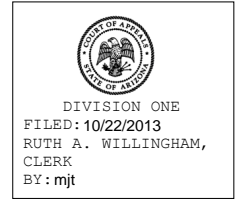


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA ex rel. WILLIAM) No. 1 CA-SA 13-0227
G. MONTGOMERY, Maricopa County)
Attorney,) DEPARTMENT E
)
Petitioner,) Maricopa County
) Superior Court
v.) No. CR2010-114002-001 DT
)
THE HONORABLE WARREN J.)
GRANVILLE, Judge of the SUPERIOR) **DECISION ORDER**
COURT OF THE STATE OF ARIZONA,)
in and for the County of)
MARICOPA,)
)
Respondent Judge,)
)
JACK DOUGLAS ROSE,)
)
Real Party in Interest.)
_____)

Petitioner, the State of Arizona ("the State"), has filed a special action seeking relief from the trial court's order compelling John Abel and William and Patricia Patterson to submit to pretrial interviews or depositions by counsel for Jack D. Rose ("Defendant"). The State argues that the order violates the rights of Abel and the Pattersons under the Victims' Bill of Rights. For the following reasons, we accept jurisdiction and deny relief.

FACTUAL BACKGROUND

In 2005, Abel, the Pattersons, and Defendant, through other entities, formed Abel Commercial Ventures, an Arizona limited liability company ("the LLC"). Membership in the LLC consisted entirely of limited partnerships associated with Abel and with the Pattersons, and one of Defendant's LLCs. Another legal entity, separately controlled by Defendant, provided general management services to the LLC.

In 2009, during a falling-out over management of the LLC, Defendant allegedly opened a bank account in the LLC's name, deposited the LLC's \$35,936.04 Maricopa County tax refund check into that account, and withdrew the funds. In the relevant part of the indictment, the State charged Defendant with theft and taking identity of another, identifying the LLC as the victim.¹

After Abel and the Pattersons refused to schedule pretrial interviews with defense counsel, Defendant filed a motion for court-ordered depositions. The State objected, arguing that because Defendant's alleged criminal activity against the LLC flowed through to harm Abel and the Pattersons, they are

¹ We are aware of related civil litigation pending in this court concerning the business disputes between Abel, the Pattersons and Defendant. See *Rose Goodyear Properties, LLC v. NBA Enterprises Limited Partnership*, 1 CA-CV 12-0484.

"victims" who could refuse pretrial interviews pursuant to the Victims' Bill of Rights ("the Amendment"). See Ariz. Const. art. II, § 2.1(A)(5) (West 2013).² As part of the Amendment's implementing legislation, however, Arizona Revised Statutes ("A.R.S.") section 13-4404 defines the rights a legal entity can exercise as a victim, and does not include the right to refuse a defendant's request for a pretrial interview. The State argued that § 13-4404 is unconstitutional because it impermissibly limits the rights of legal entities and their members as victims. The trial court granted Defendant limited relief to interview or depose Abel and the Pattersons, because the State only named the LLC as the victim in the indictment and because § 13-4404 limits the victims' rights of legal entities. This special action followed.

JURISDICTION

We accept jurisdiction of this special action because the State and alleged victims have no equally plain, speedy, or adequate remedy by appeal. See Ariz. R.P. Spec. Act. 1(a); *State ex rel. Romley v. Hutt*, 195 Ariz. 256, 259, 987 P.2d 218, 221 (App. 1999) (accepting jurisdiction where State challenged

² We cite the current Westlaw version of the applicable amendments and statutes because no revisions material to this decision order have since occurred.

defense's pretrial interview of alleged victim pursuant to the Amendment). Under the legislation implementing the Amendment, "[t]he victim has standing to seek an order [or] to bring a special action [mandating that the victim be afforded] any right or to challenge an order denying a right guaranteed to victims under [the Amendment], any implementing legislation or court rules." A.R.S. § 13-4437(A). The State has standing to bring this special action on behalf of the alleged victims under A.R.S. § 13-4437(C).³

ANALYSIS

Article II, section 2.1(A)(1) of the Arizona Constitution protects a victim's right "[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." More specifically, § 2.1(A)(5) protects the right of a victim "[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant." The Amendment also

³ The parties have, pursuant to Appellate Rule of Civil Procedure 16(a), consented to the filing of *amicus* briefs in this matter by Arizona Attorneys for Criminal Justice and the National Crime Victim Law Institute, the National Federation of Independent Business Small Business Legal Center, Arizona Voice for Crime Victims, the Arizona Chamber of Commerce and Industry, and the Arizona Restaurant Association.

vested the legislature with "the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed by this section." *Id.* § 2.1(D).

"Victim" is defined in § 2.1(C) as "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative" In its implementing legislation, the legislature adopted a similar, but more expansive, definition of victim:

a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person

A.R.S. § 13-4401(19).

Exercising its constitutionally-granted authority to define and implement the rights of victims, the legislature also provided certain rights to corporate or legal entities to appear and be heard at proceedings related to restitution and sentencing. A.R.S. § 13-4404 (entitled "Limited rights of a legal entity").⁴ In enacting its rules relating to victims'

⁴ Arizona revised statutes § 13-4404(1) states:
A corporation, partnership, association or other legal

rights, the Arizona Supreme Court reiterated the legislative distinction between natural persons and corporate entities in defining "victim" and the scope of victims' rights:

As used in this rule, a "victim" is defined in accordance with the definition provided in the Arizona Revised Statutes. . . . The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

Ariz. R. Crim. P. 39(a)(1).

The trial court's order directing Abel and the Pattersons to submit to pretrial interviews or depositions is neither erroneous nor an abuse of the court's discretion. Simply stated, Abel and the Pattersons are not victims under either the Amendment or the implementing legislation.

As previously noted, the allegedly converted check belonged to the LLC, not to these individuals. The State alleged in its indictment that Defendant wrongfully took the identity of the LLC and committed theft of the LLC's property. An LLC exists as

entity which, except for its status as an artificial entity, would be included in the definition of victim in § 13-4401, shall be afforded the following rights:

1. The prosecutor shall, within a reasonable time after arrest, notify the legal entity of the right to appear and be heard at any proceeding relating to restitution or sentencing of the person convicted of committing the criminal offense against the legal entity.

a legal entity distinct from any natural persons involved in its organization. See generally A.R.S. § 29-651. Contrary to the State's argument, neither the Amendment nor the implementing legislation creates victims' rights for an LLC's members or officers as if the crime had been committed against them personally. Further, the actual members of the LLC in this case are limited partnerships and not natural persons, and this even further distances Abel and the Pattersons from the limited victim status accorded the corporate entity. Finally, these individuals are more akin to employees who are witnesses to the criminal looting of corporate assets, leading to closure of the business. Such employees - like Abel and the Pattersons here - may be indirectly affected by a defendant's alleged criminal conduct, and may not want to voluntarily submit to interviews or depositions by defense counsel, but as witnesses they cannot invoke the Amendment, the implementing legislation or Rule 39 as a shield to preclude such interviews or depositions.

On this record, these individuals are not victims and cannot claim any rights attendant to victim status; as such, we need not address the constitutionality of A.R.S. § 13-4404 as raised by petitioner and *amici curiae*. Accordingly,

IT IS ORDERED accepting jurisdiction of this special action, and denying relief.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
JON W. THOMPSON, Judge