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6 Attorney for Crime Victim

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 STATE OF ARIZONA,

10 Plaintiff,

11 vs.

12 ALLISON ANN CLEMENT,

13 Defendant,

14 CATHY CROSS,

15 Crime Victim.

CR2014-002116-002

**VICTIM'S RENEWED MOTION
TO DENY MOTION TO
CONTINUE TRIAL**

(Honorable Joan M. Sinclair)

17 Victim Cathy Cross, grandmother of Victim A, by and through undersigned
18 counsel, respectfully requests this Court to deny any lengthy motion to continue
19 trial based on the attached Memorandum of Points and Authorities.
20

21 Respectfully Submitted August 14, 2016
22

23 By /s/Jessica Gattuso _____
24 Jessica Gattuso
25 Attorney for Crime Victim

1 **Memorandum of Points and Authorities**

2 **I. Procedural History Since Last Motion to Continue**

3 On May 24, 2016 at 5:46 p.m., defense counsel filed a written *Motion for*
4 *Continuance of Trial*, which at the time was set for June 1, 2016. On May 25,
5 2016, undersigned counsel presented the parties and the Court with a written
6 objection entitled *Victim’s Motion to Deny Motion to Continue Trial*. Exhibit A.
7 Although a copy was given to the clerk to file in court, it appears the motion was
8 never filed, however, the minute entry from the hearing May 25, 2016 indicates
9 that this Court denied the motion and granted the continuance finding that “delay is
10 indispensable to the interests of justice” and that “extraordinary circumstance(s)
11 exist warranting the continuance: Ongoing plea negotiations.” Exhibit B. This
12 Court asked the parties to pick a time certain for trial. The parties agreed to a trial
13 date of August 23, 2016 for defendant Clement with a Final Trial Management
14 Conference of August 8, 2016.
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18 On August 8, 2016 all parties appeared for the Final Trial Management
19 Conference. Again a discussion was held about ongoing plea negotiations as well
20 as scheduling issues with the State. Exhibit C. At the hearing, through undersigned
21 counsel, Ms. Cross objected to any further continuances and requested that the plea
22 offer expire on August 22, 2016. The parties requested time to set up Settlement
23 Conferences and the State informed the Court she had an older case with trial
24
25

1 starting August 9, 2016. This matter was re-set to August 15, 2016 in order to give
2 the parties time to inquire about Settlement Conference dates as well as to get an
3 update from the State on her trial conflict. As of the filing of this motion, no
4 Settlement Conference has been set and it is unknown if the State will be in trial on
5 the older case.
6

7 **II. Argument**

8 **A. Ms. Cross has a constitutional right to a speedy trial.**

9 Crime Victims have a constitutional right to a speedy trial. Ariz. Const. art.
10 II, §2.1(A)(10). The legislature, vested with authority under the Victims Bill of
11 Rights may enact substantive and procedural laws to define, implement, preserve,
12 and protect victims' rights. Ariz. Const. art.II, §2.1(D). To implement and protect
13 victims' speedy trial right, the legislature directs trial courts to "take appropriate
14 action to ensure a speedy trial for the victim." A.R.S. §13-4435(A). Ms. Cross
15 respectfully requests this Court to deny any request for a lengthy continuance and
16 order this case to proceed to trial as soon as possible.
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18

19 **B. There are no extraordinary circumstances that outweigh Ms. Cross's** 20 **right to a speedy trial and delay is not in the interest of justice.**

21 Rule 8.5 requires a written motion to continue specifying the reasons for the
22 continuance and
23

24 [a] continuance of any trial date shall be granted only upon a showing that
25 extraordinary circumstances exist and that delay is indispensable to the
interests of justice. A continuance may be granted only for so long as is

1 necessary to serve the interests of justice. In ruling on a motion for
2 continuance, the court shall consider the rights of the defendant and any
3 victim to a speedy disposition of the case. If a continuance is granted the
4 court shall state other specific reasons for the continuance on the record.

5 Ariz. R. Crim. P. 8.5(a) and (b).

6 This case was originally charged in 2012 but due to a delay with the medical
7 examiner's report had to be dismissed and re-charged in 2014. The assigned
8 prosecutor has been involved since the date of crime and the same defense attorney
9 has been assigned since the first filing of charges. Although the same parties have
10 been involved for almost four years, plea negotiations are now underway on the
11 eve of trial - a trial that the next of kin has been anxiously waiting for.

12 There has not been a written motion to continue trial since May 24, 2016.
13 While Ms. Cross understands that the assigned prosecutor cannot be in two places
14 at once and is not asking that she be found fungible, Ms. Cross is urging the Court
15 to force this case to trial as soon as possible. It is the parties that avowed to this
16 Court that they were available for trial on August 23, 2016. Now there has been a
17 request for a continuance for plea negotiations and a trial conflict. Plea
18 negotiations are not extraordinary circumstances that outweigh Ms. Cross's right to
19 a speedy trial. Additionally, further delays for plea negotiations are not
20 indispensable to the interests of justice.

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24 **C. Ms. Cross has a constitutional right to have the rules of criminal**
25 **procedure construed in a manner that protects her victims' rights.**

1 To preserve and protect victims' rights to justice and due process, a victim
2 of a crime has a constitutional right to have all the rules governing criminal
3 procedure protect victims' rights. Ariz. Const. art. II, § 2.1(A)(11). Among
4 victims' rights that must be protected are the rights to be treated with fairness,
5 respect, and dignity, and to be free from intimidation, harassment, and abuse and
6 the right to a speedy trial. Ariz. Const. art. II, § 2.1(A)(1) and (10). These
7 provisions are mandatory. Ariz. Const. art. II, § 32.
8

9 Arizona's Supreme Court instructed lower courts of the importance in
10 following and applying the plain language of the Victims' Bill of Rights (VBR).
11 *Knapp v. Martone*, 170 Aiz. 237, 239, 823 P.2d 685, 687 (1992). The plain
12 language of the VBR gives victims a sweeping right to have the rules of criminal
13 procedure protect their right to be treated with fairness, respect, and dignity, and to
14 be free from intimidation, harassment, and abuse, and to a speedy trial. Ariz.
15 Const. art. II, § 2.1(A)(1) and (10).
16
17

18 Because courts are mandated to construe these provisions in a manner that
19 protects victims' rights, Rule 8.5 of the Arizona Rules of Criminal Procedure must
20 be construed in a way that protects Ms. Cross's right to a speedy trial. There
21 should be no more continuances without a written motion to continue trial showing
22 that extraordinary circumstances exist and a delay is indispensable to the interests
23 of justice. Additionally this Court must consider Ms. Cross's speedy trial rights
24
25

1 when considering the motion to continue.

2 **D. Ms. Cross may needlessly suffer secondary victimization if the court**
3 **grants any more continuances beyond those absolutely necessary.**

4 Homicide is one of the most severe of all traumas. Many victims¹ of
5 homicide experience symptoms of depression, posttraumatic stress disorder
6 (PTSD) and prolonged grief. *See, e.g., Heidi Zinzow, et al., Losing a Loved One to*
7 *Homicide: Prevalence and Mental Health Correlates in a National Sample of*
8 *Young Adults*, 22 *J. of Traumatic Stress* 20, 25 (2009) (finding a “significant
9 relationship . . . among homicide survivorship and negative mental health
10 sequelae.”). In fact, victims of homicide are particularly susceptible to mental
11 health issues compared to other victims of violent crime. *See, e.g., Alyssa*
12 *Rheingold and Joah Williams, Survivors of Homicide: Mental Health Outcomes,*
13 *Social Support, and Service Use Among a Community-Based Sample*, 30 *Violence*
14 *and Victims* 870, 879 (2015) (noting that homicide victims are “at greater risk for
15 prolonged and complicated bereavement reactions” because of “factors unique to
16 homicide”).

17 The crime itself, however, is not the only source of trauma for homicide
18 victims. The intense and painful consequences of initial victimization are often
19 compounded by a prolonged and difficult experience with the criminal justice
20 system. Jim Parsons and Tiffany Bergin, *The Impact of Criminal Justice*
21 *Involvement on Victims’ Mental Health*, 23 *J. Traumatic Stress* 182, 182-83
22 (2010); *see also* Judith Herman, *Trauma and Recovery* 72 (1997) (“If one set out

23
24 ¹ “Victim” includes a “person against whom the criminal offense has been committed, including
25 a minor, or if the person is killed or incapacitated, the person’s spouse, parent, child, grandparent
or sibling[.]” A.R.S. § 13-4401(19). Here, “victim” is used interchangeably with “survivor” and
“next of kin.”

1 by design to devise a system for provoking intrusive post-traumatic symptoms, one
2 could not do better than a court of law.”). This experience can be so damaging that
3 some victims regard the treatment as a “secondary victimization.” Uli Orth,
4 *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15. Soc. Just.
5 Research 313, 314 (2002). This re-victimization can exacerbate symptoms of
6 PTSD and depression and can cause other negative psychological changes in
7 victims. *Id.* at 321. In short, a homicide victim’s well-being is affected not only by
8 the crime itself, but also the criminal justice system.

9 A timely resolution to a case is important for victim recovery. Victims “are
10 already heightened emotionally with anxiety and anticipation of the impending
11 trial, and [trial] delays lead to further and unnecessary trauma.” Mary Beth Ricke,
12 *Victims’ Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to*
13 *Legislative Protection*, 41 Wash. U.J.L. & Pol’y 181, 183 (2013). Years of court
14 dates, reversals, appeals, and exposure to the defendant harm murder victims. *See*
15 *Maryland Comm’n on Capital Punishment: Final Report to the General Assembly*
16 *55, 59 (2008)*, available at [http://www.scribd.com/doc/8948491/Maryland-Death-](http://www.scribd.com/doc/8948491/Maryland-Death-Penalty-Commission-Final-Report)
17 [Penalty-Commission-Final-Report](http://www.scribd.com/doc/8948491/Maryland-Death-Penalty-Commission-Final-Report). Delays can take an enormous physical and
18 emotional toll on victims, as they are forced to repeatedly relive their painful loss.
19 Holly Aldrich and Diya Kallivayalil, *The Impact of Homicide on Survivors and*
20 *Clinicians*, 18 J. of Loss and Trauma 362, 370 (2013) (stating that victims “too
21 often find that the protracted proceedings, the court appearances, the continuances,
22 the trials, the appeals . . . exact a painful toll in their grieving and efforts to survive
23 their losses.”), *cf.* Dan Levey, *Balancing the Scales of Justice*, 89 *Judicature* 289,
24 291 (2006)(discussing the negative effects of lengthy appeals).

1 Some delay, and therefore additional trauma, may be inevitable as courts
2 comply with a defendant's constitutional rights. But every decision that could
3 increase delay should be justified considering the harm it will cause homicide
4 victims. It would be difficult to justify further delays in this case. The defendant
5 has no right to a plea offer and certainly no right to extend plea negotiations to
6 almost four years. Ms. Cross, however, has a constitutional right to a speedy trial.
7 The Court should thus deny any motion to continue trial beyond that absolutely
8 necessary due to trial conflicts that involve cases older than this one.

9 **III. Conclusion**

10 Ms. Cross requests that this Court make sure this case proceeds to trial as
11 soon as possible and that there is a final conclusion before the four-year
12 anniversary of the death of Ms. Cross' granddaughter, Victim A.
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14
15 Respectfully Submitted August 14, 2016

16 By /s/ Jessica Gattuso
17 Jessica Gattuso
18 Attorney for Crime Victim
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1 ORIGINAL of the foregoing filed and
2 COPIES of the foregoing delivered
3 August 14, 2016 to:

4 Honorable Joan M. Sinclair
5 Judge of Superior Court

6 Frankie Grimsman
7 Deputy County Attorney

8 Christopher Winchell
9 Attorney for Defendant

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Exhibit A

1 **Jessica Gattuso (AZ Bar # 025492)**

2 **Colleen Clase (AZ Bar # 029360)**

3 **Eric Aiken (AZ Bar # 032418)**

4 Arizona Voice for Crime Victims

5 P.O. Box 877906

6 Tempe, AZ 85287

7 Office: 480-600-2661

8 jgattuso@voiceforvictims.org

9 Attorney for Crime Victim

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 ALLISON ANN CLEMENT,

16 Defendant,

17 CATHY CROSS,

18 Crime Victim.

CR2014-002116-002

VICTIM'S MOTION TO DENY
MOTION TO CONTINUE TRIAL

(Honorable Joan M. Sinclair)

19 Victim Cathy Cross, grandmother of Victim A, by and through undersigned
20 counsel, respectfully requests this Court to deny any lengthy motion to continue
21 trial based on the attached Memorandum of Points and Authorities.

22 Respectfully Submitted May 25, 2016

23 By _____

24 Jessica Gattuso

25 Attorney for Crime Victim

Memorandum of Points and Authorities

I. Procedural History

Defendant Clement is charged with the murder and child abuse of two-year old Victim A. Victim A's mother left her in the care of Clement on November 23, 2012 and by December 11, 2012 Victim A was dead.

Defendant Clement was originally indicted in CR2012-162806-001 and had an Arraignment on December 28, 2012. The case was designated complex and the original trial date was set for September 10, 2013. On August 22, 2013 the assigned trial judge vacated the trial date and set a hearing on Rule 15.6(e) issues for September 20, 2013. On September 20, 2013, Dr. Jeffrey Johnston and Roberto Pulver appeared from the Medical Examiner's Office and addressed the court regarding reasons for the delay in the medical examiner's report on the autopsy of Victim A. Dr. Johnston was unable to state with any certainty when his office may be able to complete a final report. The State requested a continuance and a stay. Both were denied, however, and trial was set for September 24, 2013. On September 23, 2013, the trial judge denied the State's Motion to Reconsider Denial of State's Motion to Continue and Stipulated Release of Defendants but granted the State's Motion to Dismiss Without Prejudice. Defendant Clement was released along with her co-defendant Reed.

Defendant Clement was re-indicted almost ten months later on July 10, 2014

1 for Second Degree Murder and Child Abuse committed on or between November
2 23, 2012 and December 11, 2012. The case was again designated complex and the
3 last day was set as June 13, 2015. Defendant Clement's attorney remained the
4 same as in the original 2012 case. On April 15, 2015, Defendant Clement and Co-
5 defendant Reed filed a Joint Motion to Continue Trial Beyond Last Day stating the
6 request is based on "about 100 witnesses and over 1000 pages of discovery." The
7 motion was granted and a new last day was calculated as July 30, 2015.
8

9 Additional time was excluded at Complex Case Management Conferences
10 without taking into consideration Ms. Cross' position: on June 1, 2015 time was
11 excluded and a new last day was set as October 4, 2015; on August 18, 2015, the
12 new last day was calculated as December 3, 2015; on October 22, 2015, the new
13 last day was calculated as March 2, 2016; and on February 22, 2016, the new last
14 day was calculated as June 30, 2016 and a trial date was set for June 1, 2016.
15
16

17 **II. Argument**

18 Crime Victims have a constitutional right to a speedy trial. Ariz. Const. art. II,
19 §2.1(A)(10). The legislature, vested with authority under the Victims Bill of Rights
20 may enact substantive and procedural laws to define, implement, preserve, and
21 protect victims' rights. Ariz. Const. art.II, §2.1(D). To implement and protect
22 victims' speedy trial right, the legislature directs trial courts to "take appropriate
23 action to ensure a speedy trial for the victim." A.R.S. §13-4435(A). Ms. Cross
24
25

1 respectfully requests this Court to deny any request for a lengthy continuance and
2 order this case to proceed to trial as soon as possible.

3 Aside from the fact that Ms. Cross would like to put this matter behind her,
4 the multiple delays and not knowing when trial will start are causing tremendous
5 stress and is basically putting Ms. Cross' life on hold. Additionally, Ms. Cross
6 needs to make travel arrangements, which costs more money when booked at the
7 last minute.
8

9 **III. Conclusion**

10 Ms. Cross requests this Court to make sure this case proceeds to trial and
11 there is a final conclusion before the fourth-year anniversary of the death of Ms.
12 Cross' granddaughter, Victim A.
13

14
15 Respectfully Submitted May 25, 2016

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17 By _____
18 Jessica Gattuso
19 Attorney for Crime Victim
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1 ORIGINAL of the foregoing filed and
2 COPIES of the foregoing delivered
3 May 25, 2016 to:

4 Honorable Joan M. Sinclair
5 Judge of Superior Court

6 Frankie Grimsman
7 Deputy County Attorney

8 Christopher Winchell
9 Attorney for Defendant

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Exhibit B

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-002 DT

05/25/2016

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
S. Bhakta/N. McKinney
Deputy

STATE OF ARIZONA

FRANKIE LYNN GRIMSMAN
JESSICA ANN GATTUSO

v.

ALLISON ANN CLEMENT (002)

CHRISTOPHER M WINCHELL
MICHAEL A LEAL

JUDGE SAM MYERS

TRIAL CONTINUANCE PAST LAST DAY

10:20 a.m.

Courtroom CCB-903

State's Attorney:	Frankie Grimsman
Defendant's Attorney:	Christopher Winchell
Defendant:	Present
Victim's Attorney:	Jessica Gattuso

A record of the proceedings is made digitally in lieu of a court reporter.

LET THE RECORD REFLECT that this matter is heard in conjunction with co-defendant, Ryan Reed, who is not present (presence waived for this hearing only) and represented by counsel, Michael Reed . A separate minute entry will issue as to said co-defendant.

This is the time set for Final Trial Management Conference.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-002 DT

05/25/2016

Having considered the Motion to Continue by counsel for the Defense, the Court finds,

1. The nonmoving party or parties: Do Not Object.
2. The Arraignment date was: July 17, 2014
3. The original last day was: December 11, 2014
4. The existing date of the trial when the motion was filed: June 30, 2016
5. The number of continuances granted before this continuance was: 1
6. The motion was: In writing.
7. The motion was filed at least 5 days before trial: Yes
8. If filed untimely, the motion sets forth with specificity the reasons for its untimeliness: Does Not Apply

The Court is in receipt of Victim's Motion to Deny Motion to Continue Trial.

Discussion is held.

IT IS ORDERED denying Victim's Motion to Deny Motion to Continue Trial.

The Court finds that delay is indispensable to the interests of justice and that the following extraordinary circumstance(s) exist warranting the continuance:

Ongoing plea negotiations

The Defendant waived applicable time limits: Yes

IT IS ORDERED vacating the current Trial setting of June 1, 2016 and resetting same to August 23, 2016 at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS ORDERED resetting the Final Trial Management Conference (FTMC) set on this date to August 8, 2016 at 8:30 a.m. before this division.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-002 DT

05/25/2016

IT IS FURTHER ORDERED excluding all time from June 1, 2016 through August 23, 2016 (83 days). NEW LAST DAY: September 21, 2016.

IT IS FURTHER ORDERED affirming prior custody orders.

10:36 a.m. Matter concludes.

Exhibit C

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-002 DT

08/08/2016

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
D. McGraw
Deputy

STATE OF ARIZONA

FRANKIE LYNN GRIMSMAN

v.

ALLISON ANN CLEMENT (002)

CHRISTOPHER M WINCHELL
JESSICA ANN GATTUSO

CONFERENCE RESET/CONTINUED

9:07 a.m. This is the time set for Final Trial Management Conference.

Courtroom 903 Central Court Building

State's Attorney: Frankie Grimsman
Defendant's Attorney: Christopher Winchell
Defendant: Present

A record of the proceedings is made digitally in lieu of a court reporter.

LET THE RECORD REFLECT that counsel Jessica Gattuso is present on behalf of the victim's next of kin.

Discussion is held regarding pretrial matters, including scheduling issues and the status of plea negotiations.

IT IS ORDERED continuing Final Trial Management Conference to **August 15, 2016, at 8:30 a.m.** before Judge Sinclair.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-002 DT

08/08/2016

IT IS ORDERED affirming the Firm Trial Date of **August 23, 2016, at 8:00 a.m.** before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS ORDERED that no time be excluded. LAST DAY REMAINS: September 21, 2016.

IT IS FURTHER ORDERED affirming prior custody orders.

9:16 a.m. Matter concludes.