

Crime Victim Law Update

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I. SPECIFIC VICTIMS' RIGHTS

A. Right to Courtroom Accommodations

1. Closed Courtroom

State v. MacBale, 305 P.3d 107 (Or. 2013).

Defendant, charged with sexually assaulting a former employee, requested an evidentiary hearing under the state's rape shield statute to determine the admissibility of evidence of the victim's prior sexual conduct. After the trial court denied defendant's request that it open the statutorily mandated *in camera* hearing to the public, defendant filed a petition for a writ of mandamus requesting that the Oregon Supreme Court direct the trial court to hold a public hearing. Defendant argued, *inter alia*, that the rape shield statute's mandatory *in camera* procedure violates the open courts clause under the state constitution and his right to a public trial under the state and federal constitutions.

The Oregon Supreme Court rejected defendant's arguments. First, the court concluded that the rape shield statute's *in camera* procedure does not violate the state constitution's open courts clause, as the prohibition in the clause—which provides that “[n]o court shall be secret, but justice shall be administered, openly and without purchase”—is not absolute and does not apply to all court proceedings. The court found that a rape shield hearing is not a hearing that “administers justice” within the meaning of the open courts clause because the purpose of the hearing is not to determine guilt or innocence but to screen for “presumptively irrelevant” evidence. The court observed that closure of rape shield hearings only “deprive[s] the public of exposure . . . to private, irrelevant facts” about a victim's prior sexual history, whereas opening the hearings “could potentially further victimize an already vulnerable witness”

and “make the ‘complete’ administration of justice . . . more difficult, if not impossible.” Second, the court concluded that the *in camera* procedure does not violate defendant's right to a “public trial by an impartial jury” under the state constitution. In reaching its conclusion, the court determined that this constitutional right only concerns “the trial itself” and does not require pretrial rape shield hearings to be open to the public. Lastly, the court concluded that the *in camera* procedure does not violate defendant's right to a “public trial” under the Sixth Amendment. In reaching its conclusion, the court recognized that the United States Supreme Court has held that the Sixth Amendment right to a public trial extends to pretrial proceedings that are considered “‘an integral part of the trial’ and ‘involve the values that the right to a public trial serves.’” The court considered the values as described by the federal courts and determined that “those values are not implicated” by the rape shield proceedings. The court also observed that “a rape victim who is examined about the details of her personal sexual background may be less likely to be forthcoming if forced to discuss the matter in open court.” For these and other reasons, the court dismissed defendant's petition for a writ of mandamus.

2. Support Person Presence

People v. Duncan, 835 N.W.2d 399 (Mich. 2013).

Defendants were charged with first and second degree criminal sexual conduct and operating a daycare facility without a license. At a preliminary hearing, the victim, then three-years-old, stated she was able to tell the difference between the truth and not telling the truth, was adjudged competent to testify, and testified as to the assaults. Approximately a year later at trial, the victim stated she did not know the difference between the truth and a lie, appeared unable to answer

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questions, became distraught and agitated, began to cry, and was then excused as not competent to testify. The prosecution asked the court to declare the victim unavailable, arguing that she lacked memory of the events giving rise to the charges, and moved to admit her preliminary examination testimony. The court considered the five options constituting unavailability under Michigan's Rules of Evidence, held none applied, and found the victim was not unavailable. The decision was appealed and affirmed, and then appealed to the Michigan Supreme Court. On appeal, the court focused on another example constituting unavailability: when the victim "is unable to be present or to testify at the hearing because of . . . then existing physical or mental illness or infirmity." The court defined "infirmity" as encompassing weakness or feebleness of the mind, as can be caused by an individual's age. The court stated that the infirmity need not be permanent—"the only relevant reference point is the point at which the witness takes the stand." Noting the victim's stated inability to tell the truth from a lie, and her obviously distraught behavior on the stand, the court found that she had a mental infirmity because "she was unable to sufficiently cope with her significant emotional distress and give testimony at trial, a result of her particularly young age." The court further noted that mental infirmity is a fact-specific inquiry, and that courts should attempt to accommodate young witnesses, such as with support persons, prior to making such a determination. Thus, the court concluded that the trial court abused its discretion in ruling the victim was not unavailable, and reversed and remanded.

3. Other

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). Defendant was convicted of predatory sexual assault against a child and endangering the welfare of a child—his daughter—and was sentenced to an indeterminate term of imprisonment of 25 years to life. Defendant appealed his conviction, arguing, *inter alia*, that the trial court erred in permitting the child-victim to be accompanied by a comfort dog during her testimony. Defendant argued that the state law providing guidelines for the fair treatment of child witnesses did not authorize the presence of comfort dogs at a criminal trial, that the trial court's interpretation of the statute so as to permit such presence improperly invaded the domain of the legislature, and that the dog's presence violated defendant's due process right to a fair trial and impaired his right to confront witnesses against him. Defendant also argued that the trial court erred in failing to make a finding of necessity before allowing

the presence of the comfort dog. The court rejected defendant's arguments and affirmed his conviction, concluding that as an issue of first impression, New York courts "should permit the presence of a therapeutic 'comfort dog' in a trial setting when the court determines that the animal may provide emotional support for a testifying crime victim." The court began its analysis by clarifying that there is no state statute that specifically provides that comfort dogs are permissible in a trial setting, but that "the Legislature has generally addressed the treatment of crime victims, and it has endeavored to ensure that those who are victimized by criminal acts are treated fairly in the subsequent judicial process." The court found that one such law—providing for the fair treatment of child witnesses—applied in this case, and was properly interpreted to permit the use of a comfort dog at trial. The court explained that because the relevant language in the law was so general "that it can only be interpreted as authorizing a trial judge to utilize his or her discretion in fashioning an appropriate measure to address a testifying child witness's emotional or psychological stress, based upon the particular needs of that child[.]" the trial court's exercise of its discretion did not usurp the province of the legislature. The court further held that the trial court's decision to permit the victim to testify in the presence of the comfort dog was "a proper exercise of its inherent power and discretion to control the trial proceedings[.]" as comfort dogs have "been shown to ameliorate the psychological and emotional stress of the testifying child witness" and defendant made no showing that the dog's presence had any identifiable impact on the proceeding or was otherwise inherently prejudicial or impaired his right to a fair trial. The court concluded that, to the contrary, the record demonstrated that the dog's "unobtrusive presence" did not violate defendant's confrontation right as defendant had wide latitude to question witnesses, including the child-victim, and that the trial court instructed the jury that it was not to draw any inference because of the dog's presence "and it must be presumed that the jury followed the legal instructions it was given." Lastly, with respect to defendant's argument that the trial court erred in not requiring a showing of necessity, the court explained that this argument was unpreserved as it was raised for the first time on appeal, but that "[i]n any event, this argument is without merit." The court pointed out that the relevant state law does not set forth any "necessity" criterion, and that other jurisdictions that have addressed this issue have not adopted any such criterion.

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). Defendant was convicted of residential burglary after a jury trial in which the jury declined to find that the victim—an individual with developmental delays—was a vulnerable victim. The victim was accompanied by a facility dog during the defense interview, and the victim requested the assistance of the facility dog during his trial testimony. The state moved to allow this accompaniment, basing its argument on the victim's fear of defendant and anxiety about testifying, as well as on his developmental disability. Defendant objected. The trial court permitted the facility dog to assist the victim during his testimony and, at the end of the trial, instructed the jury not to "make any assumptions or draw any conclusions based on the presence of this service dog." The court of appeals affirmed the conviction, holding that the presence of the facility dog did not compromise defendant's right of cross examination, that the prosecutor did not provide the victim with a gift by permitting the assistance of the facility dog, that the trial court properly balanced the needs of the victim against the possibility of prejudice, and that no prejudice resulted from the victim's accompaniment by the facility dog. Defendant appealed, and the state supreme court held that the burden is on the prosecution "to prove that special dispensation" for a witness is necessary, but clarified that it does not require a showing of "substantial need" or "compelling necessity." Rather, because trial courts "have a unique perspective on the actual witness" and are "in the best position" to analyze the need for a "special dispensation," the trial court's exercise of discretion will not be overruled "unless the record fails to reveal the party's reasons for needing a support animal, or if the record indicates that the trial court failed to consider those reasons." Because the trial court in this case did not base its decision on untenable grounds or reasons and its decision was not manifestly unreasonable, and because the record does not support a finding of prejudice resulting from the assistance of the facility dog, the court affirmed defendant's conviction.

B. Right to Due Process, Fairness, Dignity, and Respect

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). Defendant was charged with raping a female Airman. As part of a larger Air Force program to combat sexual assault, the Air Force JAG Corps had implemented a special victims' counsel (SVC) program that affords legal counsel to victims of sexual assault. The victim was appointed an SVC, who entered a formal appearance

in the case and asked the military judge to direct the parties to provide him with copies of motions filed under Military Rules of Evidence 412 (the military's rape shield law), 513 (psychotherapist-patient privilege), and 514 (victim advocate-victim privilege). SVC argued that as the Military Rules of Evidence expressly gave the victim the "right to be heard," she must be provided copies of the motions so that she can understand the arguments being made regarding her privacy interests and thereby be afforded a "meaningful opportunity" to be heard in response. In making this request, SVC acknowledged that the victim is not a party to the case, but contended that she had standing to participate in the proceeding regarding any issues that implicated her rights under Rules 412, 513, and 514. The government did not object to the victim being heard, either personally or through counsel, on factual matters, but argued that neither the victim nor SVC had the right to file motions or make legal arguments; defendant argued that the victim and SVC lacked standing to be heard and that permitting SVC to present legal arguments would unfairly burden the defense and create "an appearance problem." The military judge held that the victim had no standing to move for copies of motions, to be heard through SVC, or to seek any exclusionary remedy during any portion of the trial. The military judge further held that the victim was only authorized to be heard personally, through counsel for the government in pretrial hearings, or—in the event she became incompetent—through a guardian, representative, or conservator. The military judge explained that "to hold otherwise would make [the victim] a 'de facto party' to the court-martial, with a degree of influence over the proceedings akin to a private prosecution, which is antithetical to American criminal law jurisprudence." Victim's appellate counsel filed a petition with the Air Force Court of Criminal Appeals for a writ of mandamus challenging the decisions of the military judge, but the court concluded that it lacked jurisdiction to review the victim's petition. After the court denied the victim's motion for reconsideration en banc, victim's appellate counsel filed a petition for a writ of mandamus with the United States Court of Appeals for the Armed Forces, certifying three issues for review by that court: (1) whether the Air Force Court of Criminal Appeals erred by holding that it lacked jurisdiction to hear A1C LRM's petition for a writ of mandamus; (2) whether the military judge erred by denying A1C LRM the opportunity to be heard through counsel thereby denying her due process under the military rules of evidence, the Crime Victims' Rights Act and the United States Constitution; and (3) whether the court should issue a writ of mandamus.

Upon review, the court answered the first two questions in the affirmative, holding that the Air Force Court of Criminal Appeals erred in finding that it lacked jurisdiction to hear the victim's petition for a writ of mandamus, and that the military judge erred in denying the victim the opportunity to be heard through counsel. As to the first question, the court explained that the issue of whether the victim has limited standing to be heard through counsel in M.R.E. 412 and 513 hearings was ripe and that the harm alleged by the victim has "the potential to directly affect the findings and sentence" in the case. The court concluded that this potential existed because the military judge's ruling "precluding [the victim] from presenting the basis for a claim of privilege or exclusion, with or without counsel, during an ongoing court martial[.]" had "a direct bearing" on the guilt or innocence determination, which would then "form the very foundation of a finding and sentence." The court dismissed the contention that the victim's position as a nonparty to the court martial precluded standing, relying instead on "long-standing precedent that a holder of a privilege has a right to contest and protect the privilege[.]" and recognition by numerous courts, including the United States Supreme Court, that limited participant standing is permissible. As to the second question addressing the substantive merits of the military's judge's decision denying the victim the right to be heard through counsel, the court concluded that the military judge erred in so deciding, as "[s]tatutory construction indicates that the President intended, or at a minimum did not preclude, that the right to be heard in evidentiary hearings under M.R.E. 412 and 513 be defined as the right to be heard through counsel on legal issues, rather than as a witness." The court found that this interpretation was consistent with case law and that although "the military judge suggests that LRM's request is novel, there are many examples of civilian federal court decisions allowing victims to be represented by counsel at pre-trial hearings." The court further found that although the victim's right to be heard through counsel is not absolute, the victim "has a right to have the military judge exercise his discretion on the manner in which her argument is presented based on a correct view of the law." The court also concluded that the military judge erred in finding that judicial partiality was at stake, finding instead that "[i]t is not a matter of judicial partiality to allow a victim or a patient to be represented by counsel in the limited context of M.R.E. 412 or 513 before a military judge, any more than it is to allow a party to have a lawyer." On the issue of the appropriate remedy, the court declined to issue a writ of mandamus, instead returning the matter to the military judge for reconsideration of his ruling in

light of the court's holding.

C. Right to be Heard

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see "Specific Victims' Rights – Right to Due Process, Fairness, Dignity, and Respect."

Barnett v. Antonacci, 122 So. 3d 400 (Fla. Dist. Ct. App. Aug. 28, 2013). Defendant was charged with three counts of fraudulent transactions and one count of second degree grand theft. Defendant moved to dismiss three of the four counts for failure to comply with the statute of limitations. The state then filed a nolle prosequere dismissing all four counts that had been filed against defendant, stating simply that "[a]lthough there was probable cause for arrest and charge of the Defendant(s), the State has entered a Nolle Prosequere in this case." The victim filed a petition for a writ abating the nolle prosequere, arguing that his state constitutional rights to be informed of, and present and heard at all crucial stages of the criminal proceeding were violated by his failure to receive advance notice of the decision to file the nolle prosequere and to be informed that such an action was being considered. The court analyzed the victim's state constitutional "right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings" in the context of the prosecutors' constitutionally dictated and exclusive discretion regarding whether to file charges or to continue with a prosecution. The court then concluded that to harmonize victims' constitutional rights with the separation of powers doctrine embodied in Florida's Constitution, "a prosecutor's decision to file charges or to discontinue prosecution with a nolle prosequere is not a 'stage' of the criminal proceeding." Instead, the court found that the victims' constitutional rights to be informed, present, and heard "contemplates in-court hearings before a judge as the forum for exercising the rights[.]" and that the "right to be heard protected [in the state constitution] is not the right to be heard by the prosecutor, but the right to be heard by a judge." Declining to "transgress the principle of separation of powers," the court of appeals denied the victim's petition for writ relief, affirming the dismissal of the petition.

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). *For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Other."

D. Right to Notice

Barnett v. Antonacci, 122 So. 3d 400 (Fla. Dist. Ct. App. Aug. 28, 2013). *For full case summary, see "Specific Victims' Rights – Right to be Heard."

E. Right to be Present

Barnett v. Antonacci, 122 So. 3d 400 (Fla. Dist. Ct. App. Aug. 28, 2013). *For full case summary, see "Specific Victims' Rights – Right to be Heard."

F. Right to Privacy

1. Closed Courtroom

State v. MacBale, 305 P.3d 107 (Or. 2013). *For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Closed Courtroom."

2. Victim Records

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see "Specific Victims' Rights – Right to Due Process, Fairness, Dignity, and Respect."

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). Defendant, convicted of stalking after a guilty plea, appealed the trial court's award of \$2,800 in restitution to the victim for therapy and moving expenses. First, defendant argued that the trial court erred by denying his request for an *in camera* review of the records concerning the victim's therapy sessions that the Crime Victim's Compensation Board (CVCB) had produced in response to defendant's subpoena. The court of appeals disagreed. Relying on prior case law, the court determined that defendant had failed to satisfy the two-prong test to establish the necessity for an *in camera* review of a crime victim's confidential mental health records in the possession of the CVCB or the district attorney. The court found that defendant's request was "speculative" because it was based solely on defense counsel's "assertion that he had 'reason to believe that the victim's . . . therapy sessions predates'" defendant's criminal conduct. The court also found that defendant's allegations "failed to establish a reasonable evidentiary hypothesis that would disprove the prosecution's requested restitution" because defendant had offered no evidence that shows the victim's therapy expenses "were *solely* attributable to circumstances *before* defendant's misconduct." Second, defendant

argued that the trial court erred by adopting the CVCB's conclusion that the amounts paid for the victim's therapy sessions were proximately caused by defendant's conduct. The court rejected this argument. The court determined that the trial court's findings regarding proximate cause were based on an independent evaluation of the redacted evidence submitted by the prosecution. Next, defendant argued that the trial court erred in awarding restitution for the victim's moving expenses on the basis that there is insufficient evidence to support the finding that the expenses were proximately caused by defendant's conduct. The court disagreed. The court found that the victim impact statement established that the victim relocated because of legitimate concerns about the ongoing threat posed by defendant. Lastly, defendant argued that the restitution order violated his constitutional right to due process. The court rejected this argument on the ground that it found no error in the trial court's order. For these reasons, the court concluded that the trial court did not abuse its discretion and affirmed the restitution order.

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). Defendant was convicted after a jury trial of the second-degree murder of his live-in-girlfriend. On direct appeal to the Iowa Supreme Court, defendant challenged, *inter alia*, the trial court's denial of his request to obtain and review *in camera* the victim's mental health records based on its application of a newly amended state statute. Defendant argued that the statutory provision that governs a criminal defendant's request to access the victim's privileged records is unconstitutional on its face and as applied to him. Relying on *State v. Cashen*, 789 N.W.2d 400 (Iowa 2010), which established a protocol for determining when and how defendants may obtain access to crime victims' mental health records, defendant asserted that the statutory provision is facially unconstitutional to the extent that it conflicts with *Cashen* in three key respects: (1) it requires defendants to make a stronger threshold showing to obtain a victim's mental health records for an *in camera* review; (2) it directs trial courts, as opposed to defense counsel, to perform the initial *in camera* review to identify exculpatory information; and (3) it requires defendants to show that the requested information is not available from another source. The court disagreed, concluding that the statutory provision is facially constitutional and supersedes the *Cashen* protocol. First, the court rejected the facial challenge to the threshold requirement that defendants show "a reasonable probability that the information sought is likely to contain exculpatory information," finding it persuasive that the highest

courts in several other states have upheld the constitutionality of similar statutory requirements. Second, the court rejected the facial challenge to the requirement that the trial court perform the *in camera* inspection on the ground that defendant has no constitutional right to have defense counsel conduct the initial *in camera* review. The court observed that allowing defense counsel to perform the initial review of the victims' private and privileged records would undermine the state's interests in protecting crime victims' confidential information; cause crime victims to experience re-victimization; and cast "a chilling effect . . . over the reporting of domestic abuse, the disclosure of information to treatment providers by victims, the ability of physicians and psychotherapists to treat psychological disorders arising from domestic abuse, and the willingness of victims to testify against their abusers." Lastly, "in light of the importance of maintaining confidentiality" of privileged records, the court rejected the facial challenge to the statutory requirement that defendants must show the requested information is unavailable from another source. The court found no authority that indicates due process forbids requiring defendants to obtain information available from other less intrusive sources before granting access to a victim's privileged records. With respect to the "as applied" challenge, defendant argued that the trial court erred in finding that he failed to meet the threshold showing for an *in camera* review. Defendant claimed that the victim's mental health records were necessary to establish facts to support his PTSD defense. The court rejected this argument, concluding that the trial court correctly denied his request. In reaching its conclusion, the court determined that the confidentiality of mental health records survives the death of the patient. The court observed that a deceased victim has diminished privacy interest in preventing disclosure of the privileged information, but "the societal interest in the privacy of mental health records continues unabated." The court agreed with the trial court's finding that the facts concerning the victim's conduct relating to defendant's PTSD defense had already been made available to defendant by way of deposition testimony and other sources. The court also found that defendant offered no evidence that showed the existence of a nexus between the relevant issues at trial and the mental health treatment received by the victim. Under the circumstances, the court determined that defendant's request amounted to an impermissible "fishing expedition." For these and other reasons, the court affirmed defendant's conviction.

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). Defendant was charged with one count of repeated sexual assault of a child—his stepdaughter. The trial court granted defendant’s motion for *in camera* inspection of the child-victim’s privileged therapy records, and the victim refused to consent to the release of the records. The trial court honored the victim’s assertion of her absolute statutory privilege with respect to her therapy records, and ordered that she would nevertheless be allowed to testify at trial, but with an instruction to the jury informing it of the victim’s refusal and stating that because of the refusal a presumption exists that the contents of the records would have been helpful to the defense. Both defendant and the state appealed. In ruling, the court of appeals found it must adhere to the outcome in an earlier case, *State v. Shiffra*, in which it affirmed the trial court’s order for *in camera* inspection of the victim’s psychiatric records, agreed that the victim was not obligated to disclose the records, but concluded that the trial court did not err in exercising its discretion when it suppressed the victim’s testimony as a sanction for her refusal to release the records. Relying on *Shiffra*, the court of appeals affirmed the trial court’s order requiring *in camera* inspection of the victim’s records, reversed the trial court’s order allowing the victim to testify while she is exerting her privilege, and remanded. On appeal to the Wisconsin Supreme Court, the court in a per curiam opinion reached majority decisions on the three issues before it, but because of varying rationales from the justices the court did not provide analysis. First, a majority of the court determined that *Shiffra* should not be overruled; second, that defendant had met his burden in making an initial showing of materiality entitling him to *in camera* review of the victim’s privileged records; and third, that the victim was not required to produce the privately-held privileged mental health records for *in camera* review, and that the victim may testify in the case despite her refusal to waive the privilege. In a footnote, the court noted that two justices would not affirm the trial court’s decision to give a curative jury instruction regarding any inferences to be taken from the victim’s invocation of her privilege, but this finding did not appear to garner a majority and thus was not a part of the court’s decision. Accordingly, the court modified and affirmed the decision of the court of appeals, and remanded to the trial court for further proceedings consistent with its opinion.

3. Other

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision

order). Defendant, charged with second-degree murder, sought pretrial discovery from the deceased victim’s girlfriend, who is also the mother of the deceased victim’s child. In an earlier special action proceeding, the court of appeals found that the deceased victim’s child meets the definition of “victim” for purposes of the victims’ rights laws and concluded that the child-victim’s mother may assert the same rights as the child-victim, including the right to refuse a defense interview. In this special action proceeding, the state challenged the trial court’s order granting defendant’s motion to establish the paternity of the child-victim to confirm “victim” status. The state argued that the trial court committed reversible error when it ordered: (1) the child-victim to submit a buccal swab for DNA testing; and (2) an evidentiary hearing to be set to determine paternity. The state also argued that the trial court’s orders violated the victims’ state constitutional rights to privacy, to justice, to be treated with fairness, to be free from intimidation and harassment, and to refuse any defense-initiated discovery request. Without commenting on the victims’ rights arguments, the court of appeals agreed with the state and vacated the trial court’s orders. The court observed that defendant has no constitutional right to pretrial discovery, and that the paternity of the child is not an element of the charged offense. The court determined that the trial court may not order the child to undergo DNA testing or order the state to prove victim status on the basis of mere defense speculation that the deceased victim was not the parent of the child because the child’s parents were unmarried and not living together at the time of the murder. The court explained that defendant’s request for a judicial inquiry into victim status was especially inadequate in this case because the record shows that the mother “asserted her son’s paternity at her first opportunity” and there is no evidence that suggests she has taken a contrary position or that witnesses will testify otherwise.

State v. West, No. 107,865, 2013 WL 5422316 (Kan. Ct. App. Sept. 27, 2013) (per curiam) (memorandum opinion). Following a jury trial, defendant was convicted of multiple crimes involving his stepdaughter, including three counts of rape. As part of the child-victim’s testimony on direct examination, she testified about the relative size of defendant’s penis. The trial court refused to allow defendant to cross-examine the child-victim about her exposure to the “private areas” of other individuals, citing the jurisdiction’s rape shield protections. On appeal, defendant argued, *inter alia*, that the trial court impermissibly prohibited him from cross-examining

the victim about her statement, as he believed it to be relevant to her credibility, and because the rape shield provision permits defendants to engage in cross-examination of a victim about sexual conduct if the prosecutor first introduces evidence relating to the victim's sexual conduct. The court of appeals held that because the state introduced the statement at issue, defendant was explicitly permitted to cross-examine her about that statement. However, the court held that because this statement was not a "weighty part" of the state's case, impeachment relating to the statement would not have directly rebutted the victim's claim of sexual abuse, and the statement itself was not critical to defendant's "theory of defense," the trial court's error in limiting cross-examination about the victim's statement did not affect the outcome of the trial and did not require the reversal of defendant's conviction. For this reason, and others, defendant's conviction and sentence were affirmed.

State v. Richardson, 308 P.3d 526 (Utah 2013). Defendant appealed from his convictions for rape and forcible anal sodomy of his live-in girlfriend. He claimed error in his trial in the exclusion of evidence of the specific nature of his prior sexual relationship with the victim under Utah's Rape Shield Law. Specifically, he had sought to introduce specific evidence that he and the victim had engaged previously in consensual instances of oral sex and anal sex. Although the trial court allowed defendant to present general evidence that he and the victim had a sexual relationship, it found the more detailed evidence to be inadmissible as insufficiently relevant under the Rape Shield law, absent evidence or argument from the state that the parties had never engaged in consensual anal intercourse. On appeal, the court reversed. It found that the specific instances of anal sex between defendant and the victim fell within one of the exceptions to the Rape Shield law, which permits "evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered . . . by the accused to prove consent . . . [if it] is otherwise admissible" under Utah's evidentiary rules. The court found that the behavior fell squarely within the exception. Further, it disagreed with the trial court's interpretation that the evidence was "not sufficiently relevant to be admissible" under rule 412(b). The court stated that there was no heightened relevancy test for evidence of specific instances of sexual activity between the victim and the accused; rather, relevancy should be interpreted leniently, as having "any tendency to make the existence of any fact that is of consequences to the determination of

the action more probable or less probable than it would be without the evidence." The court held that defendant's proffered evidence "easily clears this low bar." It stated that the evidence "makes consent more probable here because it contextualizes the victim's sexual relationship" with defendant. It continued: "If the general evidence of a sexual relationship was relevant, the more detailed evidence was as well. . . . If a person is more likely to consent to sex with a past sexual partner, she is also more likely to consent to the kind of sexual relations she has had with a partner in the past." Finding that its confidence in the verdict against defendant was sufficiently undermined by the exclusion of this evidence, the court reversed and ordered a new trial.

G. Right to Protection

1. Protective Orders

State v. Sinclair, No. 12-1145, 2013 WL 3458146 (Iowa Ct. App. July 10, 2013). Defendant, originally charged with harassment in the third degree, was ordered to have no contact with the victim as a condition of pretrial release. Pursuant to a plea agreement, defendant entered an *Alford* plea to an amended charge of disorderly conduct; and the trial court modified the terms of the no-contact order and extended it for one year. After the trial court granted the victim's motion to extend the modified no-contact order for another year, defendant appealed. First, defendant argued that the victim did not have legal standing to seek an extension of the no-contact order because disorderly conduct is a "victimless crime." The court of appeals rejected this argument and concluded that the victim has legal standing to request the extension. The court determined that disorderly conduct is a public offense that has a victim, and that victim is the person who sought the protection of the no-contact order as he occupied the residence and "suffered unreasonable distress" from defendant's conduct. The court also found that the no-contact order's statutory definition of "victim" was met because the victim is "a person who has suffered . . . emotional . . . harm as a result of a public offense." Second, defendant argued that the victim's motion was untimely because it was filed after the modified no-contact order expired and therefore outside the statutory deadline for applications to extend a no-contact order. The court also rejected this argument. The court determined that the date the sentencing order was entered—rather than the earlier date when the trial court memorialized the parties' plea agreement—was the effective date for the modified no-contact order. Because the victim's motion was

filed within one year of that date, the court found it was timely. Lastly, defendant argued that the extension of the no-contact order violated his right to due process for several reasons. After determining that defendant had failed to preserve his due process arguments for appeal, the court declined to address their merits. For these reasons, the court affirmed the trial court's extension of the no-contact order.

2. Other

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc).

*For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Other."

H. Right to Refuse Discovery Requests

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision order).

*For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

I. Right to Restitution

1. Attorney's Fees

United States v. Skowron, 529 Fed. Appx. 71 (2d Cir. 2013) (summary order). Defendant, a former employee at Morgan Stanley, was convicted after a guilty plea of conspiring to commit securities fraud and obstruct justice. The trial court ordered defendant to pay Morgan Stanley, a victim of his offense, restitution in the amount of \$10,247,853, which represented 20 percent of defendant's compensation during the relevant period plus almost \$4 million in attorneys' fees and related costs. Defendant appealed the restitution order, arguing that it violates the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. § 3663A, for several reasons. First, defendant argued that the trial court erred when it concluded that the crime to which he pleaded guilty was equivalent to the commission of honest services fraud against the victim, and a portion of his compensation was therefore the victim's lost "property" under the MVRA. The court of appeals rejected this argument, holding that the trial court did not abuse its discretion in ordering restitution that equals a portion of defendant's salary during the period. In reaching its holding, the court relied on a prior decision in which it concluded that an "employer who pays for honest services but receives something less" is entitled to recover in restitution the compensation that it paid to the employee. In such a case, the court explained that the employer-

victim may recover "the difference in the value of the services that [the defendant] rendered . . . and the value of the services that an honest [employee] would have rendered." The court did not find it relevant that defendant was not actually convicted of honest services fraud. Instead, the court examined the facts that supported defendant's conspiracy conviction—*i.e.*, defendant's participation in a bribery scheme to obtain inside information and his ensuing cover-up to prevent discovery by the victim and the Securities and Exchange Commission (SEC)—and found that they establish that defendant had deprived the victim of his honest services. Second, defendant argued that the trial court erred in awarding restitution for the attorneys' fees and costs that the victim incurred as a result of the SEC insider trading investigation on the ground that they were not "necessary . . . other expenses incurred during participating in the investigation or prosecution of the [criminal] offense" under the MVRA. The court rejected this argument, holding that the trial court committed no error. In reaching its holding, the court relied on an earlier decision in which it concluded that a restitution award of legal expenses under the MVRA may include expenses incurred by an employer-victim during an internal investigation that was "related to" a pending criminal investigation. The court observed that the requisite causal relationship exists here, as the trial court found that defendant's actions caused the victim to conduct "an internal investigation related to an SEC investigation that led directly to the filing of parallel criminal . . . charges." Lastly, defendant argued that the trial court erred in awarding restitution for the attorneys' fees and costs that it advanced to its employees (other than defendant) because those employees were not "victims" under the MVRA. The court also rejected this argument. The court determined that it was reasonable for the district court to find that the victim was obligated to incur those costs because it was obligated to indemnify its employees under the circumstances. For these and other reasons, the court affirmed the trial court's judgment.

State v. Mockovak, 175 Wash. App. 1032 (Wash. Ct. App. 2013). Defendant was convicted of attempted murder and of solicitation to commit the murder of his business partner, a fellow doctor with whom he worked. The state sought \$220,439.95 in restitution on behalf of the victim (including restitution for attorney fees, hiring a replacement surgeon during the period the victim attended trial, and for expenses associated with the retention of a public relations firm to assist the business that was co-owned by defendant and the victim in the aftermath of defendant's arrest),

and the trial court granted restitution only for certain medical expenses, totaling \$1,543.34. Defendant appealed the restitution order, arguing that the trial court abused its discretion in ordering restitution expenses; the state cross-appealed, arguing that the trial court applied an unduly narrow legal standard in limiting restitution to medical expenses. The court of appeals began by observing that “[r]estitution is allowed only for losses that are causally connected to the crimes charged.” The court of appeals continued, finding that “[i]mposition of restitution for injury incurred solely as the result of a criminal trial is not permissible because such an injury is not the result of the defendant’s crime.” Accordingly, as reasoned by the appellate court, because a defendant’s choice to exercise his or her right to a jury trial is only “connected with” the crime charged and is not “an act constituting a part of the charge,” restitution cannot be ordered for expenses incurred “solely as a result of the trial.” The appellate court then affirmed the trial court’s restitution order for medical expenses, as it found that the medical expenses incurred by the victim as a result of a stress-related medical condition “flowed directly from the crime itself.” The appellate court affirmed the trial court’s denial of restitution for the cost of hiring a replacement surgeon during the time the victim attended defendant’s trial, reiterating that defendant’s “criminal trial was not a direct result of [his] crimes and, accordingly, any funds expended as a result of that trial are not compensable.” The appellate court also affirmed the denial of restitution for the other expenses sought, as it found, *inter alia*, that the retention of the public relations firm was hired to ameliorate the harmful effects of the criminal trial, that damage to business reputation as a result of crime is an “intangible” loss not subject to restitution, and that the civil suits were “not sufficiently connected to the defendant’s crime” to allow restitution for attorney fees incurred in those actions. The court of appeals affirmed the trial court’s restitution order.

2. Calculation Method

United States v. Lundquist, 731 F.3d 124 (2d Cir. 2013). Defendant, convicted of receiving and possessing images of child sexual abuse, appealed the district court’s restitution order, arguing, *inter alia*, that he was not a proximate cause of the victim’s losses, that he should be able to depose the victim or learn her identity to investigate her claims, and that the district court committed error both in calculating the victim’s losses and in holding defendant jointly and severally liable for harm caused by separate defendants. The court affirmed the district court’s

finding of proximate cause, based on the materials provided by the victim, declining to adopt a requirement of proof that the defendant directly caused some discrete, measurable aggravation of the victim’s injuries. The court of appeals further determined that the district court did not abuse its discretion by not allowing defendant to depose the victim, as statutory authority explicitly provides that victims are not required to participate in any phase of a restitution order; furthermore, defendant had ample opportunity to raise objections to the materials submitted by the victim, and “failed to do so.” The court determined, however, that the district court clearly erred in calculating the total amount of loss resulting from defendant’s receipt and possession of images of the victim’s childhood abuse, as a defendant “cannot be ordered to make restitution for harm” that was caused by the perpetrator of her childhood abuse. Accordingly, the court instructed the district court on remand to apportion some of the victim’s total losses to her original abuser before determining the “loss caused by [the victim’s] knowledge that individuals had downloaded images of the abuse.” Similarly, the district court was instructed to exclude from the calculation of loss to which defendant may have contributed any counseling costs or other losses that were incurred prior to the time defendant obtained her image, as defendant could not have proximately caused those losses. Finally, the court found the district court abused its discretion by holding defendant jointly and severally liable for harm caused by other defendants not before the court or included in the same indictment, as the district court does not have jurisdiction over all of the responsible parties. The court then affirmed the decision in part, but vacated the amount of restitution owed, remanding the case to the trial court for recalculation.

United States v. Skowron, 529 Fed. Appx. 71 (2d Cir. 2013) (summary order). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Attorney’s Fees.”

People v. Petronella, 160 Cal. Rptr. 3d 144 (Cal. Ct. App. 2013). Defendant was found guilty of 33 counts of insurance fraud for submitting false monthly payroll reports on behalf of his company to the State Compensation Insurance Fund (SCIF). Defendant was found to have submitted the falsified reports to reduce the premiums to be paid to SCIF for his company’s worker’s compensation insurance. The court sentenced defendant to 10 years in prison, and ordered him to pay \$500,000 in restitution to SCIF. Both defendant and the state challenged the

restitution award on the basis that the amount of the restitution award was arbitrary, but disagreed as to the reasons why and what should happen upon remand. Defendant argued, *inter alia*, that there was insufficient evidence to support the restitution award and that the losses incurred resulted from “SCIF’s incompetent claims handling[,]” and not his criminal conduct. The state argued that because the trial court refused to find SCIF’s statements of loss sufficient to establish a *prima facie* case and instead insisted that the state perform what was essentially a forensic audit of defendant’s records, the court improperly placed a higher burden on the state than was required by the victim restitution statute. Defendant further argued that the state’s appeal of the restitution order must be dismissed because it was not authorized by statute. The court rejected defendant’s arguments, holding that the trial court abused its discretion by relying on irrelevant factors and without considering all of the evidence presented to it in fashioning its restitution order, and that the state may properly maintain the appeal from the restitution order. First, regarding the validity of the state’s appeal, the court held that “[g]iven the importance of the prosecution’s presence at victim restitution hearings” and “the state’s interest in ensuring the constitutional right to victim restitution be properly enforced . . . the [state] ha[s] a right to appeal the trial court’s restitution order.” Second, the court found that a review of the court’s reasons for awarding \$500,000 in restitution “clearly indicates it abused its discretion in reaching the decision.” The court explained that at trial a certified public accountant testified that defendant underreported his payroll by over \$29 million, and that the jury returned a finding that defendant “engaged in a pattern of related fraudulent . . . conduct involving the loss of *more than* \$500,000.” The court concluded that by failing to consider all of the evidence presented to it concerning restitution and relying on irrelevant factors to pick a figure that was less than what the jury found to have been SCIF’s loss, the court clearly abused its discretion by not “employing a method that is rationally designed to determine the . . . victim’s economic loss.” Further, the court found that none of the reasons supplied by the trial court supported its award. For example, the court found that the trial court’s belief that “it’s time to move on[,]” is not a proper basis for failing to determine the correct amount of restitution to award; instead, if the court believed additional evidence was needed to determine the amount of SCIF’s loss, it could have imposed sentence and continued the restitution hearing. The court also found that other reasons supplied by the trial court—including whether SCIF had a right to seek recovery in a civil action, and the imposition of

a criminal fine—were “contrary to the applicable law as well as irrelevant in determining the amount of restitution.” The court also concluded that the trial court’s apparent conclusion that SCIF contributed to the amount of its loss of premiums by failing to cancel defendant’s policy years earlier when it first discovered the possibility that defendant was intentionally underreporting his payroll was in error, as defendant was convicted of intentional fraud and in the civil justice system “comparative fault principles do not apply in cases involving intentional torts.” The court then reversed the restitution order and remanded for further proceedings.

3. Causation

United States v. Lundquist, 731 F.3d 124 (2d Cir. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

People v. Petronella, 160 Cal. Rptr. 3d 144 (Cal. Ct. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

Stachowski v. State, 73 A.3d 290 (Md. Ct. Spec. App. 2013). Defendant was separately convicted of committing a variety of offenses, including violations of Maryland’s Home Improvement Act and passing a bad check. Defendant was sentenced as to the first offenses relating to the Home Improvement Act, and subsequently violated probation by failing to make restitution to the three victims in that case. The probation violations relating to the first offense and the conviction for passing a bad check—were then considered by the court at a later proceeding, during which a plea agreement was reached. As part of that plea agreement, defendant was required to pay restitution to the victims of the home improvement violations; however, the restitution orders were tied to a condition of probation in the bad check offense. Defendant appealed, and the question on appeal was certified as: “Where a conviction is entered by a guilty plea and the sentence is imposed and suspended in favor of probation, may a trial judge, as one of the conditions of the probation, order that the defendant pay restitution arising from an unrelated case?” The court answered in the negative, finding that a defendant may not be required to pay restitution

to victims in an unrelated case. The court stated that a trial court has discretion to impose restitution, however, that discretion is limited by statute. Under the statute, restitution may be ordered if “as a direct result of the crime . . . property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased.” The term “victim” is further defined as a person who suffers property damage or loss “as a direct result of a crime.” The court found that “[t]he losses suffered by the victims in the home improvement case were not the result, direct or otherwise, of the bad check charge which was the basis of the suspended sentence and probation.” Although the court noted that a defendant may agree to pay restitution for crimes other than the one resulting in the guilty plea, it stated that the charges must still arise out of the same transaction and can only involve crimes related to the one which is the basis of the conviction. Accordingly, it concluded that the order requiring defendant to pay restitution to the victims of the home improvement case was illegal. The court then determined that defendant did not waive his right to appeal by expressly agreeing to pay restitution to the victims in the home improvement cases. The court stated that there was no statutory or case law suggesting that a court’s authority to enter a judgment of restitution can be expanded by agreement of the parties, and consent cannot change an illegal sentence into a legal sentence. Thus, the court vacated the condition of probation requiring defendant to pay restitution to the victims of the home improvement case, and otherwise affirmed the judgment.

State v. Mockovak, 175 Wash. App. 1032 (Wash. Ct. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Attorney’s Fees.”

4. Collection

In re Stake Center Locating, Inc., 731 F.3d 949 (9th Cir. 2013) (per curiam). Defendant, a former employee of the victim, pleaded guilty to tax evasion and wire fraud. Under the terms of the plea agreement, defendant agreed to pay the victim \$763,846 in restitution. The victim moved to compel the government to initiate criminal forfeiture proceedings to obtain property in the possession of non-parties that was allegedly traceable to defendant’s crimes and subject to forfeiture. The district court denied the victim’s motion, and the victim petitioned for a writ of mandamus. The Ninth Circuit held that the district court did not abuse its discretion in denying the victim’s motion, as the

Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, and the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. § 3663A, guarantee victims the right to restitution, not the right to criminal forfeiture. The court observed that criminal forfeiture and restitution serve different purposes and that third parties are not subject to restitution. The court also observed that although forfeiture is mandatory for wire fraud, it is only mandatory if the government exercises its discretion to seek forfeiture; and that victims’ rights do not permit victims to infringe on prosecutorial discretion. For these reasons, the Ninth Circuit denied the victim’s petition for a writ of mandamus.

5. Joint and Several Liability

United States v. Lundquist, 731 F.3d 124 (2d Cir. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

6. Jurisdiction

State v. Venacio, No. 1CA-CR-12-0711, 2013 WL 3963434 (Ariz. Ct. App. Aug. 1, 2013) (memorandum decision). Defendant pleaded guilty to one count of burglary in the third degree and, as part of the plea agreement, agreed to pay restitution to the victim in an amount not to exceed \$25,000. At sentencing, the trial court noted that it would retain jurisdiction over the restitution issue for one year from the date of sentencing. The state received the restitution information within the one-year period, but did not file its request for restitution until over a year later, when it requested restitution be ordered in the amounts of \$750 to be paid to the victim and \$1,125 to the victim’s insurance company. After a hearing, the trial court denied restitution, finding that the state had ample opportunity to set a restitution hearing before the expiration of the one-year deadline. The state appealed. On appeal, the state argued that the trial court erred when it set “an arbitrary ‘jurisdictional’ deadline that violated the crime victim’s right to obtain restitution.” The court of appeals held that the trial court erred when it said that it only had jurisdiction over the restitution issue for one year from the time of sentencing, when Arizona statutory authority clearly provides that the trial court retains jurisdiction over restitution until the amount is paid in full or until defendant’s sentence expired. However, the appellate court found that the trial court did not abuse its discretion, observing that the trial court may set and enforce reasonable deadlines for the filing of restitution claims. The court of appeals

observed in dicta that “the State’s untimely [request for restitution] waive[d] the victim’s otherwise constitutional and statutory right to restitution,” before affirming the trial court’s order denying restitution.

Stachowski v. State, 73 A.3d 290 (Md. Ct. Spec. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Causation.”

State v. Wagoner, 307 P.3d 528 (Or. Ct. App. 2013). Defendant pleaded guilty to one count of identity theft. The victim provided her restitution information in a timely fashion to the district attorney’s office, however, the victim advocate failed to forward the information to the prosecutor. As a result, at sentencing, the prosecutor told the court that the victim had not provided restitution information, and the court awarded no restitution. After learning of the mistake, the victim filed a motion asserting her state constitutional right to receive prompt restitution. The trial court found in her favor and entered a supplemental judgment awarding restitution in the amount of \$800. Defendant appealed, arguing that pursuant to state statute, the trial court did not have authority to award restitution more than 90 days after the entry of judgment. The Oregon Court of Appeals affirmed, holding that the trial court had authority under the Oregon Constitution to award the victim restitution. The court relied on precedent in finding that the trial court retained jurisdiction to order restitution outside the 90-day period provided for by statute, where the victim would otherwise be deprived of her state constitutional right to remedy by due process of law. The court explained that under the state constitution, such a remedy may invalidate a “ruling of the court[,]” but not a “conviction or adjudication[,]” and that vacating a defendant’s sentence and ordering a resentencing is a permissible remedy because the criminal sentencing is a “ruling of a court.”

7. Settlement Agreement

Stachowski v. State, 73 A.3d 290 (Md. Ct. Spec. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Causation.”

8. Other

United States v. Okoye, 731 F.3d 46 (1st Cir. 2013). Defendant pleaded guilty to three counts of wire fraud and one count of identity theft, in connection with a number of fraudulent mortgages he obtained using his brother’s identity. The plea agreement

signed by defendant contained a waiver of his right to appeal his sentence, as well as an acknowledgement that payment of restitution to the defrauded entities would be a component of his sentence. On appeal, defendant argued that this waiver did not apply to bar his challenge regarding the restitution ordered by the court, and challenged the restitution that was ordered to the financial institution that was the successor-in-interest to one of the defrauded entities. The court of appeals held that the waiver provision in the plea agreement applied to the restitution component of defendant’s sentence, as the plea agreement explicitly established that the sentence would include “restitution in the amount of the loss.[.]” and dismissed defendant’s appeal.

United States v. Skowron, 529 Fed. Appx. 71 (2d Cir. 2013) (summary order). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Attorney’s Fees.”

United States v. Lundquist, 731 F.3d 124 (2d Cir. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

In re Stake Center Locating, Inc., 731 F.3d 949 (9th Cir. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Collection.”

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

State v. Mockovak, 175 Wash. App. 1032 (Wash. Ct. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Attorney’s Fees.”

J. Right to be Free From Unlawful Search and Seizure

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision order). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Other.”

II. STANDING

A. Definition of “Victim”

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision order).

*For full case summary, see “Specific Victims’ Rights – Right to Privacy – Other.”

State v. Sinclair, No. 12-1145, 2013 WL 3458146 (Iowa Ct. App. July 10, 2013). *For full case summary, see “Specific Victims’ Rights – Right to Protection – Protective Orders.”

B. Prosecutor Standing

People v. Petronella, 160 Cal. Rptr. 3d 144 (Cal. Ct. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

C. Victim Standing – Criminal Justice System

1. Trial Court

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Due Process, Fairness, Dignity, and Respect.”

State v. Sinclair, No. 12-1145, 2013 WL 3458146 (Iowa Ct. App. July 10, 2013). *For full case summary, see “Specific Victims’ Rights – Right to Protection – Protective Orders.”

2. Appellate Court

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Due Process, Fairness, Dignity, and Respect.”

D. Victim Standing – Ripeness and Mootness

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Due Process, Fairness, Dignity, and Respect.”

III. ENFORCEMENT

A. Participation of Victim’s Attorney

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Due Process, Fairness, Dignity, and Respect.”

B. Remedies for Rights Violations – Voiding Plea, Sentence, or Parole Decision

State v. Wagoner, 307 P.3d 528 (Or. Ct. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Jurisdiction.”

C. Writs – Mandamus

In re Stake Center Locating, Inc., 731 F.3d 949 (9th Cir. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Collection.”

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenber, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Due Process, Fairness, Dignity, and Respect.”

Barnett v. Antonacci, 122 So. 3d 400 (Fla. Dist. Ct. App. Aug. 28, 2013). *For full case summary, see “Specific Victims’ Rights – Right to be Heard.”

D. Waiver of Rights – By Prosecutor

State v. Venacio, No. 1CA-CR-12-0711, 2013 WL 3963434 (Ariz. Ct. App. Aug. 1, 2013) (memorandum decision). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Jurisdiction.”

IV. STANDARD OF REVIEW – Mandamus

In re Stake Center Locating, Inc., 731 F.3d 949 (9th Cir. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Collection.”

V. CONSTITUTIONAL ISSUES RELATED TO VICTIMS’ RIGHTS

A. Right of Access – Public and Media

State v. MacBale, 305 P.3d 107 (Or. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Closed Courtroom.”

B. Defendant’s Right to Confrontation

State v. West, No. 107,865, 2013 WL 5422316 (Kan. Ct. App. Sept. 27, 2013) (per curiam) (memorandum opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Other.”

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

C. Defendant’s Right to Due Process

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

State v. Sinclair, No. 12-1145, 2013 WL 3458146 (Iowa Ct. App. July 10, 2013). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Protective Orders.”

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

D. Defendant’s Right to Fair Trial

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

State v. West, No. 107,865, 2013 WL 5422316 (Kan. Ct. App. Sept. 27, 2013) (per curiam) (memorandum opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Other.”

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

E. Defendant’s Rights Related to Punishment

Stachowski v. State, 73 A.3d 290 (Md. Ct. Spec. App. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Causation.”

F. Separation of Powers

Barnett v. Antonacci, 122 So. 3d 400 (Fla. Dist. Ct. App. Aug. 28, 2013). *For full case summary, see “Specific Victims’ Rights – Right to be Heard.”

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

VI. EVIDENTIARY ISSUES RELATED TO VICTIMS’ RIGHTS

A. Confidentiality

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

B. Consent - Sexual Assault

State v. Elias, --- P.3d ---, No. 39139, 2013 WL 3480737 (Idaho Ct. App. July 12, 2013). Defendant broke into the victim’s house and, while she was sleeping, inserted his finger into her vagina. He was convicted of burglary and forcible penetration by use of a foreign object. Defendant appealed, arguing there was insufficient evidence to show that he committed forcible penetration by use of a foreign object as defined by Idaho’s statute. The statute prohibits penetration by the use of force or threat of force where the victim is incapable of giving consent due to unsoundness of mind or where the victim is prevented from resisting due to an intoxicant. The court first found that defendant did not penetrate the victim by use of force or threat of force. The court noted that there were two approaches to what constitutes force—the extrinsic force requirement, which requires force beyond that inherent in the act itself, and the inherent force requirement, which does not. The court noted that, in the context of Idaho’s rape statute, the Idaho Supreme Court had determined that the extrinsic force requirement applied. Because

of the overlap between the forcible penetration statute and the rape statute, the court held that the extrinsic force requirement therefore applied to forcible penetration as well. The court then concluded that the defendant's actions did not constitute force. "[Defendant] used the unlawful entry while she slept and her vulnerability to accomplish the act of penetration, but we are unconvinced this constitutes the type of 'force' [required] under the extrinsic force standard." The court concluded that "[t]he victim endured an unconsented to and initially unperceived violation of her body while she slept and thereafter awoke and the conduct ceased. Such behavior by a defendant is deplorable and blameworthy, but under the statute as written and charged, not a violation of [the statute.]" The court further concluded that "unsoundness of mind" does not include being asleep, and that the victim was not intoxicated. Accordingly, the court held that the evidence was insufficient to support a finding of guilt as to the forcible penetration charge, and the judgment was vacated.

State v. Richardson, 308 P.3d 526 (Utah 2013). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

C. Discovery

1. Victim Records

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Victim Records."

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Victim Records."

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Victim Records."

2. Other

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision order). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

D. Hearsay – Accommodations for Child Victims

People v. Duncan, 835 N.W.2d 399 (Mich. 2013). *For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Support Person Presence."

E. Privilege – Statutory

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenberg, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see "Specific Victims' Rights – Right to Due Process, Fairness, Dignity, and Respect."

State v. Thompson, 836 N.W.2d 470 (Iowa 2013). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Victim Records."

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Victim Records."

F. Rape Shield

Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenberg, 72 M.J. 364 (C.A.A.F. 2013). *For full case summary, see "Specific Victims' Rights – Right to Due Process, Fairness, Dignity, and Respect."

State v. West, No. 107,865, 2013 WL 5422316 (Kan. Ct. App. Sept. 27, 2013) (per curiam) (memorandum opinion). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

State v. MacBale, 305 P.3d 107 (Or. 2013). *For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Closed Courtroom."

State v. Richardson, 308 P.3d 526 (Utah 2013). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

G. Relevance

State v. MacBale, 305 P.3d 107 (Or. 2013). *For full case summary, see "Specific Victims' Rights – Right to Courtroom Accommodations – Closed Courtroom."

State v. Richardson, 308 P.3d 526 (Utah 2013). *For full case summary, see "Specific Victims' Rights – Right to Privacy – Other."

VII. PROCEDURAL ISSUES RELATED TO VICTIMS' RIGHTS – Jury Instructions

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Dye, 309 P.3d 1192 (Wash. 2013) (en banc). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

VIII. VICTIM IMPACT STATEMENTS

People v. Eurich, No. 11CA1668 (Colo. App. July 11, 2013) (slip opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.”

IX. CHILD VICTIMS

United States v. Lundquist, 731 F.3d 124 (2d Cir. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Restitution – Calculation Method.”

State ex rel. Montgomery v. Hegyi, No. 1 CA-SA 13-0195 (Ariz. Ct. App. Aug. 29, 2013) (decision order). *For full case summary, see “Specific Victims’ Rights – Right to Privacy.”

State v. West, No. 107,865, 2013 WL 5422316 (Kan. Ct. App. Sept. 27, 2013) (per curiam) (memorandum opinion). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Other.”

People v. Duncan, 835 N.W.2d 399 (Mich. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Support Person Presence.”

People v. Tohom, 109 A.D.3d 253 (N.Y. App. Div. 2013). *For full case summary, see “Specific Victims’ Rights – Right to Courtroom Accommodations – Other.”

State v. Johnson, 832 N.W.2d 609 (Wis. 2013) (per curiam). *For full case summary, see “Specific Victims’ Rights – Right to Privacy – Victim Records.” ■

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