

1 MEMORANDUM OF FACTS AND LAW

2 ISSUE

3 The State's motion to set trial asserts that defense counsel refuses to
4 participate in the interview process and that defense waived further interviews.
5 As such, in the State's Motion for Trial setting filed the 7th of August 2018, the
6 State has requested this court set a trial date.

7 The defense filed a Response avowing that she is working diligently.¹
8 Defense stated that the defense does not waive interviews and asks this Court to
9 intervene and order the State make witnesses available for interviews.² The
10 Defendant also threatens that preclusion of defense interviews would require
11 withdrawal of current counsel and incur additional taxpayer expense.³

12 FACTS

13 Some understanding of the disclosure and interview process is needed to
14 review the disagreement between the parties.

15 On the 11th day of September 2014, defendant was indicted for Count 1:
16 First Degree Murder, Class 1 Felony, Count 2: Kidnapping a Minor Under 15,
17 Class 2 Felony, Count 3: Child Abuse, Class 2 Felony, and Count 4:
18 Abandonment of a Dead Body, Class 5 Felony.

19 On the 12th day of September 2014, undersigned prosecutor sent 29
20 pages of disclosure to the defense—Mohave County Public Defender Harry
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24 ¹ Defendant's current "Response to State's Motion to Set Trial" page 7, line 6.

² Defendant's current "Response to State's Motion to Set Trial" page 7, line 11.

³ Defendant's current "Response to State's Motion to Set Trial" page 7, line 16.

1 Moore.⁴ Disclosure progressed through early 2015 where 1109 bates stamped
2 pages and dozens of digital media disks were disclosed to defense.

3 Disclosure continued in early 2015 when defendant was represented by
4 Mr. Gavin and Mr. Gilleo. On the 12th day of June 2015, Mr. Gavin and Mr. Gilleo
5 interviewed 11 officers from the Bullhead City Police Department (BHCPD). On
6 the 15th day of June 2015, Mr. Gavin and Mr. Gilleo interviewed 12 additional
7 officers from BHCPD. On the 14th day of 2015, the State filed the "State's Case
8 Status Report for July 15, 2015." In that filing the State discussed that 22 State
9 witnesses were interviewed but the parties still have many interviews to conduct.
10 On the 17th day of June 2015, the State made additional disclosure to the
11 defense of bates stamped page 1239 and a CD ROM of the recordings of the
12 interviews conducted on the 15th day of June 2015.⁵

13 On the 28th day of August 2015, Mr. Gavin and Mr. Gilleo interviewed 4
14 witnesses from the Mohave County Sherriff's Office Search and Rescue team
15 (SAR). On the 30th day of September 2015, Mr. Gavin and Mr. Gilleo interviewed
16 a total of 3 witnesses from the Mohave County Sherriff's Office Jail and Mohave
17 County Attorney's Office.

18 After September 2015, the interview process stalled.

19 On the 2nd day of September 2016, Defense Counsel Julia Cassels
20 appeared in court, with Mr. Gavin, representing defendant.

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24 ⁴ Appendix 1—Disclosure letter dated the 12th day of September 2014.

⁵ Appendix 2—Disclosure letter dated the 15th day of June 2015. For purposes of this motion, the State redacted mention of some enclosed evidence.

1 On the 28th of February 2017 undersigned counsel e-mailed Mr. Gavin and
2 Mrs. Cassels about setting up interviews with further witnesses.⁶ Undersigned
3 counsel received no response.

4 On the 25th day of April 2017, undersigned counsel e-mailed Mr. Gavin and
5 Mrs. Cassels a letter addressed to Mr. Gavin that requested interview dates and
6 defense disclosure.⁷ Mr. Gavin indicated that he would respond to undersigned
7 counsel's letter by weeks end.⁸ After that avowal, undersigned counsel received
8 no response at weeks end.

9 On the 1st of June 2017, the State filed "State's case status report for June
10 2, 2017" and brought the issue of the stalled interviews to the attention of the
11 court. At that time the State indicated that the interview process had stalled and
12 the State had requested but not received interview dates from the defense team.

13 On the 18th of July 2017, the State filed "State's case status report for July
14 21, 2017." At that time, the State noticed victim's assertion of speedy trial rights.
15 The State indicated the defense had made no disclosure. The State indicated
16 that defense violated court deadlines for providing mitigation disclosure. The
17 State brought the issue of the stalled interviews to the attention of the court. At
18 that time, the State indicated that the interview process had stalled and the State
19 had requested but not received interview dates from the defense team.

20 On the 19th of July 2017, Mr. Gavin filed a motion to withdraw from the
21 defense team.

22 On the 28th day of August 2017, Mr. Jolly filed a notice of appearance.

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24 ⁶ Appendix 3—E-mail dated 28th of February 2017.

⁷ Appendix 5—letter and e-mail dated the 25th day of April 2017

⁸ Appendix 6—e-mail chain dated the 25th of April 2017

1 On the 5th day of September 2017, undersigned counsel e-mailed Mr. Jolly
2 and Mrs. Cassels a letter addressed to Mr. Jolly that requested interview dates.⁹
3 Undersigned counsel received no response.

4 On the 13th day of November 2017, the parties filed a joint case
5 management plan that indicated “[d]efense counsel will be better prepared to
6 address this topic once a review of all the discovery is completed.”

7 On the 17th day of November 2017, defense counsel Ms. Cassels
8 appeared in court, with Mr. Jolly, representing defendant. On that same day
9 undersigned counsel hand delivered to Ms. Cassels 4 disks containing the audio
10 and transcripts of the attorney interviews conducted in this case.¹⁰

11 On the 9th day of January 2018, the parties filed a joint case management
12 plan that indicated “[d]efense counsel will be better prepared to address this topic
13 once a review of all the discovery is completed.”

14 On the 15th day of February 2018, the State filed a motion to withdraw the
15 death penalty allegation; citing in part a need for a speedy resolution for the
16 victims.

17 On the 20th day of February 2018, Mr. Jolly appeared at a Status Hearing
18 and withdrew from representation of defendant (after the death penalty allegation
19 was withdrawn).

20 On the 19th day of March 2018, undersigned counsel re-disclosed 3 disks,
21 and disclosure pages 1240-1464 were hand delivered to Cassels at the request
22 of defense.

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24 ⁹ Appendix 7—letter and e-mail dated the 5th day of September 2017
¹⁰ Appendix 4—Disclosure letter dated the 17th day of November 2016.

1 On the 15th day of May 2018, undersigned counsel met with the defense
2 team and reviewed the disclosure in an effort to make certain that the defense
3 had all the disclosure. At that time, undersigned counsel re-disclosed 9 disks,
4 hand delivered to Cassels at the request of defense.

5 On the 15th day of June 2018, undersigned counsel sent 2 emails to Ms.
6 Cassels.¹¹ The first requested dates to set interviews. The second requested
7 defense disclosure. On the 22 of July, 2018, Ms. Cassels e-mailed undersigned
8 prosecutor, and another prosecutor within the Mohave County Attorney's Office,
9 and indicated she would get to the requests as soon as she was able.
10 Undersigned counsel received no further response.

11 On the 30th day of July 2018, undersigned counsel expressed concern that
12 the interviews stalled and requested weekly court hearings to motivate activity.
13 The court declined to hold weekly hearings but ordered the parties to have
14 contact each week on issues in this case.

15 On the 30th day of July 2018, undersigned counsel sent 2 emails to Ms.
16 Cassels.¹² The first requested defense disclosure. The second requested dates
17 to set interviews. Undersigned counsel received no response.

18 On the 7th day of August 2018, undersigned counsel sent an e-mail to Ms.
19 Cassels requesting interview dates.¹³ Ms. Cassells responded to this request by
20 stating that the defense is not ready to conduct interviews and she requested an
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24 ¹¹ Appendix 8—e-mails dated the 15th day of June 2018.
¹² Appendix 9—e-mails dated the 30th day of July 2018.
¹³ Appendix 10—e-mails dated the 30th day of July 2018.



1 evidence viewing. Undersigned counsel contacted the appropriate people at
2 BHCPD to set up an evidence viewing by defense as soon as possible.¹⁴

3 On the 7th day of August 2018, undersigned counsel and Ms. Cassels
4 exchanged a series of e-mails entitled "RE: Witness List."¹⁵ Defense requested a
5 list of witnesses. That same day undersigned counsel provided defense with the
6 names of 94 witnesses (30 witnesses already interviewed). Defense predicated
7 initiating witness interviews on the State disclosing a new witness list.
8 Undersigned counsel indicated that defense was playing games—as setting
9 interviews should not wait for a third updated witness list.

10 To this date, the State has acted proactively to disclose, and re-disclose,
11 material to the defense.

12 To this date, the defense has not provided disclosure to the State.

13 To this date, the defense has not provided a witness list or names of
14 experts to the State.

15 Since the 28th day of August 2015, the defense has refused to provide
16 dates for interview of State's witnesses.

17 ARGUMENT

18 The requirement for witness interviews arise less from the Rules of
19 Criminal Procedure and more from ethical obligations (and the resulting Rule 32).
20 In *State v. Schultz*, 681 P.2d 374, 375–76 (Ariz. 1984), the Arizona Supreme
21 Court stated:
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23 ¹⁴ Appendix 11—e-mails dated August 7 and 8 of 2018.

24 ¹⁵ Appendix 11—e-mail chain entitled "Witness List" dated August 7, 2018. For purposes of this motion,
the State redacted mention of some enclosed evidence including every witness name.

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1 From these facts, we conclude that either counsel was being less than candid
2 with the court about the reason for the need for the continuances, or counsel
3 recognized that important pretrial investigation needed to be conducted and then
4 neglected to do so. We find both alternatives unpalatable. Counsel has a duty to
be truthful with the court. Counsel also has a duty to investigate and "explore all
avenues leading to facts relevant to the merits of the case" A.B.A. Standards
for Criminal Justice, standard 4-4.1.

5 In this case, the State has requested the defense provide dates for
6 interviews of State witnesses for 2 years and 11 months. The defense has failed
7 to engage in the interview process.

8 Undersigned counsel has reported to the court for over a year that
9 interviews have stalled.

10 Undersigned counsel has, since the 12th day of September 2014, disclosed
11 and re-disclosed materials to defense.

12 Defense stated, in their response, that the defense does not waive
13 interviews and asks this Court to intervene and order the State make witnesses
14 available for interviews. What the defense does not do is provide dates for those
15 interviews to be conducted. Had the defense provided interview availability
16 dates, in their response, then undersigned counsel would set defense interviews.
17 The defense is obstructing the victim's right to a speedy trial by both requesting
18 interviews and obstructing their completion.

19 [REDACTED] was murdered 1,437 days ago. She would be 12 now.

20 For years, defense attorneys have stalled and refused to engage in
21 interviews. The State's witnesses have been, and remain, available. The
22 defendant is refusing to conduct interviews.

23 The State has complied with Rule 15.1.
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1 Rule 15.2 requires defendant's disclosure be made 40 days after
2 arraignment, or 10 days after State's disclosure, whichever is first. The State has
3 no substantive disclosure from defendant. It is 1,427 days after initial disclosure.
4 The State has now sent 1,579 pages of disclosure and approximately 96 discs.
5 Undersigned counsel took the time to go through the disclosure with defense and
6 make certain that they have all the disclosure. The State awaits defendant's
7 substantive disclosure in this case.

8 Rule 15.2 addresses a remedy for counsel when witnesses are unwilling to
9 be interviewed—depositions. However, there is no opposite remedy, where
10 witnesses are willing to be interviewed but defense counsel are unwilling to
11 engage those witnesses. The victim deserves some mechanism to expedite
12 undue delay of trial.

13 The defendant's refusal to move forward cannot delay justice.

14 1,437 days ██████ has waited. The victim has a right to final justice, and
15 such right to speedy trial does not infringe the defendant's constitutional rights.

16 CONCLUSION

17 The State respectfully requests this Court set a trial date.

18 RESPECTFULLY SUBMITTED THIS 9TH DAY OF AUGUST, 2018.

19 MOHAVE COUNTY ATTORNEY
20 MATTHEW J. SMITH

21 By 
22 DEPUTY COUNTY ATTORNEY
23 GREGORY A. MCPHILLIPS
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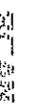
Appendix 7

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Appendix 8



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Appendix 10



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Appendix 11

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Appendix 12

1 A copy of the foregoing
2 sent this same day to:

3 HONORABLE LEE F. JANTZEN
4 SUPERIOR COURT JUDGE

5 JULIA CASSELS
6 ATTORNEY FOR DEFENDANT
7 Law Office of Julia Cassels
8 2642 East Thomas Road
9 Phoenix, AZ 84015

10 By Gyp

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