

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. D. DOUGLAS METCALF

CASE NO. CR20251060-001

DATE: March 26, 2025

STATE OF ARIZONA  
Plaintiff,

vs.

LANE JEFFERY MYERS (-001)  
Defendant.

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**R U L I N G**

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**IN CHAMBERS**

This matter is before the Court on Defendant's motion to dismiss the indictment pursuant to A.R.S. § 12-751, commonly referred to as Arizona's "Anti-SLAPP" statute.

Section 12-751 applies to this criminal prosecution. A.R.S. §12-751(J)(1)(a)(ii).

The Court must dismiss or quash the indictment if Defendant shows the State's prosecution of Defendant "was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right." A.R.S. § 12-751(B). But the Court cannot dismiss or quash the indictment if the State shows the prosecution "is justified by clearly established law and that the [State] did not act in order to deter, prevent or retaliate against [Defendant's] exercise of [his] constitutional rights." *Id.*

To support his motion, Defendant "may submit evidence based on the record, a sworn affidavit or other evidence." *Id.* If, based on this evidence, the Court finds that Defendant "has establish[ed] prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right," then, the Court can order the State to show the prosecution "is justified by clearly established law and that the [State] did not act in order to deter, prevent or retaliate against [Defendant's] exercise of [his] constitutional rights." A.R.S. §12-751(B)(1).

The State can meet its burden by establishing:

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(a) ... [T]he person who initiated and conducted an investigation that resulted in the legal action and that made the decision to pursue the legal action was unaware of the movant's lawful exercise of the constitutional right.

(b) ... [T]he state actor has a consistent practice of pursuing similar legal actions against similarly situated persons who did not lawfully exercise constitutional rights. [or]

(c) [By] [p]roducing any other evidence that the court finds sufficient.

A.R.S. §12-751(B)(1).

If Defendant cannot meet his initial burden of “establishing prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right,” the Court can deny the motion without requiring the State to respond. A.R.S. §12-751(B).

If Defendant meets his initial burden, and the State is ordered to respond, the Court can decide the motion based “the pleadings and supporting and opposing affidavits,” or it can “hold an evidentiary hearing.” A.R.S. §12-751(B) and (C).

### BACKGROUND FACTS

In this case, the indictment charges Defendant with seven felonies and seven misdemeanors. The charges cover the time period from September 12, 2024 to February 22, 2025, and allege violations Arizona's criminal harassment and stalking statutes under Chapter 29 of the criminal code (Title 13).

Defendant has not provided the Court with “evidence based on the record, a sworn affidavit or other evidence” to support his motion. Rather, his motion consists of his unsworn statements as stated in the motion. That notwithstanding, the Court will proceed to address the issues raised in his motion.

Defendant claims to be an investigative journalist for Freedom Productions LLC who covers local stories related to public employees of Pima County. He further claims he has been investigating and covering matters concerning the local court system in Pima County as well as the County Attorney. Defendant also claims his reporting has focused on the relationship between the University of Arizona law school and the local courts and prosecutor's office. Defendant has not submitted any evidence to support these claims.

Defendant further claims he maintains a YouTube channel that has 15,000 subscribers.

Defendant claims he became interested in investigating an attorney employed by the City of Tucson's prosecutor's office. Defendant further claims this City of Tucson attorney was involved in prosecuting him for trespassing due to his disruptive conduct at a Tucson City Council meeting. Again, Defendant has not supplied the Court with any evidence of this. The Court cannot take judicial notice of these proceedings because it does

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not have access to the court files for matters prosecuted in City Court. Defendant called that prosecutor's wife, S.W., who worked at the University of Arizona's law school on September 12, 2024, and left a message on her voicemail that he wanted her to help him with a special project.

One fact that is not disputed is that Defendant and S.W. did not know each other prior to Defendant contacting her on September 12, 2024 and leaving a voicemail message on her phone.

S.W. filed a verified petition in the Superior Court seeking an injunction against harassment against Defendant on October 10, 2024.<sup>1</sup> In that petition, S.W. said Defendant left a message that said he was asking her to help her spouse not be a "crooked ass prosecutor" among other things. S.W. also said Defendant sent an email to her husband, the city prosecutor, saying that he, Defendant, would be coming to S.W.'s workplace to talk to her. He also said he would be contacting S.W.'s neighbors.

S.W. also said in her petition that Defendant posted a video on his YouTube channel on September 23, 2024 that contained her name, photo, email, and both her work and home phone numbers. She says Defendant stated in his video that "if you bother me, I am going to bother you."

S.W. also said in her petition that in a video posted on October 2, 2024, Defendant said that S.W. "went after his wife's job." Defendant included S.W.'s name, place of employment, and telephone number.

S.W. also said in her petition that in a video posted on October 8, 2024, Defendant again displayed her photo, workplace, phone number, email and office number, and encouraged his 8,000 plus YouTube subscribers to contact her. According to S.W., Defendant also stated in the video that he would come visit her at her place of employment, and that others could do so as well. She also said Defendant again repeated the claim that S.W. had caused Defendant's wife fired from her job. After Defendant posted the video, S.W. says she received four telephone calls and two voicemails from individuals who said they did so at Defendant's urging. S.W. said the voicemails contain offensive names as to S.W. and were generally threatening.

S.W. also said in her petition that Defendant came to her place of employment on October 9, 2024 looking for her. She says he again stated that she had had his wife fired. She says he live-streamed the event, and approached several of her colleagues asking where he could find her. According to S.W., Defendant also posted video showing her office door, including the number on the door. She also says that in the video, Defendant threatened to return to her office the next day.

The Superior Court held an *ex parte* hearing on S.W.'s petition on October 10, 2024. S.W. testified at that hearing. The Court entered an injunction against harassment against Defendant at the conclusion of that

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<sup>1</sup> The Court takes judicial notice of the filings in the injunction against harassment case, C20246114.

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hearing. The Court ordered that Defendant not contact S.W. and that he “have no contact with Plaintiff [S.W.] through any form of social media.” The Court further ordered that “Defendant is prohibited from posting any messages or content regarding the plaintiff [S.W.] via any social media.”

Defendant was served with the October 10, 2024 injunction on October 17, 2024. According to the process server’s certificate of service, Defendant threatened him with physical violence.

Defendant requested a hearing to contest the injunction against harassment. The Superior Court held an evidentiary hearing on November 14, 2024. Defendant and S.W. both testified.

In upholding the injunction, the Court found that “Defendant caused third parties to communicate with the Plaintiff [S.W.] by explicitly and encouraging contact,” that Defendant had “no legitimate purpose for any contact,” and that his “purpose is to harass and his conduct during this hearing confirms that.” The Court noted that Defendant “used insulting language towards the Court and threw exhibits at Court staff.”

The Court ordered Defendant to have no contact with S.W., “direct or indirect ... through any form of social media,” that he “not post or place Plaintiff’s [S.W.’s] contact information, including her work information, on any social media platform,” that he “not through social media or otherwise directly or indirectly encourage third parties to contact Plaintiff [S.W.] or go to a Protection Location,” which the Court defined as S.W.’s residence and place of employment.

The State sought to indict Defendant on March 7, 2025 by direct indictment. A detective with the Tucson Police Department testified before the grand jury to establish probable cause. The detective testified that Defendant began contacting S.W. because of her husband’s employment as a City of Tucson prosecutor. The detective also said Defendant believes S.W. was to blame for his wife being fired from her job, even though S.W. said she does not know Defendant’s wife, does not know where she works, and has not had any relation with her getting fired. The detective also testified that his investigation confirmed S.W.’s allegations.

The detective’s investigation also discovered that Defendant contacted S.W. on October 15, 2024, by leaving a message on her voicemail threatening that he can come to her place of employment and that there is nothing she can do about it. The detective also testified that Defendant called S.W. again on October 16, 2024 and left another message on voicemail.

The detective also testified that the day after being served with the injunction, Defendant posted personal information about S.W. on his YouTube channel. The detective also said that on October 21, 2024, Defendant posted information about S.W. on his YouTube channel that included her name and workplace address.

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The detective also testified that after the injunction was upheld at the November 14, 2024 hearing, Defendant again posted information about S.W.'s place of employment on January 24 and 27, 2025, and February 22, 2025.

The grand jury returned a true bill. Defendant was arraigned on the indictment on March 14, 2025.

### ANALYSIS

Defendant argues that his communications with S.W. and his posting of personal information about her on his YouTube channel cannot subject him to prosecution under Arizona's harassment statutes because it is protected speech under the First Amendment of the U.S. Constitution and Article 2, Section 6 of the Arizona Constitution. Thus, according to Defendant, to the extent the State is prosecuting him in violation of his right to free speech, it is unlawfully targeting him for that speech in violation of Arizona's Anti-SLAPP statute, A.R.S. § 12-751.

However, it is well-settled that Arizona's harassment statutes "regulate[] neither constitutionally protected speech nor expressive conduct and, thus, do[] not implicate the First Amendment." *State v. Brown*, 207 Ariz. 231, 236, ¶ 14 (App. 2004). This is because "[r]esort[ing] to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution." *Id.* at ¶ 8, quoting *Cantwell v. Connecticut*, 310 U.S. 296, 309–10 (1940). Moreover, "prohibiting harassment is not prohibiting speech, because harassment is not ... communication, although it may take the form of speech." *Id.*, quoting *Thorne v. Bailey*, 846 F.2d 241, 243 (4th Cir. 1988).

Defendant cites the case of *LaFaro v. Cahill*, 203 Ariz. 482 (App. 2002), for the proposition that "statements to third parties about an individual, even if offensive or defamatory, do not constitute harassment under Arizona law." In that case, the Court of Appeals overturned an injunction against harassment finding the plaintiff failed to prove the defendant engaged in more than one act of harassment under A.R.S. § 12-1809(R), which has been since renumbered as 12-1809(T)(1)(a). *Id.* at ¶ 15. That is not an issue in this criminal case as a series of acts in conformance with the criminal harassment statute have been alleged. At the same time, the Court of Appeals found that "the protection of citizens from harassment—a legitimate and laudable goal—is not incompatible with the protection and exercise of free speech." *Id.* at ¶ 22.

Counts Seven through 13 of the indictment charge Defendant with class one misdemeanor harassment under A.R.S. § 13-2921(A). Some of the charges concern voicemails Defendant is alleged to have left on S.W.'s phone, while others concern Defendant posting S.W.'s contact information on YouTube. The grand jury has found probable cause as to all these charges. The voicemails, of course, were directed at S.W. As to the

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YouTube videos, a reasonable inference could be drawn that Defendant published S.W.'s personal contact information for the purpose of inciting others to contact her. In fact, in at least one of the videos, Defendant said he posted S.W.'s personal contact information for the purpose of encouraging others to contact her. He also posted a video showing him at S.W.'s place of employment, which could be reasonable interpreted as encouraging others to come there as well.

By his own admission, Defendant contacted S.W., a person he did not know, and posted her personal contact information on YouTube because she is married to a City of Tucson prosecutor who was involved in litigation with Defendant. Certainly, a reasonable inference can be drawn from this that he was intending to harass her to get back at her husband.

Counts One through Six charge aggravated harassment under A.R.S. § 13-2921.01(A)(1). The grand jury found probable cause as to all six counts. Count One is charged as a class six felony, while Counts Two through Six are charged as class five felonies, the difference being that subsequent charges of violating an injunction against harassment are class five felonies while the first charge is a class six felony. The allegation as to all six charges is that Defendant harassed S.W. in violation of the injunction against harassment issued in C20246114. The Court will not look behind the court's issuance of the injunction against harassment or its affirmance after a contested hearing to relitigate whether it should have been issued. It was issued, and upheld, and Defendant is charged with violating it. This does not raise any free speech issues.

Finally, Count 14 charges stalking, a class three felony in violation of A.R.S. § 13-2923(A)(2). The grand jury also found probable cause as to this count. This count alleges that the conduct Defendant engaged in with respect to S.W. put her or her family in reasonable fear of death. Again, this charge is directed at conduct, not speech.

Defendant has not met his initial burden of showing the indictment "was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right." Rather, the indictment is directed at his harassment of S.W., which is not constitutionally protected. Defendant is not being prosecuted for his protected speech discussing proceedings before the Tucson City Council, the City Court, the Justice Court, the city prosecutor's office, the county attorney's office, or any other governmental organization. As such, he is not entitled to relief under the Anti-SLAPP statute, A.R.S. § 12-751.

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Based on the foregoing,

**IT IS ORDERED** that Defendant's motion to dismiss pursuant to A.R.S. § 12-751 is **DENIED**.

  
**D. DOUGLAS METCALF**  
(ID: 8d6465d7-745c-4625-9eca-99c805a8186f)

cc: Rachel L Stiles, Esq.  
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