Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
08/21/2015 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2013-428563-001 DT 08/19/2015

HONORABLE JOSE S. PADILLA

CLERK OF THE COURT
A. Beery
Deputy

STATE OF ARIZONA

YIGAEL COHEN
COLLEEN CLASE
JOHN DOUGLAS WILENCHIK

v.

CHRIS ALLEN SIMCOX (001)

CHRIS ALLEN SIMCOX
#P982577
MCSO INMATE MAIL
-- -- 00000
SHEENA CHIANG

INMATE LEGAL SERVICES

MINUTE ENTRY
UNDER ADVISEMENT RULING

Following hearing and oral argument, the Court took under advisement the State's motion entitled *State's Request for Certain Victim and Witness Trial Accommodations based on the Pro Per Status of the Defendant*, (March 6, 2015) (hereinafter *State's Request*). Defendant opposed the *State's Request* arguing that he has a constitutional right to personally cross-examine the child witnesses. The Court having considered all of the evidence, the briefings and the arguments by the State and the defendant, grants the *State's Request* in part and denies it in part.

PROCEDURAL COURSE

Defendant, Christopher Simcox, is before the Court on charges relating to the alleged abuse of two children. On February 13, 2015, Defendant Simcox filed his motion seeking to represent himself in all future proceedings. After making the requisite finding of a knowing and voluntary relinquishment of the right to appointed or retained counsel, the Court granted Defendant's request pursuant to *Faretta v California*, 442 US 806 (1975). Defendant has asserted the panoply of rights afforded a criminal defendant including the right of cross-

examination. The Court appointed previous counsel to act as "advisory counsel" [1] for the defendant.

Thereafter and prior to trial, the State filed its *Request* seeking to prevent the Defendant from personally cross-examining the children and requesting that the Court order advisory counsel to do so. See: *State's Request, supra*. Defendant filed his Response asserting that his right of self-representation encompassed the right to directly cross-examine all the witnesses.

In support of the motion, the State alleged the children's courtroom cross-examination by the Defendant would result in the children suffering serious emotional distress, such that they would be further traumatized, not by the courtroom experience itself, but direct cross-examination by the Defendant. The State did not ask that the cross-examination occur outside the presence of the defendant, but that advisory counsel conduct the in-courtroom cross-examination of the children.

SELF-REPRESENTATION

For over two hundred years, the law of the land has afforded individuals accused of crimes the right to appear and defend either in person or through counsel. [2] [3] Over the same time period, the right as it relates to the assistance of counsel has been addressed and refined.

In February 2015, the Court granted Defendant's motion to proceed in *propria persona*, that is, to be "self-represented." The Court queried the Defendant pursuant to *Faretta, supra*, and determined Mr. Simcox was aware of his right to counsel and that he knowingly and voluntarily waived such rights. In *Faretta, supra*, the US Supreme Court held that the Sixth Amendment, in addition to ***guaranteeing the right to retained or appointed counsel***, also guaranteed a defendant ***the right to represent himself***. *Id.*, at 819.

The *Faretta* Court held that a defendant who sought to represent himself had the constitutional right to do so. It bears repeating that this is and has been the law of the land for decades. [4] The Constitution guarantees the right to self-representation with few exceptions. In

---

[1] In this context the term "advisory counsel" is used instead of "stand-by counsel."

[2] *See US Const. Amend VI*: detailing an individual's rights provides: . . . The right to [the] assistance of counsel, . . . the right to confront witnesses. . .

[3] *See* ***AZ Const. Article II, §24,*** **provides in part:** In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, . . . meet the witnesses against him face to face.

[4] The Sixth Amendment to the US Constitution as applied to the States through the Fourteenth Amendment guarantees to Mr. Simcox and to all those accused of committing a crime the right to be represented by counsel or,

this case Defendant Simcox made the necessary showing and the Court found that he knowingly and intelligently waived his right to counsel, whether appointed or retained. To date, Defendant has conducted himself appropriately. Furthermore, the Court is obligated to protect and preserve a defendant's right to self-represent before a jury. This too is the law of the land.

Subsequent to *Faretta, supra*, the US Supreme Court established parameters in cases involving self-representation. In *McKaskle v Wiggins*, 465 US 168 (1984), the Court addressed a self-represented defendant's rights vis-a-vis "standby counsel" (in this case "Advisory Counsel"), appointed by the trial court. The Court stated:

> First, the *pro se* defendant is entitled to **preserve actual control** over the case he chooses to present to the jury. This is the core of the *Faretta* right. If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, **or to control the questioning of witnesses**, or to speak *instead* of the defendant on any matter of importance, the *Faretta* right is eroded. (Emphasis added).

Id., ¶ 7, at 178. The Court went on to say:

> . . . participation by standby counsel without the defendant's consent **should not be allowed to destroy the jury's perception that the defendant is representing himself**. The defendant's appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused's individual dignity and autonomy. (Emphasis own).

Id., ¶ 8.

This trial Court was unable to find any authority nor was any presented which would allow the trial court to make exceptions to the right to self-representation without violating both the State and Federal Constitutions. Therefore, this Court cannot grant the State's request to have advisory counsel conduct the cross-examination of the victim witnesses. So long as Defendant

---

as in this case, to be self-represented. *Pointer v Texas*, 380 US 400 (1965) (The **Sixth Amendment** right to confrontation is made **applicable** to the **states** through the Fourteenth Amendment). The Arizona constitution likewise guarantees the right of self-representation, in even more explicit terms. *State v Van Bogart*, 85 Ariz 63, 331 P2nd 597 (1958) (In criminal prosecutions, the accused shall have the right to appear and defend in person . . . .' This provision has been interpreted to vest in a defendant the 'explicit' right to defend himself should he so choose). This Court is not only obligated but duty-bound to follow the law. *See: State v Rosengren*, 199 Ariz 112, 14 P3rd 303 (CA2 2000) (Because the right to counsel is valued so highly, when the right to counsel is violated, then the conviction obtained as a direct result must be set aside).

exercises his right of self-representation and he complies with court rules and decorum, this Court must allow it, to do otherwise would be a violation of constitutional proportion and therefore reversible error.

CONFRONTATION

The Confrontation Clause found in the Sixth Amendment to the US Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Generally, the right is to have a face-to-face confrontation with witnesses who are offering testimonial evidence against the accused in the form of cross-examination during a trial. The Fourteenth Amendment makes the right to confrontation applicable to the states and not just the federal government. *Pointer v Texas*, 380 US 400 (1965). The right only applies to criminal prosecutions, not civil cases or other proceedings.

Our own State's Confrontation Clause found in Article II, §24 provides: "In criminal prosecutions, the accused shall have the right to . . . meet the witnesses against him face-to-face. . . ." The Arizona Supreme Court has held this right to be "essential. . . fundamental . . . and obligatory upon the states." *State v Briley*, 109 Ariz 74, 75, 505 P2nd 245, 426 (1973). "Ordinarily, the defendant must be given the opportunity to test the recollection and credibility of the witnesses against him in a face to face encounter before the jury." *Id*. In addition to the constitutional provision, Arizona has a statutory confrontation clause. [5]

The US Supreme Court has noted various exceptions found in the Federal Rules of Evidence and of every state as indicative that confrontation is not necessarily a "face-to-face" proposition. Contrasting approaches to the Confrontation Clause were taken by the Court in two cases involving state efforts to protect child victims from trauma while testifying.

In *Coy v Iowa*, 487 US 1012 (1988), the Court held that the right of confrontation is violated by a procedure, authorized by the Iowa statute, which placed a one-way screen between the child victim witness and the defendant, thereby sparing the witness from viewing the defendant. The *Coy* conclusion was reached despite the fact the witnesses could be viewed by the defendant's counsel, by the judge and jury. The right of cross-examination was in no way limited. The Court's opinion, authored by Justice Scalia, declared a defendant's right during his trial to *face-to-face* confrontation with his accusers derives from "the irreducible literal meaning of the clause," and traces "to the beginnings of Western legal culture." *Id.*, 487 US at 1020. The Arizona Supreme Court took up the issue on the heels of *Coy*, in *State v Vincent*, 159 Ariz 418, 768 P2nd 150 (1989). There the trial court had allowed the state to present the testimony of the

[5] *ARS § 13-114(3)* provides: In a criminal action defendant is entitled: . . . to be confronted with the witnesses against him in the presence of the court. . . . Laws as Amended 1977, Ch 142, §40, eff October 1, 1978.

child witnesses on video recording made in the defendant's absence. [6] In holding that Defendant had been denied his right of confrontation, the Court rejected the State's: "*generalized assertion that any minor child directed to testify against a father would be traumatized by a face-to-face encounter*." (Emphasis own), *Id.,* 768 P2nd at160.

A year later the US Supreme Court in *Maryland v Craig*, 497 US 836 (1990), again visited the issue of child victim witnesses and the Confrontation Clause. [7] [8] In reversing the conviction, the Court noted that the State had failed to make the requisite case specific showing of necessity. The Court noted that:

> "[T]he trial court must ***hear evidence*** and determine whether the procedure's use is ***necessary to protect the particular child witness'*** welfare; find that the ***child would be traumatized, not by the courtroom generally, but by the defendant's presence; and find that the emotional distress suffered by the child in the defendant's presence is more than de minimis***. (Emphasis own).

Id., ¶7 at 855. [9]

---

[6] Defendant was "present" to the extent that he was in an another room and was in telephonic communication with his attorney during the video taping of the witnesses.

[7] Because the *Craig* result rested in part on the various exceptions found in the Rules of Evidence as indicative that the Confrontation Clause of the federal constitution is not absolute in requiring a face-to-face confrontation, *See Coy*, *supra*, its continued vitality may be questioned after the US Supreme Court's decision in *Crawford v Washington*, 541 US 36 (2004). *Crawford* overruled *Ohio v Roberts*, 448 US 56 (1980**)**, on which the Arizona Supreme Court relied heavily in *Vincent,* for its "unavailability". Whether a different result is required by the combination of textual differences in the respective constitutional provisions or the return to a stricter interpretation of the confrontation clause, per *Crawford, Id.,* is left to the judgment of this state's appellate courts.

[8] It is notable that other state supreme courts have found the *Craig* holding inapposite on adequate and independent state grounds where their respective state constitutions required "face to face" confrontation. *People v Fitzpatrick***,** 633 NE2nd 685 (1994) (A witness examined by closed circuit television does not provide the defendant with the face-to-face encounter envisioned by the Illinois Constitution - rejecting the holding in *Maryland v Craig*); *Commonwealth v Ludwig*, 594 A2nd 281 (1991) (Article I, §9, of the Pennsylvania Constitution expressly guarantees an accused the right to meet witnesses "face to face."). The Arizona Supreme Court has not yet decided this issue. *State v Vincent*, 159 Ariz 428, 768 P2nd 150 (1989) (Whether there are substantive differences between the clauses in question we have not yet been called upon to decide and need not decide today).

[9] The case at bar presents yet another question left open in *Vincent*: Whether the difference in text between the state and federal constitutional provisions compels a different result than that of the US Supreme Court in *Maryland v Craig*, 497 US 836 (1990), is addressed in part in *State v Vincent*, 159 Ariz 428, 768 P2nd 150 (1989) (Whether there are substantive differences between the clauses is a question we have not yet been called upon to decide and need not decide today).

In *Craig,* the Court *upheld* Maryland's use of one-way, closed-circuit television to protect a child witness in a sex crime from viewing the defendant. As in *Coy*, procedural protections other than confrontation were afforded: the child witness must testify under oath, is subject to cross-examination, and is viewed by the judge, jury, and defendant. The critical difference between the two cases was that Maryland required a *case-specific finding* that the child witness would be traumatized by presence of the defendant, while the Iowa procedures struck down in *Coy* rested on a statutory *presumption of trauma*.

Beginning with the proposition that the Federal Confrontation Clause does not, as evidenced by hearsay exceptions, grant an absolute right to face-to-face confrontation, the Court in *Craig* described the Clause as "reflect[ing] a *preference* for face-to-face confrontation." *Id.,* 497 US at 848. This preference can be overcome "only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured." *Id.,* 497 US at 850. Relying on the traditional and "transcendent" state interest in protecting the welfare of children, on the significant number of state laws designed to protect child witnesses, and on "the growing body of academic literature documenting the psychological trauma suffered by child abuse victims," the Court found the state's interest sufficiently important to outweigh a defendant's right to face-to-face confrontation. Reliability of the testimony was assured by the "rigorous adversarial testing [that] preserves the essence of effective confrontation." *Id.*, 497 US at 857. All of this, of course, would have led to a different result in *Coy* as well, but *Coy* was distinguished with the caveat that, "[t]he requisite finding of necessity must of course be a *case-specific* one." (Emphasis added). *Id.*, 497 US at 855. Indeed, the Maryland statute which required factual findings that a child victim witness would suffer "serious emotional distress" or that the child would be rendered uncommunicative if not protected, was clearly adequate for this purpose.

Arizona cases before and after *Craig* reached similar results in holding that the lack of specific findings of necessity amounted to a denial of a defendant's confrontation rights. Specific findings of necessity and that the child witness required protection is well established in Arizona law. *Vincent, supra; State v Vess,* 157 Ariz 236, 756 P2nd 333 (CA2 1988); *State v Wilhite,* 160 Ariz 228, 772 P2nd 582 (CA1 1989) (videotape's admission violated defendant's confrontation rights because of lack of individualized findings . . . that particular child witness . . . needed special protection . . .by testifying before videotape, rather than doing so live, demonstrated videotape's admission violated defendant's confrontation rights).

Against this backdrop, this Court held a hearing on the issue of "accommodation." During the hearing the Court invited the State to present its evidence in support of their request, *e.g.,* the need for accommodation and the evidence that either child victim witness needed

protection during the trial process. Surprisingly, the State declined the Court's invitation and chose instead to simply present oral argument on the issue.

The State submitted letters authored by a parent of each of the two children. The letters identified the children's behavioral responses to the alleged past conduct by the defendant. Based upon the State's failure to present any evidence which would support a conclusion that: "[the] *child would be traumatized, not by the courtroom generally, . . . and find that the emotional distress suffered by the child in the defendant's presence is more than de minimis," Craig, supra*, this Court denied the State's request for accommodation. The Court found the State's "evidence" for accommodation was wholly insufficient, as there was none presented. The ruling was affirmed on a special action taken by the State. The matter was remanded to the trial court for continuation of trial proceedings. *See State vs Superior Court (Simcox RPI),* I CA-SA 15-0087 (2015).

THE EVIDENCE REQUIRED

The notion that evidence of the particularized need for and manner of accommodation must be presented in order to overcome "face to face" confrontation is neither new nor novel. As early as January 1988, the Court of Appeal in *Vess,* passed upon the very issue presented here. In *Vess,* the State moved, pursuant to *ARS §13-4253* [10], to have the testimony of the alleged victim witness taken in another room and transmitted by closed-circuit television to the courtroom for the jury to view. The motion *was granted without requiring a showing or making a finding that there was any need to proceed in this manner*. Because the statute permitted it, it was done. Even before the US Supreme Court's decision in *Craig, supra*, the Arizona Court of Appeals stated:

> The demands of the confrontation clause are not absolutes. Exceptions, however, may be made only on a showing of necessity and of the minimal abridgement of the right in order to accommodate that necessity. Thus, it might be that the atmosphere of the courtroom or the presence of the defendant would traumatize the victim in this case or render her unable to communicate. ***When such a***

[10] *ARS §13-4253(A)* provides in part:

> The court, on motion of the prosecution, may order that the testimony of the minor be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. . . .

Laws as Amended 1985, Ch 364, §38, eff May 16, 1985. The remainder of the statute deals with the mechanics for implementation of the procedure, if used. *Vincent, Id.,* however dealt with the videotape provision of the statute.

> ***showing has been made, we have not hesitated to permit the use of televised testimony***. . . . Should the state make a showing of particularized need to use closed-circuit television for certain witnesses, then that procedure may be followed. (Emphasis own).

Vess, Id., 756 P2nd at 335. The *Vess* Court reversed the conviction and the case was sent back to the trial court for retrial.

Similarly, in *Wilhite, supra,* the Court of Appeals took up the case in which the State moved to have the testimony of the victim witnesses videotaped to be later presented to the jury pursuant to *ARS §13-4253*. The State's motion avowed that, "[R.D.] ... had recently developed a fear of testifying in front of a jury" and "is extremely hesitant and emotionally distraught . . ." No affidavits were attached. The trial court granted the motion upon oral argument without evidence. *Id.,* 772 P2nd at 586. The Court stated:

> In the present case the state not only failed to show that J.E. needed special protection from a face-to-face courtroom encounter with defendant; it did not even *allege* such a need. As in *Coy, Vincent,* and *Vess,* it ***supplied the trial court with no constitutional basis for the abridgement of defendant's confrontation rights***. Defendant's constitutional objection should have been sustained under both the Sixth Amendment to the U.S. Constitution and Article 2, § 24 of the Constitution of Arizona. (Emphasis own).

Id., 772 P2nd at 587. [11]

In 1989, the Arizona Supreme Court in *Vincent, supra,* found the statute, *ARS §13-4253* which permits videotaped testimony to be presented at trial, violated the Defendant's right of confrontation as applied. Reversing the conviction, the *Vincent* Court noted:

> [At] the hearing on the . . state's motion to permit videotaped testimony, the trial judge stated that children "of such tender age ... *could* be traumatized" by face-to-face testimony and that it would serve their best interests not to "look upon the face of their father" when questioned about events . . .. The trial court based its findings, not on the particularized circumstances of Kristy and Jarred, but rather on the presumed best interests of children of their ages and on the fact that defendant was their father. The State offered no evidence and the judge considered none. . . generalized an assumption is no substitute "for individualized

[11] The conviction was affirmed under a harmless error analysis.

findings that these particular witnesses needed special protection."

Vincent, Id., 768 P2nd at 160. The *Vincent* Court rejected a letter submitted by the State, authored by members of the Foster Care Board voicing their unanimous concern on behalf of the children as proof of the children's need for protection from the emotional and psychological harm as a result of testifying in the front of their father and thus in need of protection. The Court observed:

> It offered no **specific evidence** concerning the likely impact of courtroom testimony on Kristy or Jarred. The Board expressed an understandable concern that the trauma to the children be minimized. But in taking the further step of recommending videotaping, the Board, like the trial court, appears to have drawn a generalized conclusion, based ***upon the assumption that testimony under such circumstances would be traumatic to any child, rather than an individualized assessment of the ability of each Vincent child*** to testify in open court. (Emphasis own).

Id., 768 P2nd at 160. The Court went on to say:

> . . . at a minimum . . . such generalized conclusions do not suffice to justify a substitute for face-to-face confrontational testimony. Because there were no particularized findings concerning the comparative ability of the Vincent children to withstand the trauma of face-to-face testimony, . . .we hold that *ARS §13-4253* was applied in such a way as to violate the defendant's constitutional right to confrontation. . . . we conclude that the judgment must be reversed.

Id., 768 P2nd at 160 - 161. In order to sustain an accommodation request, the Court expressly held:

> . . . under both the state and federal constitutions, . . . the state [must] sustain[s] its burden of proving by an ***individualized showing*** to the trial court that face-to-face testimony would so traumatize a child witness as to prevent the child from reasonably communicating. . . . (Emphasis own).

Id., 768 P2nd at 164. [12]

[12] The case at bar presents the question the *Vincent, Id.,* Court posited:

> [The] question remains, whether upon a showing not tantamount to [a] *Roberts* unavailability, . . . a showing that face-to-face testimony would likely be traumatic, but not so disabling as to render the child unable to reasonably communicate - the state's interest in

This Court has stated time and again, that it is not the Court's desire to further traumatize anyone, especially the victim witnesses, any more than is absolutely necessary because of the rigors of trial. [13] However, when no evidence is presented in support of the accommodation motion, this Court had no legal recourse but to deny the State's request.

THE EXPERT TESTIMONY IN THIS CASE

At the hearing on July 7, 2015, the State presented the testimony of Dr. Gail Goodman, PhD, on the issue of in-court child testimony and the need for accommodation. Dr. Goodman was testifying as a "blind expert." [14] Dr. Goodman testified that she had reviewed a variety of materials in order to prepare for her testimony. [15] Ultimately, Dr. Goodman rendered her opinions.

The Court finds that the State has made the necessary individualized showing of need for an accommodation to avoid harm to the child witness ZS. Dr. Goodman opined the probability

---

> protecting a child witness would overcome the fundamental confrontational rights of a defendant. We deem it wiser to leave that question undecided until confronted with a case where the record presents it squarely.

Id., 768 P2nd at 165. This is so because, in this case, the state made no effort to show the children **would not be** able to testify if confronted or crossed-examined by the defendant *e.g*., unavailability.

[13] This Court is very mindful of the need to try this case just once. Obviously, a reversal and retrial exposes the child victim witnesses to repetitive and potentially greater harm.

[14] See Generally: *State v Salazar-Mercado*, 234 Ariz 590, 325 P3rd 996 (2014) (Admission of testimony of a "cold expert" or a "blind expert" not precluded if it educates the fact-finder about general principles).

[15] Dr. Goodman reviewed:

> . . . several phone calls that were made generally where a police detective was calling, for example, a mother of one of the children in this case. So it was a phone call with Debra Crew, Alena Simcox, Nicole Evans, and then in addition one of the adult children, Lindsay Brandage. I also reviewed videotape recordings, for instance, of forensic interviews with Zoe and Chloe Simcox, Jahna Deegan, 3T[sic], BJ, Lindsay Brandage, and, also, with the defendant Christopher Simcox. And then I reviewed a variety of documents, such as Wild Wood records of employment and a request for information relevant to support payments, police reports, Child Protective Services reports, including medical exam reports, and an e-mail message from Christopher Simcox which I believe was intended for a therapist. . . . . Yes. I researched in terms of, you know, looking at the literature and relevant studies to the extent ones exist, talking to other researchers in the field, talking to various attorneys in the field, looking on the Internet for information that might be relevant, you know, specifically to a pro per case and sexually abused children.

(Transcript dated July 7, 2015 at Pg: 17-18; Line(s) 19-25 & 1-11).

of ZS [16] being harmed as a result of trial process would be in the "high" range, if an accommodation were not made. Dr. Goodman explained the combination of the trial process, the underlying allegations and being cross-examined by defendant militated against unrestricted and unprotected trial testimony. Dr. Goodman based her opinion in part on information of alleged domestic violence in the presence of the minor child.

The mother of ZS testified at the hearing that the Simcox children had witnessed domestic violence in the home. The allegation of whether domestic violence was present in the home and witnessed by the children is difficult to assess. Dr. Deborah Pyburn, PhD., the children's therapeutic interventionist, testified that during her sessions, ZS and her sister CS never identified any domestic violence in the home nor did they indicate any fear of the defendant. In fact, she had recommended "unsupervised" parenting time access for the defendant during the acrimonious divorce process. Dr. Goodman did not hear Dr. Pyburn's testimony nor was she familiar with Dr. Pyburn's work with the Simcox children, specifically ZS.

Although the testimony is conflicting, the evidence presented weighs in favor of a finding that accommodation should be made with respect to the child ZS.

As to the second child, JD, the Court finds, based on the dearth of harm evidence presented, that she is not likely to suffer harm beyond that which is experienced by any other child witness in a case of this nature. [17] According to Dr. Goodman, the fact the child has a supportive parent and is not related to the defendant, mitigates against potential harm. It is important to note that Dr. Goodman did not examine nor evaluate either child, nor did she personally meet with them. To this Court's knowledge no one has examined or evaluated the children for purposes of the accommodation motion. In other types of proceedings involving children, children are routinely examined and evaluated for the eventuality of some future event

---

[16] ZS is the biological child of Mr. Simcox. JD is a neighbor child.

[17] Dr. Goodman testified based upon several **assumed** risks and using a low, middle and high scale that ZS would likely be in the "high" range for the potential to suffer harm as a result of testifying and being questioned by her father. Dr. Goodman stated: "Okay. [ZS]. Would be in the high range. For -- is it [JD]?" (Transcript dated July 7, 2015 at Pg: 56; Line(s) 16-20).

Dr. Goodman further testified that JD would be more in the middle range. Dr. Goodman states:

> "Yeah. I'm sorry. For the other child who was a neighbor and seems to have, from the phone call that I heard, a supportive mother, she would probably --. . . . You know, probably more in the middle range for her."

(Transcript dated July 7, 2015 at Pg: 56-57; Line(s) 20-25 & 1-6).

or events such as family reunifications during dependency proceedings or determining the parameters of parenting time during custody proceedings.

The mothers of ZS and JD testified about the children's reaction to the possibility of coming to court to testify at trial. Both parents indicated the children exhibited both fear and anxiety about the process, but neither could testify that such fear and anxiety was beyond that which any witness testifying in a criminal matter would suffer. Because of this, the Court must rely on the testimony of the expert witness. Neither parent, nor the expert, presented any evidence, that if called upon to testify, either child would be unable to communicate the facts and circumstances of the alleged incidents. The Court considered the expert testimony presented to evaluate the potential of additional harm over and above the harm suffered by merely testifying before the court.

IT IS THEREFORE ORDERED granting the accommodation as to the child ZS and denying the accommodation as to the child JD as follows:

The Court has considered the cases and the various methods by which accommodation has been attempted in the past and concludes that "closed circuit" television, the Maryland model as approved by the US Supreme Court in *Craig, supra*, and the Arizona model, *ARS §13-4253*, as approved by the Arizona Supreme Court in *Vincent, supra*, upon a showing of particularized need for the procedure with the individual victim witness, is the appropriate accommodation in this case. The Court finds this procedure is the most analogous to an actual courtroom presentation and affords the accused all his confrontation rights, but for the physical presence of the victim witness in the same room and simultaneously provides a "protective atmosphere" for the testifying witness.

IT IS FURTHER ORDERED denying the *State's Request* for advisory counsel to conduct cross-examination of the child witnesses.

IT IS FURTHER ORDERED the State will make all necessary arrangements to have the "closed circuit" equipment set up in such a way that the Court, the jury and respective counsel will be able to see the child ZS, but the child will not be able to see any individual in the courtroom. The equipment must also make it possible for the witness to hear only counsel and the Court during the proceedings. See *ARS §13-4253.*