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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**
12

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 ELIZABETH JOHNSON

17 Defendant.

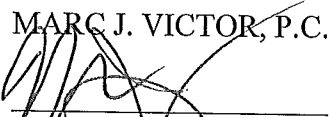
) Case No. CR2010-101760-001
)
)
) MOTION PURSUANT TO RULE 20 RE:
) ALLEGATION OF DANGEROUS CRIMES
) AGAINST CHILDREN
)
) (Oral Argument Requested)

18 Defendant ELIZABETH JOHNSON (hereinafter "Ms. Johnson"), by and through
19 undersigned counsel, moves the Court to strike the allegation of Dangerous Crimes Against Children
20 pursuant to Rule 20, *Ariz.R.Crim.P.*, because there is no substantial evidence to warrant the
21 allegation. This Motion is supported by the accompanying Memorandum of Points and Authorities.

22 RESPECTFULLY SUBMITTED this 2nd day of October, 2012.

23 By:

24 MARC J. VICTOR, P.C.

25 
26 Marc J. Victor
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE STATE ALLEGES THE FOLLOWING FACTS:**

3 On December 18, 2009, Ms. Johnson legally traveled to the state of Texas with her son,
4 Gabriel Johnson. On December 20, 2009, Ms. Johnson failed to produce Gabriel Johnson to Logan
5 McQueary, Gabriel's biological father, for his court ordered parenting time. On December 27, 2009,
6 Ms. Johnson contacted Logan McQueary, Gabriel's father, and told him that she had killed Gabriel.
7 As a result, the State has charged Ms. Johnson with kidnapping with the allegation of dangerous
8 crime against children.

9 **II. LAW AND ARGUMENT**

10 Ms. Johnson requests the Court to strike the allegation of Dangerous Crime Against Children
11 pursuant to Rule 20, *Ariz.R.Crim.P.*, because there is no substantial evidence to warrant the
12 allegation. "'Substantial evidence' is evidence that reasonable persons could accept as adequate and
13 sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v Jones*, 125
14 *Ariz.* 417, 419, 610 P.2d 51, 53 (1980).

15 An enhancement pursuant to A.R.S. § 13-705 is only proper when the *defendant has targeted*
16 *a victim under the age of fifteen*. *State v. Williams*, 175 *Ariz.* 98, 103, 854 P.2d 131, 136 (1993).
17 According to the indictment, Ms. Johnson is charged with kidnapping because she restrained Gabriel
18 with the intent to place *Logan McQueary, not Gabriel*, in reasonable apprehension of imminent
19 physical injury to Gabriel. The State's theory of kidnapping makes the allegation of a Dangerous
20 Crime Against Children inappropriate. Ms. Johnson's alleged conduct was not "focused on, directed
21 against, aimed at, or targeting a victim under the age of fifteen" as required by A.R.S. §13-705. *Id.*
22 To the contrary, Ms. Johnson's alleged conduct was focused on and aimed at *Logan McQueary, an*
23 *adult*.

24 According to the facts alleged and evidence presented by the State, Ms. Johnson's intent in
25 was allegedly to place Logan McQueary in fear, making *Logan McQueary her intended victim, not*
Gabriel. In order for A.R.S. §13-705 to apply, "the State must prove that the defendant committed

1 one of the statutorily enumerated crimes *and* that [her] conducted was ‘*focused on, directed against,*
2 *aimed at, or target[ed] a victim under the age of fifteen.*’” *State v. Sepahi*, 206 Ariz. 321, ¶ 19, 78
3 P.3d 732, 735 (2003) *quoting Williams*, 175 Ariz. at 103 (*emphasis added*). The State has not met
4 that burden in this case.

5 Gabriel was merely the instrumentality of the crime, not the victim. For A.R.S. § 13-705 to
6 apply, the victim under fifteen years old “must be the person against whom the crime is *directed*.” *Id.*
7 There is no evidence that indicates Ms. Johnson’s conduct was directed against Gabriel. To the
8 contrary, all of the State’s evidence has asserted Ms. Johnson’s actions were *solely* directed at Logan
9 McQueary and that Gabriel was merely a pawn Ms. Johnson used to hurt Logan McQueary.

10 The purpose of A.R.S. §13-705, would not be furthered by its application in this case. The
11 purpose of this statute is to effectively respond to “predators who pose a direct and continuing threat
12 to the children of Arizona.” *Id.* at 135. The state has not even alleged that any harm was inflicted
13 upon Gabriel. However, even if the State had alleged that some harm did befall Gabriel as a result of
14 Ms. Johnson’s alleged conduct, the application of A.R.S. §13-705 would still be inappropriate here.
15 The statute does not apply to defendants “who do not prey on helpless children but who fortuitously
16 injure children by their unfocused conduct.” *Id.* at 136. Any harm that could be said to have befallen
17 Gabriel would merely have been a side-effect of what the State has alleged Ms. Johnson’s ultimate
18 goal to be, to put Logan McQueary in fear of harm to Gabriel.

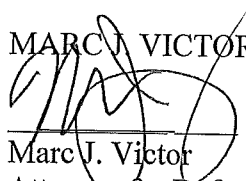
19 The application of A.R.S. § 13-705 is not to be applied merely because a child was present
20 during the commission of the crime; it is only to be applied when the conduct of the offense is
21 directed at a child under the age of fifteen. Because the alleged conduct of the offense here was
22 directed at Logan McQueary, an adult, application of A.R.S. § 13-705 in this case would be an
23 inappropriate extension of its purpose.

24 III. CONCLUSION

25 Ms. Johnson requests the Court find that no substantial evidence has been presented to
support a conclusion that a Dangerous Crimes Against Children enhancement has been shown

1 because the victim of the crime with which Ms. Johnson is charged was Logan McQueary, an adult.
2 There is no basis for the enhancement of a Dangerous Crime Against Children and it should therefore
3 be stricken pursuant to Rule 20.
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8 RESPECTFULLY SUBMITTED this 2nd day of October, 2012.
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12 By:  MARC J. VICTOR, P.C.
13 Marc J. Victor
14 Attorney for Defendant

15 Original filed with the Court and
16 copy hand delivered on October 2nd 2012 to:

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