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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF COCONINO**

11 STATE OF ARIZONA,
12
13 Plaintiff,
14
15 v.
16
17 JASON ERIC CONLEE,
18
19 Defendant,
20
21 E.H.
22
23 Crime Victim.

CR2016-00434

**CRIME VICTIM'S
RESTITUTION MEMORANDUM**

(Hon. Dan Slayton)

24
25 Crime Victim, E.H., by and through undersigned counsel, respectfully requests this Court to impose an order of restitution in the amount of \$130.80¹ for travel expenses associated with the costs of traveling to Flagstaff for trial preparations and trial testimony. This motion is supported by the attached memorandum of points and authorities.

¹ The current restitution request is for \$130.80. However, the E.H. intends to make another restitution request for costs associated with future counseling costs.

1
2 Respectfully submitted October 7, 2019

3 By _____
4 Colleen Clase
5 Attorney for Crime Victim
6 Arizona Voice for Crime Victims

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Facts**

9 E.H., is the sister of homicide victim, J.H., who died at the hands of family
10 members after six tortuous years. Upon his death, J.H. weighed only 29 pounds, was
11 severely malnourished, and was a victim of neglect and abuse. There were four
12 defendants charged in connection with J.H.'s murder.

13
14 Defendant Jason Conlee pled guilty to Endangerment, a class 6 felony, and
15 was sentenced to probation for a period of three years. Defendant Lenda Hester
16 pled guilty to Child Abuse and was sentenced to probation. Defendant Kimmy
17 Wilson pled guilty to Endangerment, a class 6 felony, and was sentenced to
18 probation for one year. Defendant Lillian Hester went to trial and was convicted of
19 First Degree Murder, a class 1 felony, and was sentenced to life imprisonment.
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21

22 Prior to Defendant Lillian Hester being convicted, the victim E.H. incurred
23 travel expenses associated with the trial. These expenses included a 120 mile round
24 trip from Camp Verde to Flagstaff on July 30, 2018, for trial preparation with the
25

1 State, and a 120 mile round trip on August 1, 2018, for trial testimony. The amount
2 of restitution requested for travel expenses² associated with the trial is \$130.80.³

3 Counsel for E.H. has reached out to Counsel for Wilson, Counsel for Counsel
4 for Defendant Lenda Hester, and Counsel for Defendant Conlee regarding this
5 motion to see if they are willing to stipulate to the mileage. Counsel was not able
6 to reach out to counsel for Lillian Hester because her former trial counsel does not
7 know who is handling her restitution claim. However, we have copied her appellate
8 counsel on our restitution motion. Counsel for E.H. has not heard back of this filing
9 but wanted to give Defendant Wilson time to respond before the period of probation
10 ends.
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13 **II. Legal Argument**

14 **A. E.H. is a victim and has standing, though her counsel, to assert and** 15 **enforce her constitutional right to restitution under A.R.S. § 13-** 16 **4437(A).**

17 The VBR defines a victim as a person against whom the criminal offense has
18 been committed or, if the person is killed or incapacitated, the person's spouse,
19 parent, child or other lawful representative, except if the person is in custody for an
20 offense or is the accused. Ariz. Const. art. II, 2.1(C).
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24

25 ² The victims anticipate filing another restitution request for costs associated with future counseling costs..

³ 120 miles * \$0.545 per mile = \$65.40. This 120 mile trip occurred twice resulting in a total expense of \$65.40 * 2 = \$130.80.

1 The people, through their legislative power, enacted the VBR. *State v.*
2 *Roscoe*, 185 Ariz. 68, 72, 912 P.2d 1297, 1303 (Ariz. 1996) (noting that an extensive
3 Victims' Rights Implementation Act (VRIA) was passed in 1991). The VBR vested
4 the Arizona legislature with the authority to enact substantive and procedural laws
5 to "define, implement, preserve, and protect" the rights guaranteed to victims. Ariz.,
6 Const. art. II, §2.1(D); *Roscoe* at 73, 1302; *State v. Lee*, 226 Ariz. 234, 240, 245 P.3d
7 919, 926 (Ariz. Ct. App. 2011) (noting that constitutional mandate gave legislature
8 authority to set forth the meaning of constitutional provisions); *State v. Stauffer*, 203
9 Ariz. 551, 553, 58 P.3d 33, 35 (Ariz. Ct. App. 2002) (noting that VRIA expands on
10 concepts set forth in the VBR).
11
12

13 Generally, the provisions of the VRIA are in accord with this Court's
14 interpretation of the powers the VBR intended to grant to the legislature. *Roscoe* at
15 73, 1302. Vested with authority under the VBR, to further define, implement,
16 preserve and protect the rights guaranteed to victims under the VBR, a victim is
17 further defined as follows:
18

19 "Victim" means a person against whom the criminal
20 offense has been committed, including a minor, or if the
21 person is killed or incapacitated, the person's spouse,
22 parent, child, grandparent or sibling, any other person
23 related to the person by consanguinity or affinity to the
24 second degree or any other lawful representative of the
25 person, except if the person or the person's spouse, parent,
child, grandparent, sibling, other person related to the
person by consanguinity or affinity to the second degree

1 or other lawful representative is in custody for an offense
2 or is the accused.

3 A.R.S. § 13-4401.19.

4 The VRIA further defines, implements, preserve and protects the rights
5 enumerated in the VBR. The VRIA expressly gave victims standing to seek an
6 “order” and the right to be represented by their own counsel. A.R.S. §13-4437(A)
7 reads as follows:
8

9 The rights enumerated in the victims' bill of rights, article
10 II, section 2.1, Constitution of Arizona, any implementing
11 legislation or court rules belong to the victim. The victim
12 has standing to seek an order, to bring a special action or
13 to file a notice of appearance in an appellate proceeding,
14 seeking to enforce any right or to challenge an order
15 denying any right guaranteed to victims. In asserting any
16 right, the victim has the right to be represented by personal
17 counsel at the victim's expense.

18 A.R.S. §13-4437(A); *State ex. rel. Romley v. Gottsfield (Roper)* 172, Ariz. 232, 237,
19 836 P.2d 445, 450 (1992) (noting “[f]or the first time in American jurisprudence,
20 victims have standing in criminal cases” to assert rights); *State v. Lamberton*, 183
21 Ariz. 47, 899 P.2d 939 (Ariz. Ct. App. 1995)(although holding that the victim was
22 not a party, the Arizona Supreme Court recognized that “the VBR and the VRIA
23 give victims the right to participate); *State ex rel. Montgomery v. Padilla*, 238 Ariz.
24 560, 566, 364 P.3d 479, 485 (Ariz. Ct. App. 2015) (victims’ counsel has standing to
25 seek an order on behalf of a victim).

1 In the present case, E.H. is the sister of J.H., the homicide victim. It is clear
2 from the plain language that the legislature intended to expand the definition of a
3 victim to include the sibling of a homicide victim. E.H. is a victim under Arizona
4 law with standing to assert and enforce her rights and therefore has standing to seek
5 restitution.
6

7 **B. Travel expenses to meet with attorneys in preparation for trial and**
8 **attendance of court proceedings are properly awarded in restitution.**

9 “The purpose of the restitution statutes is to make victims whole.” *State v.*
10 *Guilliams*, 208 Ariz. 48, ¶ 12, 90 P.3d 785, 789 (App. Div.2 2004). Arizona Revised
11 Statute § 13-603(C) provides that a convicted person shall make restitution to the
12 victim, or if the victim has died, to the victim’s immediate family, in the full amount
13 of the economic loss suffered. Economic loss means any loss which would not have
14 been incurred but for the offense. A.R.S. § 13-105(14).
15

16 Economic loss includes related travel expenses. Crime victims have a
17 constitutional and statutory right to be present at all criminal proceedings in their
18 case. (Ariz. Const. Art. II, §2.1(A)(3); A.R.S. §13-4420). Preparation for these
19 proceedings often requires victims to meet with attorneys. The travel expenses
20 incurred in exercising these rights are routinely awarded as restitution. *See State v.*
21 *Spears*, 184 Ariz. 277, 291-292, 908 P.2d 1062 1076-1077 (1996); *State v.*
22 *Guadagni*, 218 Ariz. 1, ¶18-19, 178 P.3d 473, 478-479 (Ariz. App. Div. 2, 2008)
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24
25 (vacating the trial court order on other grounds but finding that properly documented

1 travel expenses are recoverable as restitution); *State v. Madrid*, 207 Ariz. 296, ¶10-
2 15, 85 P.3d 1054, 1058 (Ariz. App. Div. 1, 2004) (holding that economic loss
3 includes reasonable travel-related expenses incurred by a victim); *State v. Baltzell*,
4 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (Ariz. App. Div. 1, 1992) (finding it was
5 not fundamental error to award travel expenses).
6

7 In the present case, but for the Defendant's actions, the Victims would not be
8 traveling to meetings with attorneys and to court for the criminal proceedings. The
9 travel expenses requested in this case amount to \$130.80. They are based on the
10 miles traveled at the IRS government mileage rate for the dates of travel as well as
11 parking fees.
12

13 **C. Defendants Kimmy Wilson, Lenda Hester, Jason Conlee, and Lilliana**
14 **Hester are Jointly and Severally Liable for Restitution.**

15 "If more than one defendant is convicted of the offense that caused the loss,
16 the defendants are jointly and severally liable for the restitution." A.R.S. § 13-804
17 (F). Courts may impose joint and several liability on co-defendants even when they
18 plead to different offenses or are convicted of different offenses. *See State v. Lewis*,
19 222 Ariz. 321, ¶19-20, 214 P.3d 409, 415 (Ariz. App. 2009) (upholding liability for
20 restitution on co-defendant who was acquitted of aggravated assault but convicted
21 of drive by shooting).
22
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24 In the present case, Defendant Lillian Hester was convicted at trial for Child
25 Abuse and First Degree Murder. Additionally, co-defendants Jason Conlee, Lenda

1 Hester, and Kimmy Wilson pled guilty to offenses involving victim E.H. Thus, all
2 four defendants are jointly and severally liable for the restitution.

3 **III. Conclusion**

4 To preserve and protect E.H.'s constitutional rights to justice and due process,
5 Arizona law requires the Defendant to make restitution for his crimes. The Victims'
6 Bill of Rights confers constitutional status on victims' rights, including the right to
7 receive prompt restitution. Ariz. Const. Art. II, §2.1(A)(8). When determining a
8 restitution award, courts routinely award travel related expenses. Thus, the victims
9 ask for a restitution order in the amount of \$103.80, which represents their travel
10 costs and expenses related to preparing for trial and attending trial.
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13 Respectfully submitted October 7, 2019.

14 By _____
15 Colleen Clase
16 Attorney for Crime Victim
17 Arizona Voice for Crime Victims

18 ORIGINAL filed this 7th day of October, 2019
19 to the Clerk of the Court

20 COPIES of the foregoing e-mailed/delivered
21 This 7th day of October, 2019 to:

22 Honorable Dan Slayton
23 Judge of the Superior Court, Div. II

24 Michael Tunink
25 Deputy County Attorney
mtunink@coconino.az.gov

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