

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2010-005965-001 DT

06/07/2012

HON. KAREN L. O'CONNOR

CLERK OF THE COURT  
C. Smith  
Deputy

STATE OF ARIZONA

KIRSTEN VALENZUELA  
ROBERT J SHUTTS  
RANDALL S UDELMAN

v.

ANDRE MICHAEL LETEVE (001)

MARIA L SCHAFFER  
GREGORY T PARZYCH  
  
CAPITAL CASE MANAGER

RULING

The Court has considered the Defendant's Motion for Deposition of Alejandro Morales, the Responses of the State and Dr. Morales and the Defendant's Reply. For the reasons that follow, the Court grants the Defendant's motion.

The Defendant is charged with the first degree murder of his two sons. At the time of their deaths, he and his wife, Laurie Leteve, were involved in divorce proceedings. The victims were their natural children. Ms. Leteve subsequently married Dr. Alejandro Morales. The State has noticed its intent to call Dr. Morales as a witness at trial. The Defendant seeks to depose Dr. Morales pursuant to Rule 15.3(a)(2), Arizona Rules of Criminal Procedure. Dr. Morales and the State object on the grounds that as the husband of the victims' mother, Dr. Morales is a "victim" and cannot be compelled to be interviewed by the defense.

Article II, § 2.1(C) of the Arizona Constitution defines "victim" for purposes of the Victims' Bill of Rights (VBR) as

a person against whom the criminal offense has been committed or, if the person

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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06/07/2012

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.

A.R.S. §13-4401(19) provides a definition of “victim” containing additional language not included in the VBR. This language includes in the definition of “victim” any person related to the victim of the crime “by consanguinity or affinity to the second degree.” The State and Dr. Morales assume that Dr. Morales is a victim because he is related to the deceased children by affinity due to his subsequent marriage to their mother. However, this assumption is based upon a faulty premise: an individual can become a “victim” at any time in the future upon the establishment of a legal relationship with another victim who clearly falls under the constitutional and statutory definitions.

The issue here is when the status of “victim” is conferred upon an individual. A.R.S. §13-4402(A) provides that the constitutional rights conferred by the VBR “arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim.” *See also, State ex rel. Romley v. Dairman*, 208 Ariz. 484, ¶20, 95 P.3d 548 (App. 2004)(“Victims' rights accrue at the time of arrest or formal charge of the alleged incident and take root as the criminal proceedings progress.”); *State v. Stauffer*, 203 Ariz. 551, ¶9, 58 P.3d 33 (App.2002)(concluding that “a crime victim's rights are specific to a crime committed upon that victim and arise only upon an arrest for or formal charging of that crime”).

Although there is no case addressing this issue, the Court finds *State v. Nichols*, 224 Ariz. 569, 233 P.3d 1148 (App. 2010), review denied, instructive. *Nichols* involved a victim who was subsequently incarcerated in another state on an unrelated offense. Under the constitutional and statutory definitions, an individual does not have victim’s rights if he “is in custody for an offense.” The trial court granted the defense’s request to compel an interview of the victim based on the fact that he was in custody at the time of the request. The Court of Appeals vacated the order on special action relief. The Court determined that the VBR denies victim status and rights only to persons who are themselves “the accused” or who are already in custody when the criminal offense is committed against them. It concluded “that a crime victim's rights, which are specific to a crime committed upon that victim, are not thereafter lost if the victim subsequently should be in custody for an unrelated offense.” 224 Ariz. at ¶22.

The *Nichols* court also found persuasive the Arizona Supreme Court’s opinion in *Stapleford v. Houghton*, 185 Ariz. 560, 917 P.2d 703 (1996). The victim in that case was a prisoner named Corso who had been assaulted by his cellmate. The trial court denied the defense’s request to compel a pretrial interview of Corso. The Supreme Court reversed, holding that Corso was not a “victim” as defined in the VBR because he was in custody when the offense was committed against him. 185 Ariz. at 563.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2010-005965-001 DT

06/07/2012

Thus, *Nichols* and *Stapleford* stand for the proposition that the status of victim is conferred at the time the offense is committed. In addition, pursuant to A.R.S. §13-4402(A), a victim's right to refuse to be interviewed by the defense accrues at the time a defendant is arrested or formally charged with the crime. As noted, Dr. Morales did not marry the deceased victims' mother until sometime after March 31, 2010, the date the offenses were committed in this case, and after April 9, 2010, the date the Defendant was formally charged. He therefore is not a "victim" under Arizona law and cannot refuse to be interviewed by the defense.

IT IS ORDERED granting the Defendant's Motion for Deposition of Alejandro Morales.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.