of  
13 duplicative compensation to the victim. *Cf.*, A.R.S. §13-804(E)(“If a victim  
14 has received reimbursement for the victim’s economic loss from... a crime  
15 victim compensation program funded pursuant to §41-2407 or any other  
16 entity, the court shall order the defendant to pay the restitution to that  
17 entity.”). But Petitioner, acting as a private prosecutor, lacked such  
18 disclosure obligation, so that disclosure didn’t happen either.<sup>15</sup>

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21 <sup>14</sup> Not only was the undisclosed difference in Petitioner’s claimed lost  
22 wages incurred through June 2018 inexplicable, but assuming  
23 compensability here, a criminal defendant is not responsible for expenses  
24 beyond a reasonable period to restore equanimity. *State v. Quijada*, 246  
Ariz. 356, 369 ¶42 (App.2019).

25 <sup>15</sup> Because the restitution will balloon to over a million dollars by the  
26 time of Hanson’s release from prison, it’s little wonder why Petitioner  
27 seeks to preclude Hanson from exercising his constitutional right of appeal.

1           These are but a few of the issues revealing the legal infirmity  
2 underlying Petitioner’s interpretation of what A.R.S. §13-4437(E) actually  
3 permits. Indeed, “[o]ur entire criminal justice system is premised on the  
4 notion that a criminal prosecution pits the government against the  
5 governed, not one private citizen against another.” *Robertson, supra.*, at 278.  
6 In passing A.R.S. §13-4437(E), the legislature could not have intended that  
7 crime victims *entirely* substitute for and usurp the prosecutor’s role during  
8 proceedings determining restitution; victims may *participate* in those  
9 proceedings by offering evidence and argument concerning “the extent of”  
10 their economic loss and their “need for restitution.” A.R.S. §§13-4426(A);  
11 13-4410(C). This critical point of law deserves clarification because  
12 Respondent Judge just recently held:

13           *Lindsay R., supra.*, does not support Defendant’s argument that  
14 Victim failed to follow Arizona ‘black letter law’ by ‘taking the  
15 prosecutor’s place’ at the restitution hearing.\*\*\* Rule 39(d)(4) of  
16 the modified rules provides that ‘[a]t any proceeding to  
determine restitution, the victim has the right to present  
information and make argument to the court personally or  
though counsel.’

17 (Exhibit E, hereto, Order of 11/9/20, p. 3). Trial courts need guidance on  
18 the continuing viability of this important aspect of *Lindsay R.* because  
19 victims’ counsel continue to successfully advance the claim that A.R.S. §13-  
20 4437(E) and Rule 39(d)(4) permit victims to take the prosecutor’s place in  
21 restitution proceedings.

22           **B. Victims may not appeal rulings on non victim right issues.**

23           Building upon her incorrect interpretation of the law, Petitioner next  
24 contends she also possessed a right to “seek[] appellate relief should she  
25 have disagreed with the trial court outcome” concerning restitution. This  
26 too is legally unsupported. Only *the State* and *defendant* have a right of  
27 appeal. *See*, A.R.S. §§13-4032, 13-4033. “If the State’s notice of appeal or  
28

1 cross-appeal is based in whole or in part on a victims' rights violation, the  
2 State must certify in the notice of appeal or opening brief that the victim  
3 requested the appeal or cross appeal." Rule 32.1(c)(2); Cf. A.R.S. §13-  
4 4437(A)(granting victims standing to, *inter alia*, "file a notice of appearance  
5 in an appellate proceeding seeking to enforce any right or challenge an  
6 order denying any right" guaranteed under the VBR, VRIA, or court rules.)

7 Nothing in the VBR grants victims a right to appeal an outcome of a  
8 criminal proceeding. The VRIA does not alter that fact; legislation may  
9 neither *create* rights not contained in the VBR nor usurp this Court's  
10 exclusive rule-making authority. As *State v. Lamberton* observed: "Section  
11 13-4437[A], however, does not give the Victim standing to argue before an  
12 appellate court that the trial court's ruling in a criminal proceeding was  
13 error or to bring the types of action against the defendant that the State can  
14 bring." 183 Ariz. 47, 50 (1995).

15 **C. Victims lack any right to seek to "uphold" a restitution order.**

16 The legal infirmity of Petitioner's final contention and conclusion-  
17 that she has a right "to be heard" to uphold a restitution order because it  
18 impacts rights enumerated by the VBR-thus seems obvious.

19 Obvious because the rights relied on here by Petitioner-the right to  
20 be treated with dignity, fairness, respect, and due process, §2.1(A)(1)-do  
21 not parlay into a right to seek to uphold restitution orders. Again, as non-  
22 parties, victims lack any right to a particular outcome in a criminal case.  
23 *Lamberton, supra*. California has held the same. *Ibid.*, quoting *Dix. v. Sup.*  
24 *Ct.*, 53 Cal.3d 442, 807 P.2d 1063 (1991)("neither a crime victim nor any  
25 other citizen has a legally enforceable interest, public or private, in the  
26 commencement, conduct, or outcome of criminal proceedings against  
27 another."). This Court echoed the principle in *State v. Reed*, 248 Ariz. 72,

1 79, ¶23 (2020)(finding statute which terminated defendant’s right of appeal  
2 following his death “does not affect rights ‘unique and specific’ to  
3 victims”); *see also*, *Reed*, at 80, ¶33 (victims possess no right to avoid trial  
4 court decisions on their merits). The right to “enforce” victim rights is  
5 demonstrably different from a right to seek to uphold a particular case  
6 outcome.

7 Obvious because a victim’s constitutional right “[t]o receive prompt  
8 restitution”, Art. 2, §2.1(A)(8), “contemplates the entry of a restitution  
9 order that is subject to appellate scrutiny, which may result in reversal or  
10 modification of the order.” *Reed*, at 79, ¶24. Because victims lack any right  
11 to a particular outcome, they lack a right to seek to uphold the decision  
12 being appealed. “The court’s disposition of the appeal...is the last cog in the  
13 ‘legal machinery’ enforcing the substantive right to appeal”. *Id.*, at 77, ¶16.

14 Finally, pragmatic reasons similarly highlight the obvious infirmity  
15 of Petitioner’s stance. If a victim *always* has a “right to be heard on matters  
16 affecting restitution” as Petitioner repeatedly contends<sup>16</sup>, then this Court  
17 must find the VBR grants victims the right “to be heard” on the merits of  
18 every criminal appeal and every claim raised under Rule 32.1(a)-(h),  
19 *excluding* (f). This is because every appeal and PCR challenges the  
20 conviction(s) and/or sentence(s); vacating either also “affects” restitution  
21 order(s) since they too are automatically vacated.

---

23 <sup>16</sup> *See*, *Fay* PFR Reply, 10:4 (“...right to be heard on matters affecting  
24 restitution in a Rule 32 proceeding...”); *Fay* PFR, 8:16 (same); *see also*, *Fay*  
25 PFR, 11:2 (“[Victims] have standing to participate in these post-conviction  
26 proceedings because the issues involve a determination of restitution for  
27 economic loss.”); *Fay* PFR Reply, 6:16 (“Standing to be heard and to  
28 counter efforts to vacate a previously established restitution order...”).

1 The appellate court pressed to clarify this to be Petitioner's stance;  
2 Petitioner conceded that it was:

3 JUDGE GASS: Well, Counsel, let me ask you a question,  
4 because as I see it, if the issue is only does the Defendant get to  
5 bring the appeal, that's just like almost any other question  
6 that's strictly an issue for the Defendant.

7 It seems to me if I take your argument, then you would have a  
8 right to intervene on—if you [*sic.*] were going to appeal his  
9 conviction and move to set aside his guilt. That still could  
10 impact the victim's restitution, but it's not something that  
11 you'd—the victim has a right to intervene in. Isn't it only when  
12 restitution is directly at issue that the statute is triggered? **Or**  
13 **do you take the position that any time restitution could be**  
14 **affected—that that would trigger the victim's ability to**  
15 **participate?**

16 PETITIONER: You're Honor, I'm a victim rights lawyer, so I'm  
17 going to say at all times.

18 (Hanson Combined Response Appx., Exhibit A, Oral Argument, 8/19/20,  
19 at 11:20-12:11, **emphasis** added). Nothing in the VBR, VRIA or court rules  
20 creates a constitutional or procedural construct such as that.

21 At bottom, this case is not about "silencing victims" as Petitioner  
22 asserts; it is about remaining faithful to victim rights as written. "Arizona  
23 courts must follow and apply the plain language of [the VBR]." *Knapp v.*  
24 *Martone*, 170 Ariz. 237, 239 (1992). Although Petitioner "wants to be heard  
25 and explain why...[Hanson's] Rule 32 petition should fail"<sup>17</sup>, the rights  
26 afforded victims under §2.1(A)(1) and (8)—as well as those afforded under  
27 the VBR's remaining provisions—cannot be parlayed into a right "to be  
28 heard" on the question of whether a defendant's failure to timely appeal  
was through no fault of his own.

---

<sup>17</sup> Fay PFR Reply, at 10:14.



1 IV. CONCLUSION

2 Based on the above, as well as that presented in Hanson's Combined  
3 Response on review, Petitioner's requested relief should be denied.

4  
5 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of November, 2020.

6 

7 \_\_\_\_\_  
8 Treasure VanDreumel  
9 Lori Voepel  
10 Attorneys for RPI Hanson  
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# APPENDIX

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**APPENDIX TABLE OF CONTENTS**

**EXHIBIT A:** References to Petitioner’s PFR and Reply ..... 19

**EXHIBIT B:** Civil Wrongful Death Verdicts ..... 21

**EXHIBIT C:** Petitioner Fay’s Testimony (civil trial, excerpt)..... 26

**EXHIBIT D:** Fay’s notice of lost wages (civil trial, p. 3) ..... 34

**EXHIBIT E:** *State v. Hanson*, Minute Entry, 11/9/20 ..... 46

# EXHIBIT A

**Fay PFR, 2:21** ("The Defendant's Rule 32 request no matter how denominated directly affects the court's determination of restitution."); **Fay PFR, 3:5** ("victims only seek the right to be heard on all matters affecting a determination of restitution."); **Fay PFR, 8:16** ("This Petition for Review seeks...a clarification that a victim can be heard on Rule 32 matters affecting determination of restitution..."); **Fay PFR, 10:4** ("closing the doors to the courthouse when a defendant challenges the amount of restitution."); **Fay PFR, 11:6** ("victims may respond to any challenges to the determination of restitution."); **Fay PFR, 11: 12** ("They have standing to participate in these post-conviction proceedings because the issues involve a determination of restitution for economic loss."); **Fay PFR, 12: 6** ("...denying a victim from being heard on a request for a delayed appeal that affects a determination of restitution."); **Fay PFR, 11:15** ("...decision to deny a victim from being heard on a matter affecting restitution...is unfair."); **Fay PFR, 13:8** ("the relief sought clearly affects the determination of restitution."); **Fay PFR Reply, 2:19** ("...Rule 32 proceedings that make a belated effort to vacate a criminal restitution order"); **Fay PFR Reply, 3:9** ("His requested remedy will eviscerate an enumerated right to a criminal restitution order..."); **Fay PFR Reply, 6:16** ("Standing to be heard and to counter efforts to vacate a previously established restitution order..."); **Fay PFR Reply, 7:12** ("The Defendant's Rule 32 asks to vacate the criminal restitution order..."); **Fay PFR Reply, 8:3** ("...when a defendant uses Rule 32 to ask the court to take away a victim's property right."); **Fay PFR Reply, 8:13** ("a Defendant uses Rule 32 to ask the court to vacate the entire restitution order?"); **Fay PFR Reply, 9:3** ("a Rule 32 proceeding involving a Defendant's effort to vacate a criminal restitution order."); **Fay PFR Reply, 10:4** ("...right to be heard on matters affecting restitution in a Rule 32 proceeding..."); **Fay PFR Reply, 10: 14** ("wants to be heard and explain why...the Rule 32 petition should fail before the court makes any potentially draconian decisions."); **Fay PFR Reply, 11:17** ("Hanson...[asks] the Court to vacate the restitution order"); **Fay PFR Reply, 12: 2** ("[Victim] should be heard on the merits before a court makes any determination to claw back a restitution order."); **Fay PFR Reply, 12: 11** ("Hanson seeks relief that affects a determination of restitution"); **Fay PFR Reply, 12:17** ("Taking away the property interest without first giving the aggrieved party a right to be heard..."); **Fay PFR Reply, 12:22** ("...ensure that crime victims have a voice in these Rule 32 proceedings affecting the determination of restitution.").

# EXHIBIT B

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-003499

10/17/2018

HONORABLE CONNIE CONTES

CLERK OF THE COURT  
D Arrieta  
Deputy

ANDREW DUMBRELL, et al.

NICHOLAS E VAKULA

v.

JORDAN HANSON, et al.

R COREY HILL

DAVID J CATANESE  
CHELSEY M GOLIGHTLY  
GARVEY M BIGGERS  
JUDGE CONTES

**TRIAL MINUTE ENTRY  
DAY SEVEN (7)**

East Court Building – Courtroom 913

8:58 a.m. LET THE RECORD REFLECT that the Jury is present in the Jury Room and continue their deliberations.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

**IT IS ORDERED** that the clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked or their written designee. Counsel/party or written designee shall have the right to refile relevant exhibits as needed in support of any appeal. Refiled exhibits must be accompanied by a Notice of Refiling Exhibits and presented to the Exhibit Department of the Clerk's Office. The Court's exhibit tag must remain intact on all refiled exhibits.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-003499

10/17/2018

**IT IS FURTHER ORDERED** that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release form (2)

2:19 p.m. This is the time set for the court and counsel to discuss written deliberation questions received from the jury. Plaintiff Andrew Dumbrell is present and represented by counsel, Nicholas E. Vakula and Garvey M. Biggers. Statutory Beneficiary Beth Fay is present and represented by counsel, David J. Catanese. Defendant Jordan Hanson is represented by counsel, R. Corey Hill. Defendants Michael L. Hanson and Annette S. Hanson are present and represented by counsel, Chelsey M. Golightly and William D. Holm.

Court reporter Brigid Donovan is present.

A record of the proceedings is also made digitally.

The jury is not present.

The court and counsel discuss the written questions, on the record, out of the hearing of the jury. The relevant question is answered by the court in written format and returned to the jury by the bailiff.

FILED: Juror Question (20)

2:26 p.m. Court stands at recess.

2:33 p.m. Court reconvenes with respective counsel and parties present.

Court reporter Brigid Donovan is present.

A record of the proceedings is also made digitally.

The jury is present in the jury box and by their foreperson return into court their verdicts, which are read and recorded by the clerk and is as follows:

**Jury Verdict Form (1)**

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Plaintiff Andrew Dumbrell and/or Beth Fay



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-003499

10/17/2018

We find the full damages of Andrew Dumbrell to be:       \$ 560,500.  
We find the full damages of Beth Fay to be:               \$ 994,000.  
Total:   \$ 1,554,500.

We find the relative degrees of fault to be: *[If you find Michael & Annette Hanson not at fault, put a zero (0) on the percentage line.]*

Defendant Jordan Hanson   100 %  
Defendants Michael and Annette Hanson                               0 %  
Total:   100 %

The jurors who have signed this verdict reply that this is their true verdict.

**Jury Verdict Form (2)**

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find in favor of Defendants Michael and Annette Hanson.

The jurors who have signed this verdict reply that this is their true verdict.

**Jury Verdict Form (3)**

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find, by clear and convincing evidence, in favor of Andrew Dumbrell and Beth Fay against Jordan Hanson on the claim for punitive damages.

We find the full amount of punitive damages to be: \$550,000.

The jurors who have signed this verdict reply that this is their true verdict.

The jury is thanked by the court and excused from further consideration of this cause.

FILED: Trial Worksheet; Jury List; Verdicts (4)

2:41 p.m. Trial concludes.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2016-003499

10/17/2018

**LATER:**

**IT IS ORDERED** assessing jury fees in the total amount of **\$1,781.01** against Jordan Hanson, all in accordance with the formal written Judgment for Jury Fees signed by the court on October 23, 2018 and filed (entered) by the clerk on October 23, 2018.

# EXHIBIT C

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

ANDREW DUMBRELL, father of the )  
deceased, Carson Dumbrell; and )  
BETH FAY, mother of the deceased, )  
Carson Dumbrell, )  
Plaintiffs )

vs. )

No. CV2016-003499

JORDAN HANSON, a single person; )  
MICHAEL L. HANSON and ANNETTE S. )  
HANSON, husband and wife; JANE )  
and JOHN DOES I-X; BLACK AND WHITE )  
CORPORATIONS I-V; ABC PARTNERSHIPS )  
I-V, )  
Defendants. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXCERPT

Trial - Day 4

BEFORE JUDGE CONNIE CONTES

Phoenix, Arizona

October 11, 2018

Reported By:

Brigid M. Donovan, RPR, CCR  
Arizona Certificate No. 50902

Brigid M. Donovan, RPR  
AZ CR. 50902

## A P P E A R A N C E S

On Behalf of Plaintiff Andrew Dumbrell:

Nicholas E. Vakula, Esq.  
The Vakula Law firm, PLC  
11240 N. Tatum Blvd., Suite 120  
Phoenix, Arizona 85028

Garvey M. Biggers, Esq.  
Garvey Biggers Law Firm, PLC  
3030 N. 3rd Street, Suite 200  
Phoenix, Arizona 85012

On Behalf of Plaintiff Beth Fay:

David J. Catanese, Esq.  
Attorney at Law  
2701 E. Camelback Road #160  
Phoenix, Arizona 85016

On Behalf of Defendant Jordan Hanson:

R Corey Hill, Esq.  
Hill & Hill, PLC  
3131 E. Clarendon Avenue #107  
Phoenix, Arizona 85016

On Behalf of Defendant Michael L. Hanson and  
Annette S. Hanson

Chelsey M. Golightly, Esq. and  
William Holm, Esq.  
Jones Skelton & Hochuli, PLC  
40 N. Central Avenue, Suite 2700  
Phoenix, Arizona 85004

--oOo--

Brigid M. Donovan, RPR  
AZ CR. 50902

I N D E X

PROCEEDINGS:

PAGE

WITNESS

Beth Fay

Direct Examination by Mr. Catanese

4

Cross-Examination by Mr. Hill

117

--oOo--

1 saying, well, is this it, is this going to be it? You  
2 know, there was just so many people out lined up to the  
3 street waiting to come in and pay their respects. And  
4 then Monday we had a funeral on 9/14.

5 Q Where was that at?

6 A Christ Church of the Valley.

7 Q Quite the turnout?

8 A Standing room only. The place wasn't big  
9 enough.

10 Q Let's talk about you. Tell us about those first  
11 few weeks. Start there.

12 A Well, I had -- my boyfriend moved in for a few  
13 weeks to take care of me. My daughter was with me for  
14 two weeks. My sister was there almost every day. And  
15 friends were over there every day, every day for two  
16 weeks bringing food and just trying to keep me alive.  
17 Everybody was worried that I would give up.

18 Q Take something to drink. Let's talk about the  
19 next couple months. Did you try and get help?

20 A Yes, that month actually, right away. I called  
21 my doctor -- people called the doctor for me, yes.

22 Q And what did they do for you?

23 A They put me on medication.

24 Q What kind of medication?

25 A Xanax actually and sleeping medications and just

1 trying to keep me calm.

2 Q Did it help?

3 A Hit and miss, came and went.

4 Q Those first couple of months, how are you  
5 coping?

6 A Oh, goodness, I was in a blur. I didn't cope.  
7 School started asking when are you coming back. And I  
8 tried to do some lesson plans and couldn't really do  
9 anything. I called the school district and we were  
10 making arrangements for substitutes and then a medical  
11 leave. And when I called to the district office, the  
12 human resource director said, I've got all your paperwork  
13 ready. And I said, I don't even know who you are. Why  
14 is this all done for me. She said, my daughter knew your  
15 son and she's in college out of state. And I got a call  
16 on September 5th and she was bawling her eyes out. So  
17 much so that she had to call the school counselor and get  
18 her daughter help. And she was going to go fly to go be  
19 with her daughter.

20 And she says, your son told me, Mom, he's the  
21 most caring person I have ever known. It is the crime of  
22 the century that he's not with us anymore. And she was  
23 just so upset that weekend. So her mother said, oh, my,  
24 goodness, Carson Dumbrell's mother works for our  
25 district. She didn't know me, but she knew my son



1 through her daughter. And as upset as her daughter was,  
2 she knew the mother was not going to be good. So when I  
3 called and I start arranging for time of leave, she said,  
4 I've got it all done for you. She said, I knew you'd be  
5 calling.

6 Q Beth, have you gone back to teaching?

7 A I have not.

8 Q Can you?

9 A Not at this time.

10 Q You say not at this time though. That sounds  
11 like hope. We know that's a good thing.

12 A Hope is good. Hope, my son had Jeremiah 29:11  
13 on his arm, hope for the future.

14 Q Now, you ended up -- where did you get your  
15 help?

16 A Crisis Prevention Recovery across the street  
17 from the police and that's where they referred me to.

18 Q And were you -- did you have specific people  
19 that were -- that you were -- counseling you?

20 A Yes, they gave me a counselor. And after about  
21 six months, I believe it was, I changed counselors  
22 because that one left.

23 MR. CATANESE: Your Honor, at this time I  
24 move for the admission of Exhibit 116.

25 MR. HILL: No objection.

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C E R T I F I C A T E

I, Brigid M. Donovan, CR, a Certified Reporter in the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

SIGNED and dated this 13th day of October, 2018.

/s/ Brigid M. Donovan

Brigid M. Donovan, RPR

Certified Reporter #50902

Brigid M. Donovan, RPR  
AZ CR. 50902

# EXHIBIT D

1 **ZACHAR LAW FIRM, P.C.**  
2 PO Box 47640  
3 Phoenix, Arizona 85020  
4 (602) 494-4800  
5 David J. Catanese (012083)  
6 DCatanese@zacharlaw.com  
7 *Attorney for Statutory Beneficiary Beth Fay*

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

10  
11 ANDREW DUMBRELL, father of the  
12 deceased, Carson Dumbrell; and BETH  
13 FAY, mother of the deceased, Carson  
14 Dumbrell,

15 Plaintiffs,

16 vs.

17  
18 JORDAN HANSON, , a single person;  
19 MICHAEL L. HANSON and ANNETTE  
20 S. HANSON, husband and wife; JANE  
21 DOE and JOHN DOES I-X; BLACK AND  
22 WHITE CORPORATIONS I-V; ABC  
23 PARTNERSHIPS I-V,

24 Defendants.

Case No.: CV2016-003499

**STATUTORY BENEFICIARY  
BETH FAY'S  
ELEVENTH SUPPLEMENTAL  
RULE 26.1 DISCLOSURE  
STATEMENT REGARDING  
DAMAGES, WITNESSES AND  
EXHIBITS**

25 Pursuant to Rule 26.1, ARCP, Statutory Beneficiary Beth Fay hereby  
26 supplements (*bold italics*) her disclosure regarding damages, witnesses and exhibits  
27 with the following information:  
28

1     **I.     COMPUTATION AND MEASURE OF DAMAGES**

2             As a direct and proximate result of Defendants' negligence and intentional acts  
3  
4     Statutory Beneficiary Beth Fay's only son, Carson Dumbrell, was taken from her at the  
5     young age of 21. At the time of his death and since his birth, Carson had lived with his  
6     mother. Their relationship was as close as a mother and son could be as will be  
7     demonstrated by photographs, videos, witness testimony and Carson's own words.  
8

9             As a result of Carson Dumbrell's tragic and needless death, Beth Fay is entitled  
10     to the full amount of money that will reasonably and fairly compensate her for the loss  
11     of love, affection, companionship, care, protection and guidance provided by Carson  
12     since his death and in the future. She is further entitled to the full amount of money  
13     that will reasonably and fairly compensate her for the pain, grief, sorrow, anguish,  
14     stress, shock, and mental suffering already experienced and reasonably probable to be  
15     experienced in the future. Beth Fay has been undergoing grief counseling through  
16     Crisis Preparation and Recovery since her son's death and has been seen in therapy for  
17     PTSD, acute anxiety and stress. Due to the nature of these damages, they are not  
18     subject to exact calculation and are left to the trier of fact to determine. Beth Fay's  
19     medical bills to date for anxiety and stress are as follows:  
20

21

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23

24

|    |   |            |
|----|---|------------|
| 25 | 1.     Arrowhead Family & Sports Medicine | \$2,745.50 |
| 26 | DOS: 11/25/15 – 08/23/17                  |            |
| 27 | DOS: 09/13/17                             | \$1,717.89 |
| 28 | 2.     Crisis Prep & Recovery             | \$3,382.50 |
|    | DOS: 09/23/15 – 09/27/17                  |            |
|    | DOS: 10/11/17 – 05/30/18                  | \$3,970.50 |
|    | 3.     Safeway Pharmacy                   | \$1,838.29 |
|    | DOS: 12/31/15 – 09/11/17                  |            |
|    | DOS: 10/16/17 – 04/20/18                  | \$ 520.14  |

|   |    |                |                  |
|---|----|----------------|------------------|
| 1 | 4. | Frys Pharmacy  | <u>\$ 104.19</u> |
| 2 |    | TOTAL TO DATE: | \$14,279.01      |

3 As a result of Carson Dumbrell's tragic and needless death, Beth Fay is further  
 4 entitled to the full amount of money that will reasonably and fairly compensate her for  
 5 the income and services that have already been lost as a result of Carson's death and  
 6 that are reasonably probable to be lost in the future. Due to the loss of her son, Beth  
 7 Fay has been unable to continue her work as a teacher. Prior to his death, she was  
 8 employed as a teacher with the Dysart Unified School District. Her lost wages to date  
 9 are as follows:

|    |                       |                  |
|----|-----------------------|------------------|
| 13 | 2014/2015 school year | \$ 39,313        |
| 14 | 2015/2016 school year | <u>\$ 45,291</u> |
| 15 |                       | \$ 84,604        |

16 It is anticipated that her loss of income for the 2017/2018 school year will be  
 17 \$52,084. As of August 30, 2017, it was the opinion of Beth Fay's grief counselor  
 18 (Patricia Birmingham, RN, LPC of the Crisis Preparation and Recovery) that Beth Fay  
 19 may not ever be able to return to her profession as a teacher due to the emotional  
 20 impact the death of her son has had on her emotional state. Therefore, her loss of  
 21 income from her teaching professional will probably continue well into the future.

22 In addition, due to absence from teaching, her employer no longer pays her  
 23 insurance premiums and this loss totals \$2,008.44 to date and will continue into the  
 24 future.

1    **II. NAMES AND ADDRESSES OF ANY WITNESSES PLAINTIFF**  
2    **EXPECTS TO CALL AT TRIAL AND THE SUBJECT MATTER OF**  
3    **THEIR TESTIMONY**

4           1.    Beth Fay, c/o The Zachar Law Firm. Beth Fay is the mother of Carson  
5    Hanson and is expected to testify regarding her interaction with the Hansons, her  
6    relationship with her son, Carson Dumbrell, and the damages she has suffered in this  
7    case.  
8

9           2.    Diane Fay, c/o The Zachar Law Firm. Diane Fay is Beth Fay's sister and is  
10   expected to testify regarding her knowledge and observations of the relationship between  
11   Beth Fay and Carson Dumbrell.  
12

13           3.    Tanner Dobbins, 133-C N. Kainalu Dr., Kailu, HI 96734 (623-313-6889).  
14   Tanner Dobbins was a friend of Carson Dumbrell and is expected to testify regarding his  
15   knowledge and observations of the relationship between Beth Fay and Carson Dumbrell.  
16

17           4.    Logan Caputo, 8003 W. Bloomfield Rd., Peoria, AZ 85381 (623-910-  
18   7558). Logan Caputo was a friend of Carson Dumbrell and is expected to testify  
19   regarding his knowledge and observations of the relationship between Beth Fay and  
20   Carson Dumbrell.  
21

22           5.    Payton Krause, address unknown. Payton Krause was a friend of Carson  
23   Dumbrell and is expected to testify regarding her knowledge and observations of the  
24   relationship between Beth Fay and Carson Dumbrell.  
25  
26  
27  
28

1           6.     Laura Kraus, address unknown. Laura Krause was a friend of Carson  
2 Dumbrell and is expected to testify regarding her knowledge and observations of the  
3 relationship between Beth Fay and Carson Dumbrell.  
4

5           7.     Bryce Richmond, address unknown. Bryce Richmond was a friend of  
6 Carson Dumbrell and is expected to testify regarding his knowledge and observations of  
7 the relationship between Beth Fay and Carson Dumbrell.  
8

9           8.     Tim Wortenberg, address unknown (602-626-4238). Tim Wortenberg was a  
10 friend of Carson Dumbrell and is expected to testify regarding his knowledge and  
11 observations of the relationship between Beth Fay and Carson Dumbrell.  
12

13           9.     Alexis Watt, 7700 W. Aspera Blvd., Glendale, AZ 85308 (623-696-7595).  
14 Alexis Watt was a friend of Carson Dumbrell and is expected to testify regarding her  
15 knowledge and observations of the relationship between Beth Fay and Carson Dumbrell.  
16

17           10.    Kristin Watt, 27115 N. 83rd Dr., Peoria, AZ 85383 (480-440-2878). Kristin  
18 Watt is the mother of Alexis Watt and was a friend of Carson Dumbrell and is expected  
19 to testify regarding her knowledge and observations of the relationship between Beth Fay  
20 and Carson Dumbrell.  
21

22           11.    Alex Biscoe, 7589 W. Kerry Ln., Glendale, AZ 85308. Alex Biscoe was a  
23 friend of Carson Dumbrell and is expected to testify regarding his knowledge and  
24 observations of the relationship between Beth Fay and Carson Dumbrell.  
25

26           12.    Kalie Holeman, 5012 W. Jomax Rd., Phoenix, AZ 85083 (602-814-7307).  
27 address unknown. Kalie Holeman was a friend of Carson Dumbrell and is expected to  
28



1 testify regarding her knowledge and observations of the relationship between Beth Fay  
2 and Carson Dumbrell.

3  
4 13. Brandon James Jones, 1121 N. 24th Pl., Phoenix, AZ 85008 (818-306-  
5 8999). Brandon James Jones was a friend of Carson Dumbrell and is expected to testify  
6 regarding his knowledge and observations of the relationship between Beth Fay and  
7 Carson Dumbrell.  
8

9  
10 14. Sophia Morgan, address unknown (602-931-5966). Sophia Morgan was a  
11 friend of Carson Dumbrell and is expected to testify regarding her knowledge and  
12 observations of the relationship between Beth Fay and Carson Dumbrell.  
13

14 15. Patricia Birmingham, RN, LPC, Crisis Preparation and Recovery, 6830 N.  
15 57th Dr., Glendale, AZ 85301 (623-930-3453). Patricia Birmingham is providing grief  
16 counseling to Beth Fay and will testify regarding the impact on Beth Fay due to her son's  
17 death and her counseling of Beth Fay.  
18

19  
20 16. Julie Jacobs, D.O., Arrowhead Dermatology, 7767 W. Deer Valley Rd., Ste.  
21 140, Peoria, AZ 85382 (623-487-3003). Dr. Jacobs is Beth Fay's treating dermatologist  
22 and will testify regarding the effects of the stress of her son's death on Beth Fay's skin  
23 condition.  
24

25 17. Roberto P. Luberto, D.O., Arrowhead Family Sports Medicine, 7717 W.  
26 Deer Valley Rd., #125, Peoria, AZ 85382-2102. Dr. Luberto is Beth Fay's treating  
27 physician and will testify regarding the effects of the loss of her only son on Beth Fay and  
28 his related diagnosis and treatment.

1           18. Representative of Dysart Unified School District Human Resources  
2 Department, Dysart Unified School District 15802 N. Parkview Place, Surprise, Arizona  
3 85374 (623-876-7005). A representative from the Dysart Unified School District Human  
4 Resources Department will testify as to Beth Fay's lost wages.  
5

6           19. Patricia Murphy, will supplement address. 623-734-4586. Patricia Murphy  
7 was a neighbor and friend of Beth Fay and Carson Dumbrell and made the urn for  
8 Carson's ashes. She is expected to testify regarding her knowledge and observations of  
9 the relationship between Beth Fay and Carson Dumbrell.  
10

11           20. Custodians of Records necessary to provide foundation.  
12

13           21. Witnesses disclosed by Plaintiff and Defendants and identified through  
14 discovery.  
15

16           22. Representative of Frys Pharmacy. This witness will testify as to the  
17 reasonableness of the charges for prescriptions.  
18

19           23. Representative of Safeway Pharmacy. This witness will testify as to the  
20 reasonableness of the charges for prescriptions.  
21

22 **III. ALL TANGIBLE EVIDENCE OR RELEVANT DOCUMENTS THAT**  
23 **PLAINTIFF PLANS TO USE AT TRIAL**  
24

25           1. Photographs, text messages and written notes of and between Beth Fay  
26 and Carson Dumbrell (FAY00001-00014; 00025- 29; 00037-43).

27           2. Videos of Beth Fay and Carson Dumbrell (will supplement).

28           3. Records from Crisis Prevention & Recovery (FAY-CPR00001-00164).

- 1           4.     Records from Fry's Pharmacy (FAY00015).
- 2
- 3           5.     “To Whom It May Concern” letter from Rani Trent, LAC at Crisis
- 4     Preparation and Recovery dated May 20, 2016 (FAY00016).
- 5
- 6           6.     “To Whom It May Concern” letter from Patricia Birmingham at Crisis
- 7     Preparation and Recovery dated August 30, 2017 (FAY00017).
- 8
- 9           7.     “Attending Physicians Statement of Disability” signed by Dr. Roberto
- 10    Luberto dated November 25, 2015 (FAY00018-19).
- 11
- 12           8.     Letter from Dr. Roberto Luberto dated August 11, 2014 regarding Beth
- 13    Fay's inability to return to work (FAY00020).
- 14
- 15           9.     Dysart Unified School District Letter to Beth Fay dated March 7, 2016
- 16    regarding her Lost 301 Performance Pay (FAY00021).
- 17
- 18           10.    Dysart Unified School District Letter to Beth Fay dated April 11, 2016
- 19    regarding Lost Wage Verification (FAY00022).
- 20
- 21           11.    Dysart Unified School District Letter to Beth Fay dated June 20, 2016
- 22    regarding her Lost 301 Performance Pay (FAY00023).
- 23
- 24           12.    Dysart Unified School District Letter regarding Beth Fay's lost wages
- 25    dated June 29, 2017 (FAY00024).
- 26
- 27           13.    Monthly Progress Report – Fay Tutoring Jordan Hanson (FAY00030-34).
- 28           14.    Email dated April 12, 2013 from Fay to Michael and Annette Hanson re
- Tutoring Jordan (FAY00035-36).
15.    Records from Arrowhead Family Sports Medicine (FAY-AFSM00001-68).
16.    Crisis Preparation and Recovery bills (FAY-CPR00165-191).

- 1           17. Safeway Pharmacy bills (FAY00037-38).  
2  
3           18. Arrowhead Family Sports Medicine billing statements (FAY-AFSM00069-  
4 73), copy provided on CD.  
5           19. Dysart Unified employment file for Beth Fay (FAY-DUSD00001-56), copy  
6 provided on CD.  
7  
8           20. E-Institute Grovers school records for Carson Dumbrell (FAY-EIG00001-  
9 2), copy provided on CD.  
10  
11          21. Arrowhead Family Sports Medicine May 16, 2018 medical record (FAY-  
12 AFSM00074), copy provided herewith.  
13  
14          22. Crisis Preparation and Recovery bills (FAY-CPR00192), copy provided  
15 herewith.  
16  
17          23. Crisis Preparation and Recovery updated medical records (FAY-  
18 CPR000193-230) copy provided on CD.  
19  
20          24. Safeway Pharmacy updated bills (FAY00039-40), copy provided on CD  
21  
22          25. Arrowhead Family & Sports Medicine updated billing statement (FAY-  
23 AFS00075-76), copy attached.  
24  
25          26. All exhibits disclosed by Plaintiff and Defendants and identified through  
26 discovery.  
27  
28          27. *Report & CV of Jill Hayes, Ph.D., previously disclosed by Defendant  
Jordan Hanson.*

1 28. *Recorded interview of Ms. Fay by Drs. Pitt and Hayes, previously*  
2 *disclosed by Defendant Jordan Hanson.*  
3

4  
5 **IV. EXPERTS**

6 *Jill Hayes, Ph.D.*  
7 *2415 E. Camelback Rd., Ste. 700*  
8 *Phoenix, AZ 85016*

9 *Dr. Hayes will testify regarding her and Dr. Steven Pitt's interviews of Ms.*  
10 *Fay, the testing performed on Ms. Fay, Dr. Hayes' review of pertinent records and*  
11 *regarding the matters set forth in her report dated August 20, 2018 disclosed*  
12 *herewith. Dr. Hayes Curriculum Vitae was previously disclosed by Defendant*  
13 *Jordan Hanson.*  
14

15  
16  
17 DATED this 29<sup>th</sup> day of August, 2018.

18 ZACHAR LAW FIRM, PC

19  
20  
21 /s/ David J. Catanese  
22 David J. Catanese  
23 *Attorney for Statutory Beneficiary Beth Fay*  
24

25 **ORIGINAL/COPIES** mailed/  
emailed this same date to:

26 R. Corey Hill  
27 Ginette M. Hill  
28 **Hill, Hall & DeCiancio, PLC**  
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Phoenix, AZ 85016  
and

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12 *Annette Hanson*

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15 11240 N. Tatum Blvd., Ste. 120  
16 Phoenix, AZ 85028  
17 and  
18 Garvey Biggers  
19 **Garvey Biggers Law Firm, PLC**  
20 3030 N. 3<sup>rd</sup> Ste., Ste. 200  
21 Phoenix, AZ 85012  
22 *Attorneys for Plaintiff Dumbrell*

23  
24  
25  
26  
27  
28  
/s/ Marci L. Turner

# EXHIBIT E

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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11/09/2020

HONORABLE DEWAIN D. FOX

CLERK OF THE COURT  
J. Matlack  
Deputy

STATE OF ARIZONA

LISA MARIE MARTIN

v.

JORDAN MICHAEL HANSON (001)

LORI L VOEPEL  
TREASURE L VANDREUMEL

COURT ADMIN-CRIMINAL-PCR  
JUDGE FOX

RANDALL S UDELMAN

**RULING ON PETITIONER'S OUTSTANDING DISCOVERY MOTIONS**

On September 17, 2020, Victim Beth Fay ("Victim") filed a petition for review and a motion for stay in the Arizona Supreme Court. On September 21, 2020, the Supreme Court issued an "Order Granting Stay In Part", which "stay[ed] all post-conviction proceedings in Superior Court pending this Court's disposition of the Petition for Review, provided that this stay order shall be inapplicable to any discovery motion pending in the post-conviction proceedings as of the date of this order."

On September 23, 2020, Defendant filed "Petitioner's Notice of Status and Request for Orders and Ruling." This Notice identified these matters as outstanding and excepted from the Supreme Court's stay order: (i) Defendant's May 2, 2020 "Request for Order Requiring Disclosure (Medical Examiner File)" (the "May 2 Motion"); (ii) Defendant's June 15, 2020 "Request for Order to Permit Independent Blood Testing and Proposed Order" (the "June 15 Blood Testing Motion"); and (iii) Defendant's June 15, 2020 "Request for Order Directing Disclosure of Communications Between Victim's Counsel and Her Expert Witness, and Disclosure of the Expert's Raw Data" (the "June 15 Expert Disclosure Motion"). Each of these filings is addressed below.



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May 2 Motion

Defendant requested an Order directing the Maricopa County Office of the Medical Examiner to produce its file for its Case No. 15-05899 in its entirety, including bench notes and communication logs, to Defendant's counsel or her designee. The State did not oppose this request. By Minute Entry dated June 11, 2020 (filed June 12, 2020), the Court granted the request and "direct[ed] the Maricopa County Office of the Medical Examiner to produce to Defendant's counsel its file in its entirety in its own case number 15-05899, including bench notes and communication logs." Defendant asserts that the Medical Examiner's Office has yet to comply with this order, and he requests a second order directing it to do so. Accordingly,

**IT IS ORDERED** affirming the June 11, 2020 order "directing the Maricopa County Office of the Medical Examiner to produce to Defendant's counsel its file in its entirety in its own case number 15-05899, including bench notes and communication logs."

June 15 Blood Testing Motion

Defendant asked the Court to issue the proposed form of Order directing the Maricopa County Medical Examiner's Office to provide specimens to, and to cooperate with, Defendant's consulting expert (Dr. Keen) in his efforts to have the specimens sent to an independent laboratory for testing. Defendant avowed that the defense would pay for all fees and shipping costs associated with the independent testing. The State did not oppose this motion. Accordingly,

**IT IS ORDERED** approving the proposed form of Order granting the June 15 Blood Testing Motion, which Order the Court signs today.

June 15 Expert Disclosure Motion

Defendant seeks an order compelling Victim and her restitution economic expert to produce: (i) all written communications between Victim and/or her counsel, on the one hand, and the expert, on the other hand; and (ii) all notes, documents, articles and raw data possessed by the expert. Defendant claims that the communications will reveal information about the decedent, which the expert used in his analysis and in forming his conclusions. Defendant further claims the other information will permit examination of the methodologies and principles underlying the expert's conclusions. Defendant asserts that his discovery request meets the "good cause" standard for discovery after the filing of a post-conviction relief petition under Rule 32.6(b)(2).

On September 22, 2020, Victim filed her Objection to the June 15 Expert Disclosure Motion. Victim contends that Defendant's discovery request violates the Victim's Bill of Rights. Specifically, A.R.S. § 13-4433(H) grants victims the right "to refuse an interview, a deposition or

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any other discovery request related to the criminal case involving the victim by the defendant, the defendant's attorney or any other person acting on behalf of the defendant."

On September 23, 2020, Defendant filed his Reply. Defendant contends that Victim is using the Victim's Bill of Rights "as both a sword and a shield to subvert disclosure of material, mandatory discovery." (Reply at 2:7-8).<sup>1</sup> In this regard, Defendant argues that his insistence on discovery from Victim is solely the result of Victim subverting the purpose of the restitution proceeding by taking the prosecutor's place and "transform[ing] a criminal sentencing function into a civil damages trial." (*Id.* at 1:11-17) (quoting *Lindsay R. v. Cohen*, 236 Ariz. 565, 567-68, ¶ 10 (App. 2015)). According to Defendant, "[d]espite this settled law [in *Lindsay R.*], in 2018 [Victim's] counsel did exactly that during restitution proceedings held in this case." (*Id.* at 1:18-19).

*Lindsay R.*, *supra*, does not support Defendant's argument that Victim failed to follow Arizona "black letter law" by "taking the prosecutor's place" at the restitution hearing. In *Lindsay R.*, the State and the victim sought special action relief from the trial court's order precluding the victim's counsel from offering evidence, examining witnesses or presenting argument at a restitution hearing. The Court of Appeals accepted jurisdiction but denied relief in its opinion filed January 13, 2015. On August 31, 2017--1 ½ years later--the Arizona Supreme Court modified the Arizona Rules of Criminal Procedure effective January 1, 2018. (R-17-0002, Order Amending the Arizona Rules of Criminal Procedure, filed August 31, 2017). Rule 39(d)(4) of the modified rules provides that "[a]t any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel."<sup>2</sup> As such, despite the Court of Appeals' holding in *Lindsay R.*, Victim's counsel did not act contrary to Arizona law by participating substantively in the restitution hearing conducted in 2018.

Defendant next contends that Victim's rights under the Victim's Bill of Rights are not absolute and must yield to Defendant's due process rights. Defendant correctly states the law. *See Fox-Embry v. Neal in and for County of Pinal*, 249 Ariz. 162, 1108-09, ¶ 18 (App. 2020). The due process rights to which a victim's rights must yield include the defendant's right to a fundamentally fair trial--consisting of the right to present a complete defense and the right to effectively cross-examine material witnesses. *Id.* at 1108, ¶ 17. This yielding principle applies

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<sup>1</sup> For convenience, the Court is citing to the page number printed on the bottom right hand corner of the page. The page numbering is incorrect, however, because the first page is unnumbered, the second page is numbered as page 1, and so forth.

<sup>2</sup> Rule 39(d) was formerly Rule 39(c) prior to the modifications. Former Rule 39(c)(4) allowed a victim to engage and be represented by counsel in asserting victim's rights, but it did not include the language in Rule 39(d)(4) expressly allowing a victim's counsel to present evidence and make argument at a restitution hearing.

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when a defendant's constitutional due process rights conflict with the Victim's Bill of Rights "in a direct manner." *Id.* at 1109, 1110, ¶¶ 21, 23 (citing *State ex re. Romley v. Superior Court (Roper)*, 172 Ariz. 232, 236 (App. 1992)).

Here, Defendant seeks the requested information to support his post-conviction relief claim for ineffective assistance of counsel during the restitution proceedings. In that claim, Defendant asserts that his counsel "operated in ignorance" and did not properly defend against Victim's restitution claim, because he failed to request the information now being requested. The requested discovery pertains only to the \$411,402.00 of restitution awarded to Victim for the decedent's lost potential future employment earnings, lost potential future advancement opportunities and benefits, lost potential future investment returns, and lost potential retirement.

To prevail on his ineffective assistance of counsel claim, Defendant must show both that: (i) counsel performed deficiently; and (ii) counsel's deficient performance caused Defendant prejudice. *See Buck v. Davis*, 137 S. Ct. 759, 775 (2017); *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To satisfy the prejudice prong, Defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland, supra* at 694.

The discovery at issue here is unnecessary for proving the first prong of the ineffective assistance of counsel claim. In this regard, Defendant already knows--presumably from restitution counsel's file--that restitution counsel did not have and did not request the information now requested in discovery.

Whether Defendant is entitled to the discovery to establish the second prong (prejudice) is a closer call. Significantly, without access to the requested discovery, Defendant already has "demonstrate[d] the critical nature of the evidence *undisclosed* in the criminal restitution proceeding and how that evidence would have impacted the validity of the statistical assumptions and presumptions underlying the victim's expert's analysis and conclusions." (Amended Petition for Post-Conviction Relief ("Petition"), filed 1/21/2020, at 37:9-12) (emphasis in original). Indeed, Defendant's Petition specifically challenges several of the expert's assumptions, even citing in extensive footnotes contrary evidence Defendant obtained in a civil proceeding. (Petition at 37-38). This level of detail suggests that the requested discovery is not necessary for Defendant to advance his ineffective assistance of counsel claim. As such, Defendant's due process rights do not presently conflict with Victim's rights under the Victim's Bill of Rights "in a direct manner."

It is important to understand the context in which the Court currently is deciding this discovery issue. This judicial officer oversees the Court's Post-Conviction Relief Unit and, in that capacity, rules on issues (mostly procedural) that arise before a post-conviction relief matter is fully briefed and ready to be assigned to another judicial officer for ruling on the merits of the post-conviction relief petition. After the Supreme Court resolves Victim's pending Petition for

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Review and lifts its partial stay, Defendant's Petition will be fully briefed and then assigned to another judicial officer--presumably Judge Gates, the sentencing judge--for ruling on the merits. This judicial officer's determination that Defendant is not currently entitled to the requested discovery is without prejudice to another judicial officer ordering the requested discovery in connection with addressing the merits of the Petition. Accordingly,

**IT IS ORDERED** denying the June 15 Expert Disclosure Motion without prejudice.