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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 RYAN ALLEN REED,

16 Defendant,

17 CATHY CROSS,

18 Crime Victim.

CR2014-002116-001

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 trial
21 based on the attached Memorandum of Points and Authorities.

22 Respectfully Submitted August 14, 2016

23 By /s/Jessica Gattuso_____

24 Jessica Gattuso

25 Attorney for Crime Victim

Memorandum of Points and Authorities

I. Procedural History Since Last Motion to Continue

On May 24, 2016 at 5:46 p.m., co-defendant Clement filed a written *Motion for Continuance of Trial*, which at the time was set for June 1, 2016. On May 25, 2016, this Court granted the continuance, over the objection of Ms. Cross, finding that “delay is indispensable to the interests of justice” and that “extraordinary circumstance(s) exist warranting the continuance: Ongoing plea negotiations.” Exhibit A. This Court asked the parties to pick a time certain for trial. The parties agreed to a trial date of September 14, 2016 for defendant Reed with a Final Trial Management Conference of August 8, 2016.

On August 8, 2016 all parties appeared for the Final Trial Management Conference. Again a discussion was held about ongoing plea negotiations as well as scheduling issues with the State. Exhibit B. At the hearing, through undersigned counsel, Ms. Cross objected to any further continuances and requested that the plea offer expire on August 22, 2016. The parties requested time to set up Settlement Conferences and the State informed the Court she had an older case with trial starting August 9, 2016. This matter was re-set to August 15, 2016 in order to give the parties time to inquire about Settlement Conference dates as well as to get an update from the State on her trial conflict. As of the filing of this motion, no Settlement Conference has been set and it is unknown if the State will be in trial on the older

1 case.

2 **II. Argument**

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

4 Crime Victims have a constitutional right to a speedy trial. Ariz. Const. art.
5 II, §2.1(A)(10). The legislature, vested with authority under the Victims Bill of
6 Rights may enact substantive and procedural laws to define, implement, preserve,
7 and protect victims’ rights. Ariz. Const. art.II, §2.1(D). To implement and protect
8 victims’ speedy trial right, the legislature directs trial courts to “take appropriate
9 action to ensure a speedy trial for the victim.” A.R.S. §13-4435(A). Ms. Cross
10 respectfully requests this Court to deny any request for a lengthy continuance and
11 order this case to proceed to trial as soon as possible.
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14 **B. There are no extraordinary circumstances that outweigh Ms. Cross’s**
15 **right to a speedy trial and delay is not in the interest of justice.**

16 Rule 8.5 requires a written motion to continue specifying the reasons for the
17 continuance, and
18

19 [a] continuance of any trial date shall be granted only upon a showing that
20 extraordinary circumstances exist and that delay is indispensable to the
21 interests of justice. A continuance may be granted only for so long as is
22 necessary to serve the interests of justice. In ruling on a motion for
23 continuance, the court shall consider the rights of the defendant and any victim
to a speedy disposition of the case. If a continuance is granted the court shall
state other specific reasons for the continuance on the record.

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

25 This case was originally charged in 2012 but due to a delay with the medical

1 examiner's report had to be dismissed and re-charged in 2014. The assigned
2 prosecutor has been involved since the date of crime and the same defense attorney
3 has been assigned since the first filing of charges. Although the same parties have
4 been involved for almost four years, plea negotiations are now underway on the eve
5 of trial - a trial that the next of kin has been anxiously waiting for.
6

7 There has not been a written motion to continue trial since May 24, 2016.
8 While Ms. Cross understands that the assigned prosecutor cannot be in two places at
9 once and is not asking that she be found fungible, Ms. Cross is urging the Court to
10 force this case to trial as soon as possible. It is the parties that avowed to this Court
11 that they were available for trial on September 14, 2016. Now there has been a
12 request for a continuance for plea negotiations and a trial conflict. Plea negotiations
13 are not extraordinary circumstances that outweigh Ms. Cross's right to a speedy trial.
14 Additionally, further delays for plea negotiations are not indispensable to the
15 interests of justice.
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18 **C. Ms. Cross has a constitutional right to have the rules of criminal**
19 **procedure construed in a manner that protects her victims' rights.**

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

3 Arizona's Supreme Court instructed lower courts of the importance in
4 following and applying the plain language of the Victims' Bill of Rights (VBR).
5 *Knapp v. Martone*, 170 Aiz. 237, 239, 823 P.2d 685, 687 (1992). The plain language
6 of the VBR gives victims a sweeping right to have the rules of criminal procedure
7 protect their right to be treated with fairness, respect, and dignity, and to be free from
8 intimidation, harassment, and abuse, and to a speedy trial. Ariz. Const. art. II, §
9 2.1(A)(1) and (10).
10
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12 Because courts are mandated to construe these provisions in a manner that
13 protects victims' rights, Rule 8.5 of the Arizona Rules of Criminal Procedure must
14 be construed in a way that protects Ms. Cross's right to a speedy trial. There should
15 be no more continuances without a written motion to continue trial showing that
16 extraordinary circumstances exist and a delay is indispensable to the interests of
17 justice. Additionally this Court must consider Ms. Cross's speedy trial rights when
18 considering the motion to continue.
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21 **D. Ms. Cross may needlessly suffer secondary victimization if the court**
22 **grants any more continuances beyond those absolutely necessary.**
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1 Homicide is one of the most severe of all traumas. Many victims¹ of homicide
2 experience symptoms of depression, posttraumatic stress disorder (PTSD) and
3 prolonged grief. *See, e.g., Heidi Zinzow, et al., Losing a Loved One to Homicide:
4 Prevalence and Mental Health Correlates in a National Sample of Young Adults, 22
5 J. of Traumatic Stress 20, 25 (2009) (finding a “significant relationship . . . among
6 homicide survivorship and negative mental health sequelae.”). In fact, victims of
7 homicide are particularly susceptible to mental health issues compared to other
8 victims of violent crime. See, e.g., Alyssa Rheingold and Joah Williams, Survivors
9 of Homicide: Mental Health Outcomes, Social Support, and Service Use Among a
10 Community-Based Sample, 30 Violence and Victims 870, 879 (2015) (noting that
11 homicide victims are “at greater risk for prolonged and complicated bereavement
12 reactions” because of “factors unique to homicide”).*

13 The crime itself, however, is not the only source of trauma for homicide
14 victims. The intense and painful consequences of initial victimization are often
15 compounded by a prolonged and difficult experience with the criminal justice
16 system. Jim Parsons and Tiffany Bergin, *The Impact of Criminal Justice Involvement
17 on Victims’ Mental Health, 23 J. Traumatic Stress 182, 182-83 (2010); see also
18 Judith Herman, Trauma and Recovery 72 (1997) (“If one set out by design to devise
19 a system for provoking intrusive post-traumatic symptoms, one could not do better
20 than a court of law.”). This experience can be so damaging that some victims regard
21 the treatment as a “secondary victimization.” Uli Orth, *Secondary Victimization of
22 Crime Victims by Criminal Proceedings, 15. Soc. Just. Research 313, 314 (2002).**

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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 This re-victimization can exacerbate symptoms of PTSD and depression and can
2 cause other negative psychological changes in victims. *Id.* at 321. In short, a
3 homicide victim’s well-being is affected not only by the crime itself, but also the
4 criminal justice system.

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

21 Some delay, and therefore additional trauma, may be inevitable as courts
22 comply with a defendant’s constitutional rights. But every decision that could
23 increase delay should be justified considering the harm it will cause homicide
24 victims. It would be difficult to justify further delays in this case. The defendant has
25 no right to a plea offer and certainly no right to extend plea negotiations almost four

1 years. Ms. Cross, however, has a constitutional right to a speedy trial. The Court
2 should thus deny any motion to continue trial beyond that absolutely necessary due
3 to trial conflicts that involve cases older than this one.

4 **III. Conclusion**

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

11 By /s/ Jessica Gattuso
12 Jessica Gattuso
13 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 Michael Leal
9 Attorney for Defendant

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Exhibit A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-001 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.

RYAN ALAN REED (001)

MICHAEL A LEAL
CHRISTOPHER M WINCHELL

JUDGE SAM MYERS
VICTIM WITNESS DIV-AG-CCC

TRIAL CONTINUANCE PAST LAST DAY

10:20 a.m.

Courtroom CCB-903

State's Attorney:	Frankie Grimsman
Defendant's Attorney:	Michael Leal
Defendant:	Presence Waived
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, Allison Clement, who is present and represented by counsel, Christopher Winchell. A separate minute entry will issue as to said co-defendant.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-001 DT

05/25/2016

The Court informs counsel the Defendant's Final Trial Management Conference set for June 29, 2016 will be accelerated to today's date.

Having considered the Motion to Continue by counsel for the Co-Defendant, the Court finds,

1. The nonmoving party or parties: Do Not Object.
2. The Arraignment date was: No Information Provided.
3. The Original last day was: No Information Provided.
4. The existing date of the trial when the motion was filed: July 11, 2016
5. The number of continuances granted before this continuance was: No Information Provided.
6. The motion was: Not 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 July 11, 2016 and resetting same to September 14, 2016 before the Master Calendar Assignment Judge in Courtroom 5B in the South

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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05/25/2016

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 vacating the Final Trial Management Conference (FTMC) set on June 29, 2016 and resetting same to August 8, 2016 at 8:30 a.m. before this division.

IT IS FURTHER ORDERED excluding all time from July 11, 2016 through September 14, 2016 (106 days). NEW LAST DAY: October 14, 2016.

IT IS FURTHER ORDERED affirming prior custody orders.

10:36 a.m. Matter concludes.

Exhibit B

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-002116-001 DT

08/08/2016

HONORABLE JOAN M. SINCLAIR

CLERK OF THE COURT
D. McGraw
Deputy

STATE OF ARIZONA

FRANKIE LYNN GRIMSMAN

v.

RYAN ALAN REED (001)

MICHAEL A LEAL
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: Michael Leal
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

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08/08/2016

IT IS ORDERED affirming the Firm Trial Date of **September 14, 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: October 14, 2016.

IT IS FURTHER ORDERED affirming prior custody orders.

9:16 a.m. Matter concludes.