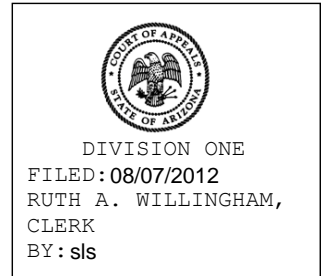


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ex rel.,	)	1 CA-SA 12-0146
WILLIAM G. MONTGOMERY, Maricopa	)	
County Attorney,	)	DEPARTMENT E
	)	
Petitioner,	)	Maricopa County
	)	Superior Court
v.	)	No. CR 2010-159525-001
	)	CR 2010-159525-002
THE HONORABLE LISA DANIEL FLORES,	)	
Judge of the SUPERIOR COURT OF	)	<b>DECISION ORDER</b>
THE STATE OF ARIZONA, in and for	)	
the County of MARICOPA,	)	
	)	
Respondent Judge,	)	
	)	
JONATHON MENA-COBIAN (001) and	)	
JOHN MITCHELL MENA (002),	)	
	)	
Real Parties in Interest.	)	
	)	

Real Parties in Interest in this special action are charged with various violent offenses involving the use of firearms. They argue they shot in self-defense, and they asked the superior court to order disclosure of prior crime reports involving the victims in this case. The State produced the crime reports but redacted personally identifying information relating to the victims and witnesses in those prior crimes. At Real Parties' request, and after receiving briefs and argument

and reviewing the crime reports *in camera*, the court ordered the State to disclose personally identifying information about victims and witnesses contained in 11 crime reports in which the victims in this case allegedly used violence or threats of violence, allegedly used or possessed weapons, or allegedly participated in criminal street gang activities. The court further ordered that defense counsel may not disclose the personally identifying information to their clients or to any persons other than their investigators.

The State petitioned this Court for special action relief. It asks us to accept jurisdiction and reverse the superior court's order compelling disclosure of the personally identifying information.<sup>1</sup>

The State does not challenge the superior court's conclusion that "specific prior acts of violence and aggression" by the victims in this case may be admissible at trial. And the court found that Real Parties require the personally identifying information to develop evidence of such prior acts. Although the State's petition asserts in passing that is not so, we have no reason to upset the court's factual finding. Nor may we quarrel with the court's finding that Real Parties have a "compelling need" for the information because "the harm from

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<sup>1</sup> We stayed the superior court's order pending our resolution of the petition.

non-disclosure of some of the redacted information . . . could significantly impact" their ability to defend themselves in this case. Further, the superior court ordered disclosure only after finding that the "specific harm" to Real Parties "substantially outweighs the [general] harm" that the victims/witnesses in the prior cases might suffer from disclosure.<sup>2</sup>

The State asserts that under no circumstances may it be compelled to disclose a victim's identifying information contained in crime reports. It relies on Arizona Revised Statutes ("A.R.S.") section 13-4434(B) (2012), which provides, "A victim's contact and identifying information that is obtained, compiled or reported by a law enforcement agency shall be redacted by the originating agency in publicly accessible records pertaining to the criminal case involving the victim."<sup>3</sup> The State argues this provision requires that when an investigating agency is required in the course of a criminal proceeding to disclose crime reports that otherwise are publicly accessible, the court may not order it to un-redact victims'

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<sup>2</sup> The superior court held that if any victim/witness identified in the prior police reports raises any personal objection to disclosure, it would further consider any specific harm that might be alleged.

<sup>3</sup> Absent material revision after the relevant date, we cite a statute's current version.

identifying information from the copies of the reports provided to the defense.

To the contrary, while § 13-4432(B) imposes requirements that apply to documents an agency makes available to the public in the ordinary course, nothing in the statute suggests that it precludes a court in a proceeding such as this from balancing the respective interests and ordering disclosure when a criminal defendant's due-process rights outweigh the victims' interests in privacy. We note that subpart (A) of A.R.S. § 13-4434 allows a court to compel a crime victim to testify about her identifying information when "a compelling need for the information exists." This provision undermines the State's assertion that subpart (B) imposes a blanket bar to compelled disclosure of the same information by an investigating agency. Given that the superior court in this case found that Real Parties have a compelling need for the information, nothing in subpart (B) precludes the court from ordering disclosure. See *generally State v. Romley*, 172 Ariz. 232, 236, 836 P.2d 445, 449 (App. 1992) ("when the defendant's constitutional right to due process conflicts with the Victim's Bill of Rights in a direct manner . . . then due process is the superior right").

The State further argues the superior court incorrectly concluded that a victim's rights to privacy under the Victims' Bill of Rights, Article 2, Section 2.1(A) of the Arizona

Constitution expire after the conclusion of proceedings relating to the crime at issue. Assuming for purposes of argument that a victim's rights under the Victims' Bill of Rights continue after the conclusion of proceedings relating to the original crime, the State points to no constitutional provision that bars disclosure of victims' identifying information when required by due process. See *Romley*, 172 Ariz. at 236, 836 P.2d at 449.

Accordingly, upon consideration,

IT IS ORDERED accepting jurisdiction of the petition for special action;

IT IS FURTHER ORDERED denying relief and lifting this court's prior order staying the order challenged by the petition.

/S/

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DIANE M. JOHNSEN, Judge

CONCURRING:

/S/

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ANN A. SCOTT TIMMER, Presiding Judge

/S/

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PATRICIA A. OROZCO, Judge