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IN THE UTAH SUPREME COURT

F.L.,
Petitioner/Appellant,

vs.

UTAH COURT OF APPEALS,
Respondent.

DAVID M. CHADWICK,
Real party in interest and
Criminal Defendant/Respondent.

and

STATE OF UTAH,
Respondent.

Case No. 20210411-SC

Court of Appeals Case No. 20190818

**F.L.'S PETITION FOR REHEARING PURSUANT TO RULE 35 REGARDING
THE COURT'S DESCRIPTION OF HER AS THE "ALLEGED" VICTIM**

F.L.'S PETITION FOR REHEARING PURSUANT TO RULE 35 REGARDING THE COURT'S DESCRIPTION OF HER AS THE "ALLEGED" VICTIM

On July 7, 2022, this Court issued its unanimous decision granting F.L.'s petition for extraordinary relief. In its seventeen-page opinion, the Court in three places referred to F.L. as the "alleged" victim—including in the first sentence of the opinion. *See* Op. at 1 ("F.L. is the *alleged* victim of sex crimes charged against David M. Chadwick" (emphasis added)); *see also id.* at 3 ("F.L. is the *alleged* victim of these crimes." (emphasis added)); *id.* ("*alleged*" abuse of F.L. (emphasis added)); *see also id.* at 17 (referring to F.L.'s "*alleged* abuser" (emphasis added)).

As permitted by Rule 35, F.L. petitions for reconsideration—specifically, that the Court should remove from its opinion the term "alleged" before the term "victim" and "abuser." That term might be appropriate in a case in which a criminal defendant has yet to stand trial. *Cf. State v. Archibeque*, 2022 UT 18, ¶ 1 (discussing procedures at a preliminary hearing where a defendant "served his alleged victim" with a subpoena and the victim moved to quash). Here, in contrast, a jury has found beyond a reasonable doubt that Chadwick was guilty of one count of sexual abuse of a child—i.e., of sexually abusing F.L. *See* Op. at 2. While Chadwick is appealing his conviction, at this time it is plainly inaccurate to refer to F.L. as Chadwick's "alleged" victim—Chadwick's guilt for sexually abusing a child has been proven in a court of law. *See* BLACK'S LAW DICTIONARY 94 (11th ed. 2019) (defining "alleged" as "[a]ccused but *not yet tried* <alleged murderer>"

(emphasis added)); BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 44 (3d ed. 2011) ("*To allege* is formally to state a matter of fact as being true or provable, *without yet having proved it*" (emphasis added)); Dictionary.Com ("*Alleged* is most commonly used in a legal context . . . in reports about crime . . . before it has been proven or before someone has been convicted."), available at <https://www.dictionary.com/browse/alleged>. In the eyes of the law, F.L. is the *proven* victim of Chadwick's abuse. See National Crime Victims' Law Institute, The Use of the Term "Victim" in Criminal Proceedings (2009) (noting that, after a finding of "victim" status has been made, "[t]he use of 'alleged victim' incorrectly asserts that victim status has not been determined."), available at <https://law.lclark.edu/live/files/21940-use-of-the-term-victim-in-crim-proc11th-edpdf>.

In other recent cases where this Court has reviewed victim-related issues after a jury determination of guilt, this Court has not typically added the term "alleged" before victim.¹ A good illustration of the conventional approach comes

¹ In some cases, this Court has quoted the phrase "alleged victim" because it was within a quotation from another source. See, e.g., *Diderickson v. State*, 2022 UT 2, 506 P.3d 519, 527 (quoting phrase "alleged victim" from *State v. Arends*, 786 N.W.2d 885, 889 (Minn. Ct. App. 2010)). In other cases, this Court has referred to "the victim" generically, as in the phrase "victim-impact evidence." These cases do not shed light on the issue discussed in this reconsideration petition and are not discussed here.

from this Court’s recent decision on similar facts in *McCloud v. State*, 2021 UT 51, 496 P.3d 179. There, in the second sentence of its opinion rejecting a convicted defendant’s challenge to his sexual assault conviction, this Court wrote that the defendant “pursued post-conviction relief, claiming his trial counsel was ineffective ... for failing to subpoena the *victim’s* medical records.” *Id.* at ¶ 1 (emphasis added). The Court later defined the term “Victim” as the girl who had been sexually abused. *See id.* at ¶ 6 (“McCloud’s daughter (*Victim*) asserted that McCloud sexually abused her multiple times when she was between five and ten years old. According to *Victim*, these incidents occurred when McCloud and *Victim* showered and slept together. *Victim* reported the abuse years later, when she was sixteen.”).

Another illustration of the conventional approach—in another similar case involving access to sexual assault counseling records—is *State v. Bell*, 2020 UT 38, 469 P.3d 929. There, this Court’s first sentence in its opinion was: “This case concerns a criminal defendant’s request to view a sexual abuse *victim’s* privileged mental health therapy records.” *Id.* at ¶ 1 (emphasis added).

While we have not done a comprehensive survey of all of this Court’s caselaw, we have found a number of other recent decisions from this Court²

² We used the Westlaw database for the Utah Supreme Court and searched for cases in which “State” was in the title (i.e., criminal cases) and the word “victim” appeared. The date restriction was cases after January 1, 2020.

following the same approach of referring to a “victim” without the qualifier “alleged” where a defendant’s guilt has been established at trial. *See, e.g., State v. Jok*, 2021 UT 35, ¶ 1, 493 P.3d 665, 667 (first sentence of decision begins “John Atem Jok was convicted after a trial to the bench on two counts of sexual battery, based primarily on testimony from the *victim*, Beth (emphasis added)); *State v. Richins*, 2021 UT 50, ¶ 33, 496 P.3d 158, 164 (noting defense argument that lewdness “*Victim*” was preconditioned to identify him (emphasis added)); *State v. Eyre*, 2021 UT 45, ¶ 35, 500 P.3d 776, 787 (referring to “a *victim* of the robbery” (emphasis added)); *State v. Jordan*, 2021 UT 37, 493 P.3d 683, 685 (referring to twelve-year-old sexual assault victim “Mark” and adding in a footnote that “[t]his not *the victim*’s real name but a pseudonym adopted by the court of appeals (to protect the anonymity of the victims)” (emphasis added)); *Wyatt v. State*, 2021 UT 32, ¶ 6 n.1, 493 P.3d 621, 623 n.1 (referring to sex assault victim “Alice” and stating “[w]e employ the same pseudonym for *the victim* as used by the State” (emphasis added)); *State v. Marquina*, 2020 UT 66, ¶ 3, 478 P.3d 37, 40 (referring to “*the victim* in this case” (emphasis added)); *Archuleta v. State*, 2020 UT 62, ¶ 73, 472 P.3d 950, 964 (referring to the defendant making a statement about “killing *the victim*” (emphasis added)); *State v. Norton*, 2021 UT 02, ¶ 41, 481 P.3d 445, 454, *as amended* (Jan. 7, 2021) (referring to the issue in sexual assault case as whether the defendant had the “required mental state as to the *victim*’s nonconsent”), *cert.*

denied, 142 S. Ct. 180 (2021); *State v. Grunwald*, 2020 UT 40, ¶ 4, 478 P.3d 1, 4 (referring to “the *victim*-police officer” in a homicide case (emphasis added)); *State v. Newton*, 2020 UT 24, ¶ 28, 466 P.3d 135, 142 (noting argument that there was “no mens rea requirement as to the *victim*’s nonconsent” (emphasis added)); *State v. Gallegos*, 2020 UT 19, ¶ 3, 463 P.3d 641, 644 (first sentence of Court’s opinion begins “[o]n a dark night, *the victim* (*Victim*) parked his RV next to Lester Park in Ogden, intending to spend the evening” (emphasis added)); *see also State v. Argueta*, 2020 UT 41, ¶ 111 n.26, 469 P.3d 938 (Utah 2020) (Lee, J., concurring) (referring to convicted defendant meeting “*the victim*” (emphasis added)); *but see also State v. Stricklan*, 2020 UT 65, ¶ 133, 477 P.3d 1251, 1275 (Durrant, C.J., dissenting) (referring to “*alleged victim*” in case where it was disputed whether the alleged sexual abuse had ever occurred (emphasis added)).

Other courts also follow this approach of referring to “the victim” (rather than “the alleged victim”) in cases in which a criminal defendant has been convicted. *See, e.g., Michigan v. Bryant*, 562 U.S. 344 (2011) (first sentence of opinion begins “[a]t respondent Richard Bryant’s trial, the court admitted statements that *the victim*, Anthony Covington, made to police officers” (emphasis added)).

The Court should follow the conventional approach here. Referring to F.L. as the “alleged” victim inappropriately causes harm to her by suggesting—without basis—that a defect exists in the jury’s finding that she was the victim of

Chadwick's child sex abuse crime. See Note, Scott A. McDonald, *When a Victim's a Victim: Making Reference to Victims and Sex-Crime Prosecution*, 6 NEVADA L.J. 248, 271 (2005) (concluding that the term "alleged" victim "fails to recognize adequately the status of victim and instead portrays a presumption of incredibility").

A common fear of child sex abuse victims is "not being believed." GAIL S. GOODMAN & BETTE L. BOTTOMS, *CHILD VICTIMS, CHILD WITNESSES: UNDERSTANDING AND IMPROVING TESTIMONY* 121 (1993); see also *State v. Lopez*, 2020 UT 61, ¶ 52, 474 P.3d 949, 964 (child sex abuse victims may come "to feel somehow responsible for the abuse"). Sexual abuse is likely to leave child victims "psychologically fragile," including "fear, anxiety, post-traumatic stress symptoms, depression, sexual difficulties, poor self-esteem, stigmatization, [and] difficulty with trust.'" William Wesley Patton, *Viewing Child Witnesses Through a Child and Adolescent Psychiatric Lens: How Attorney's Ethical Duties Exacerbate Children's Psychopathology*, 16 WIDENER L. REV. 369, 369 (2010). The Court's use of the term "alleged" here compounds this psychological trauma for F.L.

Under the Utah Constitution, "victims of crimes ... as defined by law" have the right "[t]o be treated with fairness, respect, and dignity" Utah Const., art. I, § 28(1)(a). There can be no doubt that F.L. is a "victim" of the crime of sexual abuse of a child for which Chadwick was duly convicted.

For all these reasons, this Court should reconsider its decision and release a new opinion omitting the term “alleged” where it refers to F.L.’s victim status.

Respectfully submitted on July 14, 2022.

/s/ Paul G. Cassell

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered, via email, on July 14, 2022,
the foregoing MOTION FOR RECONSIDERATION to counsel for the following:

1. State of Utah
via counsel William Hains at whains@agutah.gov;
2. Appellant Chadwick
via counsel Douglas J. Thompson at dougt@utcpd.com.
3. Utah Court of Appeals
via counsel Keisa Williams at keisaw@utcourts.gov

/s/ Paul G. Cassell
Paul G. Cassell
Attorney for Crime Victim/Petitioner F.L.