

Colleen Clase (AZ Bar # 029360)  
Robert Swinford (AZ Bar # 030651)  
Attorneys for Petitioner Lynn Fox-Embrey  
Arizona Voice for Crime Victims  
111 East Taylor Street  
Phoenix, AZ 85004  
480-600-2661  
cclase@voiceforvictims.org

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO**

LYNN FOX-EMBREY,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE  
OF ARIZONA, in and for the County of  
PINAL, THE HONORABLE DELIA R.  
NEAL, a judge thereof,

Respondent Judge,

SHAWN MAIN,

Real Party in Interest.

Court of Appeals  
No. 2 CA-SA 2019-0045

Pinal County Superior Court  
No. CR201503594

**SUPPLEMENTAL CITATION OF  
LEGAL AUTHORITY**

Petitioner and legal guardian to the child-victims, Crime Victims' Representative, Lynn Fox-Embrey, respectfully submits this Supplemental Citation to Authority to Real Party Main's *Petition for Special Action* filed on August 29,

2019. Petitioner submits this supplemental legal authority in reference to pages 21-23 of the *Petition for Special Action*. On November 21, 2019, the Arizona Court of Appeals Division I issued an opinion in *R.S. v. Thompson, In and For Cty. of Maricopa*, No. 1 CA-SA 19-0080, 2019 WL 6206892 (Az. Ct. App. Nov, 21, 2019). This new opinion narrows the scope of *State v. Roper*, and clarifies the rule of when a victim’s statutory right to privacy yields to a defendant’s rule-based rights to demand documents.

*Thompson* distinguishes *Roper* noting “*Roper* largely based its holding on cases involving privileged materials already in the state’s possession (and therefore subject to *Brady*), or on cases concerning a defendant’s Sixth Amendment trial-based confrontation rights.” *Id.* at ¶18. The Court reiterated “that a defendant does not have a general constitutional right to discovery from a third party, and we depart from *Roper* to the extent it implies that such a right exists.” *Id.* at ¶22.

After analyzing potential flaws in *Roper*’s rationale, the Court further found the “reasonable possibility” for an in-camera review as noted in *State v. Connor* was insufficient to overcome the physician-patient privilege. “Instead, a defendant is entitled to an in camera review of physician-patient privileged records not subject to *Brady* when the defendant demonstrates (1) a substantial probability that the protected records contain information that is trustworthy and critical to an element of the charge or defense, or (2) that their unavailability would result in a

fundamentally unfair trial.” Id. at ¶24.

## CONCLUSION

For the reasons set forth above, Ms. Fox-Embrey respectfully requests this Court to consider the supplemental legal authority and reverse Respondent Judge’s order for an *in camera* review of the child-victims’ privileged and confidential WIC and physician records.

Respectfully submitted this 6th day of December, 2019.

By: \_\_\_\_\_/Robert Swinford/\_\_\_\_\_  
Attorney for Petitioner Lynn Fox-Embrey