



ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY



STATE v. HONS. WELTY and CHAVEZ (KOONTZ/GILL)  
CV-13-0274-PR

**PARTIES:**

*Petitioner:* Real Party in Interest/Defendant Robert Lee Gill.

*Respondent:* Plaintiff State of Arizona *ex rel.* William G. Montgomery, Maricopa County Attorney.

*Amicus Curiae:* Arizona Attorneys for Criminal Justice.

**FACTS:**

Robert Lee Gill (“Gill”) was charged with three counts of Theft of Means of Transportation. During the parties’ exchange of pretrial disclosure, the State disclosed the police report regarding the alleged offense to Gill but redacted the victims’ birth dates. Defense counsel requested disclosure of the redacted birth dates in order to run a conflicts check. The State refused to provide the birth dates but offered to assist counsel in determining the victims’ identities for purposes of the conflicts check. Gill refused the State’s offer and moved to compel discovery of the birth dates. The trial court granted the motion to compel on the grounds that no statute or rule allowed the State to withhold that information. The trial court explained its reasons for granting Gill’s motion as follows:

Gill requests an order compelling the prosecutor to provide to the defense law enforcement agency reports that include the listed victim’s name and date of birth. The current practice of the [Maricopa County Attorney’s Office] is to redact the victim’s date of birth from law enforcement agency reports before providing them to the defense. Rule 15.1(b)(3) . . . requires the prosecutor to “make available to the defendant . . . (3) All then existing original and supplemental reports prepared by a law enforcement agency in connection with the particular crime with which the defendant is charged.” Rule 39(b)(10) . . . allows the prosecutor to “withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim’s place of employment, and the name of the victim’s employer.” Based on the Arizona Rules of Criminal Procedure, the prosecutor is required to provide a copy of the law enforcement agency reports to the defense without redacting the victim’s date of birth.

The State contends it is required to redact this information pursuant to A.R.S. §13-4434. This statute does not require, or authorize, a prosecutor to redact the victim’s date of birth from a law enforcement agency report . . . . This provision

requires the “originating agency” to redact this information. The prosecutor is not the originating agency and thus is not required to redact the information. In addition, discovery provided to the defense under Rule 15 does not constitute “publicly accessible records.” Rule 15.4(d) ... states “[a]ny materials furnished to an attorney pursuant to this rule shall not be disclosed to the public but only to others to the extent necessary for the proper conduct of the case.”

The State argues that the Court must read A.R.S. §13-4434 in relation to the Victim’s Bill of Rights. “In construing the meaning of a statute, the language of the statute itself is ordinarily regarded as conclusive. A court must give effect to a statute’s unambiguous meaning.” *Wasserman v. Low*, 143 Ariz. 4, 12, 691 P.2d 716, 724 (App. 1984) (citations omitted). The statute is clear. The meaning is unambiguous. Neither party provided any evidence of contrary legislative intent or meaning.

The State challenged the above-quoted order by filing a petition for special action (i.e., a petition for extraordinary interlocutory relief) in the Court of Appeals. The Court of Appeals accepted jurisdiction and reversed the trial court’s order, holding that the relevant Arizona constitutional provisions, statutes, and rules on victims’ rights “demand that the victims’ birth dates must be protected from disclosure.” Defendant Gill petitioned the Arizona Supreme Court for review.

**Note:** No Petition for Review was filed by the defendant in the companion case *State of Arizona ex rel. William G. Montgomery v. Hon. Welty/James Dean Koontz*.

## **ISSUES:**

1. A.R.S. § 13-4434(A) permits an alleged victim to refuse to testify regarding his or her address, phone number, or other locating information. Does this section permit the State to refuse to provide the victim’s birth date to the defense?
2. Rule 39(10), Arizona Rules of Criminal Procedure, permits the prosecutor to withhold an alleged victim’s personal and professional addresses and telephone numbers. Rule 39 (11) permits a victim to refuse an interview, deposition, or other discovery request. Do these rules, taken together, permit the State to refuse to provide the victim’s birth date to the defense?

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