

**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 12-0283  
WILLIAM G. MONTGOMERY, Maricopa )  
County Attorney, ) DEPARTMENT B  
)  
) Maricopa County Superior  
Petitioner, ) Court No. CR 2011-008083-001  
)  
v. ) DECISION ORDER  
)  
THE HONORABLE EDWARD BASSETT, )  
Judge of the SUPERIOR COURT OF )  
THE STATE OF ARIZONA, in and for )  
the County of MARICOPA, )  
)  
Respondent Judge, )  
)  
JOE CUEN, Pro Per Defendant, )  
)  
Real Party in Interest. )  
)

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DIVISION ONE  
FILED: 2/27/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

This special action arises out of an order entered by the superior court denying the pretrial motion filed by the Petitioner/State to bar the Real Party in Interest, Joe Cuen, who is representing himself at trial, from personally cross-examining the Victim and two witnesses. Presiding Judge Patricia K. Norris, and Judges Andrew W. Gould and Randall M. Howe have considered the written submissions of the State,

joined by Amici,<sup>1</sup> and of Cuen, also joined by Amici.<sup>2</sup> Because the State does not have an equally plain and speedy remedy by appeal, we accept special action jurisdiction, but deny the relief requested.

The State argued the superior court should grant its motion based on the nature of the offense charged against Cuen. Additionally, the State asserted that Cuen had sent one witness a letter, which the witness "determined to be harassing and inappropriate" and was "absolutely terrified" of Cuen. The State acknowledged, however, it did not have "specific information" from the Victim or from the other witness.

The superior court denied the motion, concluding, in part, the State had failed to present sufficient evidence justifying a restriction on Cuen's right, as a self-represented litigant, to cross-examine the Victim and the two witnesses.

The court also explained it had considered the Arizona constitution's provisions that protect the interests of crime victims at trial. The court acknowledged it remained obligated to monitor the process of cross-examination under rules concerning the victims' rights as well as under Rule 611 of the Arizona Rules of Evidence.

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<sup>1</sup>Arizona Prosecuting Attorneys' Advisory Council, Arizona Voice for Crime Victims/National Crime Victim Law Institute, and Coalition to End Arizona Sexual Exploitation.

<sup>2</sup>Arizona Attorneys for Criminal Justice, Maricopa County Public Defender's Office, and Pima County Public Defender's Office.

In its petition, the State argues Cuen, as a self-represented defendant, does not have a constitutional right to cross-examine the Victim and the two witnesses. The State also argues it was not required to make a factual showing of necessity beyond what it presented to the superior court, especially in light of the nature of the charge against Cuen.

On the record presented, the superior court did not abuse its discretion or misapply the law in determining the State had failed to present evidence relevant to the Victim and the two witnesses that would justify, at this stage of the proceeding, a restriction on cross-examination.

For the foregoing reasons, we deny the relief requested by the State in its petition. Further, we vacate the stay of trial previously ordered.

Additionally, we deny Cuen's "Motion to Dismiss on Speedy Trial Grounds" filed with this court on February 8, 2013. This issue is not properly before us in this special action and we express no opinion regarding it.

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/s/  
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

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/s/  
ANDREW W. GOULD, Judge

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/s/  
RANDALL M. HOWE, Judge