

No. _____

ORIGINAL

24-7024

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
MAR 13 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JESSE SCOTT FULCHER — PETITIONER
(Your Name)

vs.

the STATE OF ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Courts of Appeals, Division One
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jesse Scott Fulcher
(Your Name)

Central Arizona Correctional and Rehabilitation Facility (CACRF)
(Address)

P.O. Box 9600, Florence, AZ 85132-9600
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Was Fulcher denied his fundamental right to Due Process as guaranteed by the 5th and 14th Amendments of the United States Constitution, and Article II, Section 4 of the Arizona Constitution, when

A. the trial court permissively allowed and used a term that fosters a predetermination of guilt.

B. the State of Arizona failed to disclose material evidence, pursuant to Arizona Rules of Criminal Procedure 15.1

C. the State of Arizona failed to disclose material evidence that is exculpatory / impeachment

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Kristen Mayes, Attorney General of the State of Arizona (AGO)

Dr. Ryan Thornell, Director of the Arizona Department of Corrections,
Rehabilitation, and Reentry (ADCRR)

RELATED CASES

COFFIN v. UNITED STATES, 156 U.S. 432, 39 L.Ed. 481, 15 S.Ct. 494 (1895)

COMSTOCK v. HUMPHRIES, 786 F.3d 701 (9th Cir. 2015)

COVE v. BELL, 556 U.S. 449, 173 L.Ed. 2d 701, 129 S.Ct. 1769 (2009)

STATE v. BOLIVAR, 250 Ariz 213, 477 P.3d 672 (AZ.Ct.App. 2020)

STATE EX REL ROMLEY v. ROPER, 172 Ariz 232, 836 P.2d 445 (AZ.Ct.App. 1992)

TRACY v. SWARTWOUT, 35 U.S. 80, 9 L.Ed. 354 (1836)

WASHINGTON v. GLUCKSBURG, 521 U.S. 702, 138 L.Ed. 2d 772, 117 S.Ct. 2258 (1997)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Mohave County Superior court appears at Appendix E to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was December 16, 2024
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL

5th Amendment of the United States Constitution

14th Amendment of the United States Constitution

STATE

Article II, Section 2.1 (A) of the Arizona Constitution

Article II, Section 2.1 (C) of the Arizona Constitution

Article II, Section 2.1 (D) of the Arizona Constitution

Article II, Section 4 of the Arizona Constitution

Arizona Revised Statute § 13-4401 (19)

STATEMENT OF THE CASE

On June 20th, 2019, the Mohave County Grand Jury (188 GJ 388) returned a true bill charging one count (I) of Molestation of a Child, a class 2 felony, Dangerous Crime Against Children (DCAC); four counts (II, III, VI, VII) of Sexual Abuse of a Minor, a class 3 felony, DCAC; two counts (IV, VIII) of Sexual Abuse, a class 5 felony; and, two counts (V, IX) of Offer to Transfer Marijuana, a class 3 felony - see, Indictment. Approximately three weeks later, Fulcher entered a plea of not guilty to all counts. Minute Entry (M.E.), 07/15/2019.

On January 16th, 2020, upon advise of Counsel C. Ray Lundberg (ABN 025605), Fulcher gave "notice of his intention to waive his right to a trial by jury on all issues pursuant to Rule 18(b) Arizona Rules of Criminal Procedure" (ARCrP). M.E. 03/05/2020. Due to Covid-19 outbreak, victims were allowed to "appear telephonically" and restricted to access to the courtroom, during trial, to essential personnel. see, Order, 03/24/2020.

A three day bench trial commenced on September 8th, 2020, concluding on the 15th, wherein, "a judgment of guilty on all counts in the Felony Indictment" was entered. M.E. 09/15/2020. On October 26th, 2020, CAMACHO Court "ORDERED that the Defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

- Count I, Molestation of a Child, seventeen (17) years, given credit for 40 days served prior to sentencing.
- Count II, Sexual Abuse of a Minor, five (5) years.
- Count III, Sexual Abuse of a Minor, five (5) years.
- Count IV, Sexual Abuse, one and a half (1.5) years.
- Count V, Offer to Transfer Marijuana, two and a half (2.5) years.

- Court VI, Sexual Abuse of a Minor, five (5) years.
- Court VII, Sexual Abuse of a Minor, five (5) years.
- Court VIII, Sexual Abuse, one and a half (1.5) years.
- Court IX, Offer to Transfer Marijuana, two and a half (2.5) years.

M.E. 10/26/2020. All counts to run consecutive in sequential order. Id. Totaling forty-five (45) years. A timely Notice of Appeal was filed.

On April 1st, 2021, Counsel Jill L. Evans (ABN 025978) on appellate review raised "[t]here was insufficient evidence:

- A) to support the conviction for Child Molestation of K.C.;
- B) to support convictions for sexual abuse of a child involving the female breast of K.C. and H.P.;
- C) of sexual contact with the breasts of L.D., age eighteen, or that any accidental or incidental contact was without consent; and,
- D) to support the convictions for an "Offer to Transfer Marijuana".

Ultimately, the Arizona Court of Appeals (AZ Ct. App.) affirmed the "convictions and resulting sentences" see, ICA-CR 20-0518. Fulcher failed to file a Petition for Review; mandate issued on October 25th, 2021.

On November 5th, 2021, Counsel Benjamin M. Brewer (ABN 018251) made an appearance as post-conviction counsel. see, Notice of Appearance. Approximately four months later, Mr. Brewer informed the CAMACHO Court that "No Colorable Claim" was found. see, Appendix F.

On February 23rd, 2023, Fulcher filed a Supplemental Petition for Post-Conviction Relief (hereinafter, "Sup. Petition") alleging

- A. [was] Fulcher denied his fundamental right to due process, as guaranteed by

Article 11, Section 4 of the Arizona Constitution and, the 5th and 14th Amendments of the United States Constitution, when

1. [the CAMACHO Court] permissively allowed and demonstrated a predetermination of guilt;

2. [the CAMACHO Court] improperly implied the term "breast"; and,

3. the State failed to disclose

a) available information; and,

b) exculpatory/impeachment evidence?

B. Was Fulcher denied effective assistance of counsel, as guaranteed by Article 11, Sections 4 and 24 of the Arizona Constitution and, the 5th, 6th, and 14th Amendments of the United States Constitution, when Defense Counsel failed to

1. object to the improper use of the term "victim";

2. investigate exculpatory/impeachment evidence; and,

3. properly prepare for trial?

An evidentiary hearing was conducted on September 15th and November 3rd of 2023. see, Appendixes D, E. At the conclusion of the November hearing, the CAMACHO Court "ORDERED denying the Defendant's Motion for Rule 32". Id.

On February 24th, 2024, Fulcher sought review from the Arizona Court of Appeals (AZ Ct. App.), raising issues of

A. Did the CAMACHO Court abuse its discretion by failing to adequately address the predetermination of guilt;

B. Did the CAMACHO Court abuse its discretion by failing to adequately address the State's failure to

1. file and disclose evidence.

2. disclose exculpatory/impeachment evidence; and,

C. Did the CAMACHO Court deny Fulcher due process as guaranteed by Article 11, Section 4 of the Arizona Constitution and, the 5th and 14th Amendments of the United States Constitution, when it

1. failed to maintain decorum, resulting in a meaningless and unfair evidentiary hearing.

2. denied a request to have Advisory Counsel reinstated as Counsel of Record for the evidentiary proceedings.

On March 1st, 2024, AZ. Ct. App., Division One transferred case number 1CA-CR 24-0115 PRPC to AZ. Ct. App., Division Two "to equalize caseloads for the best use of judicial resources"; new designation 2CA-CR 2024-0050 PR. see, Appendix C. Ultimately, the Division Two concluded "[w]e grant the petition for review but deny relief" see, Appendix B.

A timely Petition for Review was filed with the Arizona Supreme Court (AZ. Sup. Ct.), resulting in a boilerplate, "ORDERED: Petition for Review = DENIED" see, Appendix A.

REASONS FOR GRANTING THE PETITION

Fulcher puts forth this Petition for Writ of Certiorari (hereinafter, "W. Petition"), under 28 U.S.C. § 1257(a), as a propria persona litigant, unskilled in the science of law and, prays this W. Petition and attached appendices - in support of - will be received and viewed as such. Fulcher asks this Court to treat this W. Petition as whatever legal vehicle necessary to grant relief. This Court, in HAINES v. KERNER held "pro se litigants are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers... if the court can reasonably read pleading to state a valid claim on which litigant could prevail, it should do so, despite failure to cite proper legal authorities, confusion of legal theories, poor syntax or sentence construction, or litigant's unfamiliarity with pleading requirements". fnl. 404 U.S. 519, 30 L.Ed. 2d 652, 92 S.Ct. 594 (1972); ERICKSON v. PARDUS, 551 U.S. 89, 94, 167 L.Ed. 2d 1081, 127 S.Ct. 2197 (2007).

fnl. Fulcher apologizes to this Court for any inconsistencies in legal authorities and theories, or lack thereof, whereas, ADCRR regulation, Department Order (D.O.) 902-Inmate Legal Access to the Courts policies severely restricts or prohibits a propria persona litigant from advancing a meaningful pleading with such dogma as "SHALL NOT provide legal resource material [other than identified in] Attachment A and B... [or] archive services". see, Corrections.AZ.gov; see also, Appendix G, H.

The 5th and 14th Amendments (Amend.) of the United States Constitution (U.S. Const.) and Article (Art.) 11, Section (Sect.) 4 of the Arizona Constitution (AZ Const.) guarantees to all citizens the inalienable right that "no person shall be... deprived of life, liberty or property, without due process of law". see, WASHINGTON v. GLUCKSBURG, 521 U.S. 702, 721, 138 L. Ed. 2d 772, 117 S. Ct. 2258 (1997) (The Due Process Clause only "protects those fundamental rights and liberties, which are, objectively, deeply rooted in this Nation's history and traditions" and "implicit in the concept of ordered liberty", such that "neither liberty or justice would exist if they were sacrificed").

A. Did the Honorable Douglas R. Camacho (hereinafter, "CAMACHO Court") violate Fulcher's right to due process by practicing a PROFESSIONAL NORM that permissively allows trial courts to foster a predetermination of guilt?

1. The Term "Victim" Has A Very Embroidered Past In Arizona Law.

In 1990, the People of the State of Arizona (AZ) incorporated the Victim's Bill of Rights into the Constitution (Const.), i.e. Article (Art.) 11, Section (Sect.) 2.1. Embedded within this section are several provisions, the most notable for purposes of this pleading are subsections,

(A) To preserve and protect victim's rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

(C) "Victim" means 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, except if the person is in custody for an offense or is the accused.

(D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed by this section,...

In 1991, the AZ Legislature (Leg.) enacted the Victim's Rights Implementation Act, i.e. Arizona Revised Statute (A.R.S.) § 13-4401 to -4437, 1991 Ariz. Sess. Laws, CH 229, §§ 1, 7. Affixed within -4401 is subsection "19", which parrots Art. 11, Sect. 2.1(C) of the AZ Const. fn2.

fn2. Henceforth, all references to A.R.S. § 13-4401(19) will mean to include Art. 11, Sect. 2.1(C) of the AZ Const.

On December 1st, 2003, the Arizona Supreme Court (AZ Sup. Ct.), through a procedural vehicle - Arizona Rules of Criminal Procedural (ARCP) 39(a)(1), interpreted -4401(19) to mean "a 'victim' is defined as a person against whom a criminal offense as defined by 13-4401(6) [fn3] has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense, except where the spouse, parent, lawful representative, or child is also the accused". This interpretation changed the "substantive and procedural laws to define, implement, preserve, and protect" which were explicitly reserved for the "legislature, or the people by initiative or referendum". Art. 11, Sect. 2.1(D) of the AZ Const.

fn3. The AZ Sup. Ct's reference to 13-4401(6) is a typographical error, where in, the actual statute is 13-4401(19).

By promoting this illegitimate interpretation, an accouplement of two opposing

definitions was permitted to morph into one, that being, "victim" and "alleged victim" sharing the same significance. SPARKS v. REPUBLIC LIFE INSURANCE COMPANY, 132 Ariz 529, 534, 647 P.2d 1127 (AZ 1982) (Ambiguity exists when language "can be reasonably construed in more than one sense"); ESTATE OF COWART v. NICKLOS DRILLING COMPANY, 505 U.S. 469, 475, 120 L. Ed. 2d 379, 112 S. Ct. 2589 (1992).

In 2005, the AZ Leg. amended the substantive meaning of 13-4401(19) to "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" fn4. The verbalization of this substantive change reenforced legislative intent of "HAS BEEN COMMITTED" versus that of an interpretative rule of "HAS ALLEGEDLY BEEN COMMITTED".

fn4. Judicial Notice must be given that the AZ Leg. did not change the elements that defined a "victim", it only added clarity to the relationship factors set out in the statute. It must also be noted, the AZ Leg. did not give any recognition to the AZ Sup. Ct.'s interpretation as set out and practiced in ARCP 39(a)(1).

In September of 2009, the AZ Sup. Ct. issued R 08-0037 with the purpose of "amend[ing] Rule 39(a)(1)" see, Appendix I. This order modified the term, "victim" [to be] defined in accordance with the definition provided in the Arizona Revised Statute [and removed] a person against whom a criminal offense as defined by 13-4401(6) has allegedly been committed, or the spouse, parent, lawful representative, or child of

someone killed or incapacitated by the alleged criminal offense, ...". Id.

The issuance of R.08-0037" indicates the AZ Sup. Ct.'s awareness that an error was present. For it is more than reasonable to conclude, the AZ Sup. Ct. IS NOT IN THE HABIT OF CORRECTING ERRORS THAT DO NOT EXIST, NOR ISSUING ORDERS IF THE ERROR IS HARMLESS. R.08-0037 should have aligned ARCrP 39(a)(1) with A.R.S. § 13-4401(19), thereby ending seven years of a court imposed PROFESSIONAL NORM grounded on ambiguity. Unfortunately, as future rulings by the Arizona Judiciaries have indicated, this is not to be the case; misuse of the term "victim" continues.

On August 31st, 2017, the AZ Sup. Ct. issued R.17-0002, which served two purposes. First, redesignating ARCrP 39(a)(1) as 1.4(h); and, second, reaffirming "[v]ictim' means a person as defined in A.R.S. § 13-4401" fn 5. see, Appendix J.

fn 5. As the record has continually maintained, since the inception of A.R.S. § 13-4401(19), the AZ Leg. has been unwavering as to what constitutes a "victim".

On May 8th, 2018, the AZ Ct. App., Division (Div.) One, in Z.W. v. FOSTER (SUPERIOR COURT) held that "the superior court retains discretion to address - on a case-by-case basis - whether using a particular term to refer to a victim violates the victim's right to be treated with respect and dignity". 244 Ariz 478, 422 P.3d 582, §2.

In the Z.W. case, Z.W. filed a Motion to Preclude reference to her as an "alleged victim" at trial. The Z.W. Court, in response, opined "accordingly and for reasons that follow, ... [we assert] although 'alleged victim' connotes some degree of uncertainty as to whether a crime occurred, UNTIL A DEFENDANT HAS BEEN CONVICTED OF A CHARGED OFFENSE, THE CASE INVOLVES AN ALLEGED CRIMINAL ACT AGAINST AN ALLEGED

VICTIM; Id., at 583, 92, 5; thus, putting it in lockstep with -4401(19)'s definition that use of the term "victim" requires a "criminal offense [to have] been committed". supra.

The Z.W. Court further enucleates "the term 'alleged victim'... SIMPLY AVOIDS PREJUDGING AND RESERVES JUDGMENT ON CREDIBILITY ISSUES WHICH ARE FOR THE JURY ALONE TO DECIDE". Id., at 583, 96. Meaning, absent "alleged" use of the term "victim" to describe an accuser would violate a criminal defendant's constitutional right to a presumption of innocence; COFFIN v. UNITED STATES, 156 U.S. 432, 39 L. Ed. 481, 15 S. Ct. 394 (1895) (A "principle that there is a presumption of innocence in favor of the accused is undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law"); and, invades the province of the jury. TRACY v. SWARTWOUT, 35 U.S. 80, 9 L. Ed. 354 (1836). fn6. This holding of "undoubted law, axiomatic and elementary" solidifies the founding fathers' belief that a presumption of innocence is a self-evident, inalienable principle guaranteed to all criminal defendants whom face deprivation of "life, liberty or property" 5th and 14th Amend. Of the U.S. Const.; Art. 11, Sect. 4 of the AZ Const. For without this bedrock, a mere accusation would condemn a criminal defendant to a predetermined fate.

fn6. Clearly, the Z.W. Court did not greenlight the use of the term "victim", it only affirmed "respect and dignity" must be maintained when addressing an accuser at trial.

Furthermore, the Z.W. Court's ambiguous reasoning permits future courts to place at odds accuser's right to be addressed as a "victim" versus a criminal defendant's right to due process. STATE EX REL ROMLEY v. ROPER, 172 Ariz 232, 836 P.2d 445 (AZ Ct. App. 1992) (When defendant's constitutional right to due process conflicts with Victim's Bill of Rights directly, due process is superior right, and the Due Process

Clause of the United States Constitution prevails over provisions of State Constitution.); see also, STATE EX REL MONTGOMERY v. WELTY, Ariz. 308 P.3d 1151 (AZ Ct. App. 2013).

This is evident when "[Ruben] Bolivar moved to preclude the State and its witnesses from referring to Becca [fn] as the 'victim', claiming it is 'a term that denotes a certain status under the law', ... Instead, Bolivar requested Becca be referred to by her name or 'complaining witness'. The State opposed Bolivar's motion, arguing Becca 'is the victim under the Victim's Bill of Rights, that's the legal term we use to note who she is' ...". STATE v. BOLIVAR, 250 Ariz 213, 471 P.3d 672 (AZ Ct. App., Div. 2, 2020).

fn 7. The AZ Ct. App. declared in its decision "use [of] the pseudonym 'Becca' [is] to protect the victim's privacy".

The BOLIVAR Court's decision was based on the Z.W. Court's ruling stating "[c]ontrary to Bolivar's contention, [Z.W. Court] does not establish that the term 'victim' is inappropriate when the defendant disputes whether a crime occurred. Rather, [the Z.W.] stressed that the trial courts, should have flexibility in determining how to refer to crime victims during criminal proceedings". Id., at 677, ¶ 10.

Clearly, the BOLIVAR Court did not take into consideration the full extent of the Z.W. Court's opinion on "until a defendant has been convicted of a charged offense, the case involves an alleged criminal act against an alleged victim"; Z.W., at 583, ¶ 5; or the prejudice suffered by the defendant, that being, to use "alleged victim" [I would] simply avoid [...] prejudging and reserves judgment on credibility issues, which are for the jury alone to decide". Id., at 583, ¶ 6. So, again, the Z.W. Court did

not greenlight the use of the term "victim", in fact, its opinion highly discourages such.

2. Arizona Law, In Comparison With The Legal-Layman Understanding Of The Term "Victim"

The plain language of A.R.S. §13-4401(19) "has been committed or, if the person is killed or incapacitated" is unquestionably consistent with accepted legal definition of "a person harmed by a crime, tort, or other wrong." BLACK'S LAW DICTIONARY, Eighth Edition, Copyright 2004; see also, BALLENTINE'S LAW DICTIONARY, Third Edition, Copyright 2010

; and, the layman understanding (both by academia and life experience) of "somebody who is hurt or killed by somebody or something; somebody or something harmed by an act or circumstance." ENCARTA WORLD ENGLISH DICTIONARY, First Edition, Copyright 1999; see also, SHORTER OXFORD ENGLISH DICTIONARY, Fifth Edition, Copyright 2002; WEBSTER'S NEW WORLD DICTIONARY, Fourth Edition, Copyright 2004; MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, Eleventh Edition, Copyright 2020.

Clearly, -4401(19) shares the same common denominator with the legal-layman definition of "victim", i.e. an act or acts were perpetrated against oneself or another describing a "finality" event - harm has been suffered; a commonality that carries NO AMBIGUITY.

3. Did the CAMACHO Court permissively allow and/or participate in an Ambiguous Professional Norm that foster a predetermination of guilt?

On September 8th, 2020, a bench trial commenced where Prosecutor Karolina J.

Czaplinska (ABN 031439) improperly identified Kayla Marie Ciampoli (hereinafter, "Accuser 1"), Haylee Isabelle Pickron (hereinafter, "Accuser 2"), and Lexy Lynn Deering (hereinafter, "Accuser 3") as "victims":

"Your Honor, just to explain the order of witnesses... We will be calling Tara Thome, who is mom to two of the VICTIMS..., the State intends to call each of the three VICTIMS in this case..." Recorders Transcript (R.T.) 09/08/2020, 6:19-7:6; and,

"..., we do believe that the evidence will show that the Defendant committed sexual abuse against two minor VICTIMS and one adult VICTIM..." Id., 7:9-14.

On the second day of trial, Ms. Czaplinska further elicited or utilized the term "victim" in the State's case-in-chief, i.e. testimony of Bullhead City Police Officer Christopher Fletcher:

"Once I got that information, the name of the VICTIM and suspect was identified to me, I was given the VICTIM'S mother's name, ... from there I contacted Mrs. Tara Thome, the mother of the identified VICTIM..." R.T. 09/09/2020, 65:13-66:8
; and, Detective Andrew Sevillano:

"My next step was to line up interviews. I first interviewed Mr. Fulcher, and then I later interviewed the VICTIMS in this case." Id., 82:8-10.

On the final day of trial, Ms. Czaplinska continued at summation with:

"..., we sort of saw examples of how this played out for these girls, for this family, for these VICTIMS." R.T. 09/15/2020, 6:7-9;

"And the fact that there is three VICTIMS in this case, ..." Id., 11:3-4; and,

"And when I say that there's two different ways to look at this, ... that Lexy and Kayla as the VICTIMS..." Id., 25:7-15.

To this point, the CAMACHO Court allowed Ms. Czaplinska to use the prejudicial term "victim" approximately twenty-six times.

Fulcher has pled NOT GUILTY to all counts, meaning NO CRIMINAL CONDUCT was committed by him. Z.W., 422 P.3d at 583, 92 ("the term 'alleged victim's' simply reflects ... [a defendant's] dispute that any crime occurred."). The plea of NOT GUILTY raises such a dispute. This means any criminal defendant who elects to exercise his or her constitutional right to a trial, places the burden on the State to prove beyond a reasonable doubt that

these PARTICULAR ACCUSER(S) are a "victim(s)" who is ASSOCIATED with NAMED DEFENDANT under these SPECIFIC CIRCUMSTANCES as charged.

isn't this the (bedrock) fundamental purpose of a criminal trial?

Fulcher avers regardless of the quantity or quality of any evidence that may or may not implicate a criminal defendant, the premature use of the term "victim", before all the evidence is presented and a verdict is returned, does not allow the ASSOCIATION FACTOR between accuser and defendant to develop. This means the CAMACHO Court's permissiveness of and participation in the accusers as being described "victims" led to the appearance of a predetermination of guilt. INNER MURCHISON, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S.Ct. 623 (1955) (A fair trial in a fair tribunal is a basic requirement of due process. Even where there is no actual bias, justice must appear fair.); see also, MCELHANON v. HING, 151 Ariz 403, 411, 728 P.2d 273 (AZ 1986).

B. Did the State of Arizona deny Fulcher the fundamental right to Due Process, when it failed to disclose material evidence, pursuant to the rules of discover?

ARCP 15.1(a) states "[u]nless a local rule provides or the court orders otherwise: 1) the State must make available to the defendant all reports containing information identified in B(3) and B(4) that the charging attorney possessed when the charging was filed; and, 2) the State must make these reports available by the... arraignment. fn8. Section (b) further addresses supplemental disclosures, where "the State must make available to the defendant [all information pertaining to subsections 1 through 11, that is] material and information within the State's possession or control." This coupled with Arizona Rules of the Supreme Court (ARSup Ct) 91(f), that being, "every document or object filed in an action or proceeding shall constitute a part of the record in the superior court" indicates all parties must present to and the Clerk of the Superior Court must chronologically list by file number and brief notation, all documents presented before the Court". ARSup Ct 94(c).

fn8. Through review of local rules and court orders reveals no publications were ever issued instructing the parties to modify or forego disclosure requirements as set out in ARCP 15.1.

Close examination of the record depicts Pretrial Prosecutor Ms. Jaimye L. Ashley (ABN 032073) and Trial Prosecutor Ms. Czaplinska making absolutely NO DISCLOSURES pursuant to ARCP 15.1(a) and (b) in this case. see, Appendix K. But, the same record shows Defense Counsel C. Ray Lundberg (ABN 025605) making ARCP 15.2 disclosures on October 22, 2019 and April 23, 2020.

In fact, at an evidentiary hearing, conducted on September 15th, 2023, testimony of Ms. Scarlett Runge revealed,

FULCHER: "Can you please state your occupation?"

BUNGE: "I'm currently working at the Mohave County Sheriff's Office, but I've only been there two weeks. Prior to that I worked at the Mohave County Attorney's office as a disclosure supervisor." R.T. 09/15/2023, 13:13-17.

As examination progressed,

FULCHER: "Ms. Bunge, in your employment with the Mohave County Attorney's Office, please estimate how many times a notice of disclosure you have transcribed?"

BUNGE: "Notice of disclosure? Zero. We typically don't draft notice of disclosure."

FULCHER: "Who does?"

BUNGE: "I don't believe anybody does... That's a witness list. That does not get filed with the clerk's office." Id., 20:20-21:7.

Additional testimony by Pretrial Prosecutor Ashley evulgated,

FULCHER: "Is there any reasoning a prosecutor's office would withhold disclosure in a case, any local rules, anything, any reasons behind?"

ASHLEY: "Yes."

FULCHER: "What is that local rule?"

ASHLEY: "I didn't say there was a rule that pertained to it, but I'm not saying it applied to your case." Id., 31:9-15.

Further testifying,

FULCHER: "At any time during the investigation before the trial if these lists change, does - does a new disclosure get filed... if more witnesses or victims show up, would this document change?"

ASHLEY: "That depends. That's a vague question."

FULCHER: "So if two or more witnesses were set to testify in this case,

would another one of these documents be sent out?

ASHLEY: Again, that depends.

FULCHER: So how would you notify defense of other witnesses that would be brought up that are not disclosed?

ASHLEY: Again, that depends. I'm a defense attorney now, so I wouldn't be notifying defense.

FULCHER: As a prosecutor, how would you?

ASHLEY: Well, I don't feel comfortable answering that." Id. 33:14-34:6;
41:21-42:13.

The Mohave County Attorney's no disclosure practice lacks transparency, wherein, no records exist as to what was disclosed, if at all. see, Appendix K. By instituting said practice, Ms. Ashley and Ms. Czaplinska hindered Fulcher's ability to develop a reasonable defense; meaning, as a minimum, Fulcher could not conduct relevant and meaningful pretrial interviews. This Court, in CONE v. BELL held "[w]hen the State withholds from a criminal defendant evidence that is material to his guilt or punishment, it violates his right to due process of law, a violation of the Fourteenth Amendment" 556 U.S. 449, 173 L. Ed. 2d 701, 129 S. Ct. 1769 (2009).

C. Did the State of Arizona deny Fulcher the fundamental right to Due Process, when it failed to disclose material evidence that is both exculpatory / impeachment?

ARCrP 15.1(b)(8) asserts "the State must make available to the defendant... material and information within the States possession or control... all existing material or information that tends to mitigate or negates the defendant's guilt or could tend to reduce the defendant's punishment".

In the instant case, Detective Sevillano's testimony opened the door that

Accuser 1, in an unrelated case, had been subjected to a prior forensic interview as either a victim/witness or suspect. R.T. 09/09/2020, 83:13-18. The Ninth Circuit Court of Appeals, in COMSTOCK v. HUMPHRIES determined "[a] BRADY violation has three components: 1) the evidence at issue must be favorable to the accused; 2) the evidence must have been suppressed by the State; and, 3) the suppression must have been prejudicial". 786 F.3d 701 (2015); see also, BRADY v. MARYLAND, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963); UNITED STATES v. AGURS, 427 U.S. 97, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976); BANKS v. DRETKE, 540 U.S. 668, 137 L. Ed. 2d 1166, 124 S. Ct. 1256 (2004); STATE v. BRACY, 145 Ariz 520, 703 P. 2d 464 (AZ 1985). The COMSTOCK Court further enucleated:

1) "Evidence is 'favorable to the accused' if it is either exculpatory or impeaching, if information would be 'advantageous' to the defendant, or 'would tend to call the government's case into doubt'. Whether evidence is favorable is a question of substance, not degree, and any evidence that has any affirmative, evidentiary support to the defendant's case or any impeachment value is, by definition, favorable." UNITED STATES v. BAGLEY, 473 U.S. 667, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985).

Here, the evidence is "favorable" because it shows Accuser 1's propensity to inappropriate relationships under false pretense and then accuse others when confronted with her questionable behavior. It appears from

Report # 17-08669, that Accuser 1 "started a relationship with a male [Logan Wilhide from Greencastle, Pennsylvania], who was in his twenties and she told him she was 16 years old". fn9. The report further indicates Accuser 1 initiated the sexual aspect of this relationship when she "would make sexual remarks during their normal conversation"; Accuser 1 posted pictures "in different positions in a purple leotard and two photos topless with her covering her breasts with her hands"; and, either directed to her internet page and sent additional photo of "Logan's

username on a sign that covered her breast". When asked if Mr. Wilhide ever asked "to have sex with him. Kayla said no" see, Appendix L.

fn9. Mr. Wilhide resided in the State of Pennsylvania, he believed Accuser 1 to be of consensual age to take this internet relationship across the threshold into adult conversation.

Report # 19-02492, that Accuser 1 instigated an inappropriate contact when username "nixico" asked her "to send a photo of her tongue. Kayla searched Google and sent a photo of a tongue" see, Appendix M.

These 2 incidents show Accuser 1 has a propensity to cultivate, through initiating or instigating, an internet sexual relationships with strange men. In 17-08669, Accuser 1 may have informed Mr. Wilhide she was from Arizona but she lied about her age. In 19-02492, Accuser 1 sent a photograph exposing a body parts. In this case, there is impeachment value that showed Accuser 1, when confronted with her bad behavior, she places the blame on the male party, thereby, portraying herself as the innocent victim; by definition this is "favorable" impeachment evidence.

2) "Evidence is 'suppressed' where it is known to the State and not disclosed to the defendant. The State must disclose evidence known to the prosecutor as well as evidence 'known only to police investigators and not to the prosecutor'. Thus, the prosecutor has an obligation 'to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police'. Once the prosecutor acquires favorable information, even if [he] she 'inadvertently' fails to communicate it to the defendant, evidence has been suppressed."

DISTRICT ATTORNEYS' OFFICE v. OSBORNE, 557 U.S. 52, 174 L.Ed. 2d 38, 129 S.Ct. 2308

(2009); see also, STATE v. GONZALES-PEREZ, ___ Ariz. ___, 62 P.3d 126 (AZ Ct. App. 2003). The existence of both incident reports depicts the Bullhead City Police Department had prior knowledge of Accuser 1's past, and by association the Ms. Ashley and Ms. Czaplinska failed to disclose said reports.

3) "Evidence is 'material' if it could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. To establish materiality, a defendant need not demonstrate that disclosure of the suppressed evidence would have resulted ultimately in his [her] acquittal. Rather, the defendant need only establish a 'reasonable probability' of a different result." CONE, 556 U.S. 449; KYLES v. WHITLEY, 514 U.S. 419, 434-34, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995); BAGLEY, 473 U.S. at 682.

The comparing of Fulcher's case (Incident Report # 19-01900) with the two unrelated incidents (# 17-08669 and # 19-02492) has shown Accuser 1's habitualilty for diverting, some if not all of, the blame from her to the accused. In each case, when a friend or family member discovers Accuser 1's bad act, she places the blame on the other party. This behavior, if known by the CAMACHO Court, may or may not have negated the conviction, in part, associated with Accuser 1; but, it is "reasonably probable" to have mitigating properties towards sentencing.

The indisputable fact is, the Bullhead City Police Department was the investigative agency for Incident Reports 17-08669 and 19-02492, as well as, Fulcher's case. The fact is also clear, the Bullhead City Police Department is under the direction or control of the Mohave County Attorney's Office in matters concerning criminal cases. ARCrP 15.1(F)(2) ("the State's disclosure obligation extends to material and information in the possession or control of...any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction or

control."). The record bears witness that the State failed to record any disclosures with the Clerk's Office, coupled with evidentiary hearing testimony, leaves severe questions as to whether the State even complied with the rules of disclosure. AGURS, 427 U.S. 97 (In criminal prosecutions, the government constitutionally is obligated to disclose exculpatory evidence, even if it is not requested by the defendant.); see also, CANYON v. COLE, 210 Ariz 598, 115 P.3d 1261 (AZ 2005).

Based on the foregoing, whether singularly or cumulatively, the CAMACHO Court violated Fulcher's constitutional right to due process by

1. practicing a PROFESSIONAL NORM that permissively allows trial courts to foster a predetermination of guilt;
2. permitting nondisclosure policies of the Mohave County Attorney's Office; and,
3. being indulgent of the Mohave County Attorney's nondisclosure of exculpatory and/or impeachment evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. M. J.", written over a horizontal line.

Date: MARCH 13TH, 2025