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Litigating the "Serious Offense" Aggravating Circumstance Element in Capital Cases: Don't Roll Over

By Anna Unterberger, Defender Attorney, Capital Unit

INTRODUCTION

Regarding capital cases, one of the aggravating circumstance elements where a prior conviction may come into play is the "serious offense" aggravating circumstance. One way for the State to establish this aggravating circumstance is if it proves beyond a reasonable doubt that, "[t]he defendant was previously convicted of a serious offense, whether preparatory or completed." See A.R.S. § 13-751(F)(2) (prior to January 1, 2009, section numbered as 13-703(F)(2)).

This article reviews several possible issues to litigate when defending against an (F)(2) allegation that involves "previously existing" prior convictions rather than "contemporaneous" prior convictions. The issues presented are: (1) if the conviction is from a jurisdiction outside of Arizona, the elements of the foreign conviction must be "in strict conformity" with an Arizona felony; (2) the evidentiary foundational requirements under Arizona law; (3) constitutional rights trump the "presumption of regularity" regarding prior convictions, at least when they are being alleged as *an element of capital murder*; (4) prior convictions may not satisfy the (F)(2) allegation if the State is unable to prove beyond a reasonable doubt that your client was not mentally retarded when the prior offense was committed; and (5) prior convictions may not satisfy the (F)(2) allegation if your client was under 18 years old when the prior offense was committed.

FOREIGN FELONY CONVICTIONS AND THE ISSUE ADDRESSED IN STATE V. ROQUE: THE STATE FAILED TO PROVE THAT THE ELEMENTS OF THE ALLEGED CALIFORNIA CONVICTION FOR ATTEMPTED ROBBERY WERE "IN STRICT CONFORMITY" WITH THE ELEMENTS OF ATTEMPTED ROBBERY IN ARIZONA

General Law

Even if a defendant admits the existence of a prior conviction, if the conviction is from outside of Arizona, "such an admission does not

constitute proof that the foreign conviction would have been a felony under Arizona law.” *State v. Crawford*, 214 Ariz. 129, 131, 149 P.3d 753, 755 (2007), quoting *State v. Heath*, 198 Ariz. 83, 84, 7 P.3d 92, 93 (2000). On appeal, and because the issue is one of law, it is reviewed *de novo* if preserved. *State v. Smith*, 194 P.3d 399, 401 (Ariz. 2008). A defendant’s claim that a trial court did not properly examine his foreign conviction may be reviewed for fundamental error on appeal, despite the lack of an objection at the trial level. 194 P.3d at 403, overruling *State v. Fagnant*, 176 Ariz. 218, 860 P.2d 485 (1993), and *State v. Song*, 176 Ariz. 215, 860 P.2d 482 (1993). But the much better practice is to make the objection and obtain a ruling from the trial judge, which ruling is then reviewed *de novo*.

Regarding the “serious offense” aggravating circumstance finding and foreign prior felony convictions, the court must be sure that the fact finder in the prior case actually found beyond a reasonable doubt that the defendant had committed every element of the foreign prior conviction that would be required to prove an Arizona felony offense. *State v. Ault*, 157 Ariz. 516, 521, 759 P.2d 1320, 1325 (1988) (non-capital case involving California prior convictions that resulted from a jury trial); see also *Heath*, 198 Ariz. at 84, 7 P.3d at 93 (non-capital case) (holding that the State must prove that the foreign felony conviction would have been a felony under Arizona law); *State v. Schackart*, 190 Ariz. 238, 246, 947 P.2d 315, 323 (1997) (capital case) (holding that regarding the (F)(2) circumstance, a reviewing court must look to the “statutory definition” of the “earlier felony”).

But if the statutory definition of the crime contains a basis that would not qualify as a prior “serious offense” felony under Arizona law, then it does not satisfy the (F)(2) circumstance. See e.g., *State v. Henry*, 176 Ariz. 569, 587, 863 P.2d 861, 879 (1993) (capital case) (discussing predecessor statute to most recent version of § 13-703(F)(2)); *State v. Fierro*, 166 Ariz. 539, 549, 804 P.2d 72, 82 (1990) (same). When reviewing an (F)(2) foreign conviction finding, the Arizona Supreme Court does not, “consider the facts underlying the conviction[.]” *State v. Schaaf*, 169 Ariz. 323, 334, 819 P.2d 909, 920 (1991) (capital case). Thus, the crux of this issue is not whether the prior conviction is a “serious offense” felony under the foreign criminal code, but whether *it would necessarily be a “serious offense” felony* under the Arizona criminal code. See A.R.S. § 13-751(F)(2) & (I)(8) (prior to January 1, 2009, sections numbered as 13-703(F)(2) & (I)(8)) (including that a prior conviction for Robbery as a “preparatory” offense qualifies as an aggravating circumstance, “if committed in this state or . . . committed outside this state,” if the out-of-state offense would constitute the in-state offense).

In *State v. Clough*, 171 Ariz. 217, 829 P.2d 1263 (App. 1992), the Arizona Court of Appeals addressed this type of issue in a non-capital case under former A.R.S. § 13-604(I). One of the cases relied on by the *Clough* Court was *Schaaf*, *supra*. *Clough*’s Arizona jury had convicted him of third-degree burglary and a class 3 felony theft. The State’s allegations included a prior felony conviction for issuing a bad check in Montana. *Clough* admitted the prior felony at trial. In an amended opinion, the Court reversed and remanded *Clough*’s enhanced sentences. The Court first addressed what test to use when deciding whether enhancement with a foreign felony as a prior conviction is appropriate:

[Defense counsel] emphasized that there must be strict conformity between the elements of the Montana felony and the elements of some Arizona felony before A.R.S. § 13-604(I) can apply. He is correct. In *State v. Ault*, 157 Ariz. 516, 521, 759 P.2d 1320, 1325 (1988), our supreme court ruled that in order for an out-of-state conviction to constitute one of the felonies enumerated in [former] A.R.S. § 13-604(O) relating to eligibility for release from prison, a court must be sure that the fact finder in the prior case actually found beyond a reasonable doubt that the defendant had committed every element that would be required to prove the Arizona offense. While *Ault* dealt with a different statute, we believe its reasoning applies to A.R.S. § 13-604(I). See also *State v. Schaaf*, 169 Ariz. 323, 333, 819 P.2d 909, 919 (1991) (foreign statutory definition must involve

violence or threat of violence if foreign conviction for felony involving violence or the use of violence is used to enhance under [former] A.R.S. § 13-703(F)(2)).

Next, the *Clough* Court compared the Montana bad check statute with the Arizona statutes for theft, and for fraudulent schemes and artifices, and found that the Montana statute did not equate with either Arizona statute. 171 Ariz. at 221-22, 829 P.2d at 1267-68. Thus, a remand for resentencing without the prior-conviction enhancement was necessary. *See also State v. Kuntz*, 209 Ariz. 276, 279, 100 P.3d 26, 29 (App. 2004) (“The due process concerns expressed by the supreme court in *Schaaf* . . . as the reason for precluding evidence other than the judgment of conviction and the elements of the relevant offenses are equally viable when the conviction is a substantive element of the crime as opposed to a sentencing enhancement. Consideration of events underlying the foreign conviction that are not necessarily part of the conviction would, in effect, constitute a prohibited second trial concerning that crime.”).

The Arizona appellate courts continue to remain concerned about the use of foreign felony convictions in Arizona sentencing proceedings. The Arizona Supreme Court addressed this issue in *Crawford, supra*. There, the Court reviewed a historical felony allegation involving a federal conviction for possessing a credit card stolen from the United States mail. And although *Crawford* was a non-capital case, the Court relied upon Arizona capital caselaw when discussing the scope of review regarding foreign felony convictions. “The capital cases make plain that only the ‘statutory definition of the prior crime, and not its specific factual basis’ can be considered in determining whether a foreign conviction is treated as a ‘serious offense’ and thus an aggravating circumstance under A.R.S. § 13-703(F)(2).” 214 Ariz. at 131-32, 149 P.3d at 755-56, *citing capital cases including State v. Roque*, 213 Ariz. 193, 216-17, 141 P.3d 368, 391-92 (2006). Because the trial court used the factual basis contained in the indictment to establish the historical felony conviction rather than just looking to the statutory language, the *Crawford* Court remanded the finding for further proceedings. 214 Ariz. at 132, 149 P.3d at 756.

California Robbery Law Versus Arizona Robbery Law

The Arizona Supreme Court reviewed the interplay of California robbery law and A.R.S. § 13-703(F)(2) in *Roque, supra*. There, the Court was called upon to determine whether, “based on the statutory provisions, Roque’s attempted robbery in California would have constituted an attempted robbery if it had been committed in Arizona.” 213 Ariz. at 216, 141 P.3d at 391. The State had filed the attempted robbery conviction as an (F)(2) allegation, and the defense moved pretrial to dismiss the allegation. The court granted the defense motion. The State then cross-appealed the dismissal after Roque’s notice of appeal was filed. 213 Ariz. at 215, 141 P.3d at 390.

In Arizona, and since 1978, “A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.” A.R.S. §13-1902(A) (added by Ariz. Sess. Laws 1977, Ch. 142, § 73, eff. Oct. 1, 1978). “‘Force’ means any physical act directed against *a person* as a means of gaining control of property[,]” and, “[t]hreat’ means a verbal or physical menace of imminent physical injury to *a person*.” A.R.S. § 13-1901(1) & (4), respectively (added by Ariz. Sess. Law 1977, Ch. 142, § 73, eff. Oct. 1, 1978; most recently amended by Ariz. Sess. Laws 1980, Ch. 229, § 21, eff. April 23, 1980) (emphasis added).

In California, and since 1872, “Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211. “The fear mentioned in Section 211 may be either: 1. The fear of an unlawful injury to the person *or property* of the person robbed, or of any relative of his or member of his family; or, 2. The fear of an immediate and unlawful injury to the person *or property* of anyone in the company of the person robbed at the time of the robbery.”

Before *Roque*, the Court had yet to rule on whether the California offense of Robbery was a “serious offense” under the version of A.R.S. § 13-703(F)(2) that was in effect from July 17, 1993, through May 25, 2003, which was the version that applied to Roque’s case. See Ariz. Sess. Laws 1993, Ch. 153, § 1; Ariz. Sess. Laws 2003, Ch. 255, § 1 (adding language regarding convictions for serious offenses committed on the same occasion as, or consolidated for trial with, the homicide at issue). Before that, the (F)(2) circumstance read: “The defendant has been or was previously convicted of a felony in the United States involving the use or threat of violence on another person.”

Regarding former § 13-703(F)(2) and the California Robbery statute, the Court had recognized:

Both the State and [defendant] Kemp agree that the California statute under which Kemp was convicted requires the taking of property *from a person* accompanied by “force or fear” and defines fear as either: “1) The fear of an unlawful injury to the person *or property* of the person robbed. ... or 2) The fear of an immediate and unlawful injury to the person *or property* of another in the company of the person robbed at the time of the robbery.” Cal. Penal Code §§ 211 (1951) (defining robbery) & 212 (1963) (defining force or fear) (emphasis added). Kemp argues that the California statute does not satisfy the (F)(2) factor because its statutory definition does not require the use or threat of violence against a *person*. Robbery could be committed by threatening force against property.

State v. Kemp, 185 Ariz. 52, 64, 912 P.2d 1281, 1293 (1996) (emphasis supplied in *Kemp*). The Court then reasoned that, “even though it is possible to commit Robbery in California by threatening force against property, the person from whom property is being taken actually experiences the fear[,]” and that, “this fear is the violence.” *Kemp*, 185 Ariz. at 64, 912 P.2d at 1293. The Court further reasoned that:

the California robbery statute requires the “taking of personal property in the possession of another, *from his person or immediate presence*, and against his will” by means of force or fear. Cal. Penal Code § 211 (1951) (emphasis added). Implicit in the California robbery statute is the danger that either the taking itself or the foreseeable resistance to the taking presents the risk of violence. This threat of violence is what makes robbery a more serious crime than larceny. And this threat of violence is the same whether the robbery is accomplished by threatening force against a person or against property. Robbery is clearly a crime against a *person*. It necessarily carries with it the threat or use of violence. Accordingly, Kemp’s robbery conviction satisfies [former] A.R.S. § 13-703(F)(2).

Id. (emphasis supplied in *Kemp*). But *Kemp* did not answer the issue presented in *Roque*, which fell under the version of 13-703(F)(2) enacted in 1993. And that is because the question in *Roque* was not whether Robbery was a, “crime against a person.” Instead, the question was whether Robbery in California, by statutory definition, *could be committed in a manner different* from Robbery in Arizona, by statutory definition.

In California, Roque had pleaded guilty to Attempted Robbery by use of “force and fear.” But a comparison of California’s and Arizona’s Robbery statutes, and the definitional statutes necessarily encompassed within those statutes, showed that the elements between the two State’s statutes were not “in strict conformity” with each other.

In Arizona, if Robbery is committed by use of a “threat,” there must be made a, “verbal or physical menace of imminent physical injury to a *person*.” A.R.S. §§ 13-1901(4) & -1902(A) (emphasis added). If it is committed by using “force,” then there must be used a, “physical act directed against

a person as a means of gaining control of property.” A.R.S. §§ 13-1901(1) & -1902(A) (emphasis added). Thus, and regardless of whether an Arizona Robbery is committed through the use of threats, force or both, the threats and/or force must be against a person.

By contrast, and in California, Robbery accomplished by “force and fear,” necessarily allows for the fear to be of an (1) unlawful injury to *the property* of the person robbed, or of any relative of his or member of his family, or, (2) immediate and unlawful injury to *the property* of anyone in the company of the person robbed at the time of the robbery.

A difference also exists regarding the “imminence” of the Arizona “threat” element versus the California “fear” element. In Arizona, a “threat” must be a, “verbal or physical menace of *imminent* physical injury to a person.” A.R.S. §§ 13-1901(4) (emphasis added). But in California, the fear element may be accomplished through fear of, “unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family[;]” thus, there is no requirement of “imminent” injury. See Calif. Penal Code § 212 (1); *Roque*, 213 Ariz. at 216, 141 P.3d at 391.

Consequently, and under the version of § 13-703(F)(2) that applied to Roque’s case, a California conviction for Attempted Robbery did not qualify as a “serious offense” *as a matter of law*, and the trial court did not err by dismissing the State’s allegation. 213 Ariz. at 217, 141 P.3d at 392.

This is the type of issue that should be presented via a pretrial Motion To Dismiss Allegation of Aggravating Circumstance made pursuant to Rule 13.5(c), Arizona Rules of Criminal Procedure (“ARCP”), and oral argument. That way, if the elements of the foreign statute and the Arizona statute are not “in strict conformity,” the court will dismiss the allegation, and the jurors will never hear about that alleged aggravating circumstance element during the eligibility phase.

THE STATE’S DOCUMENTARY EVIDENCE MUST MEET THE REQUIREMENTS OF ARIZONA LAW

Generally, and regarding proof of the existence of prior convictions, the State meets its burden, “by offering into evidence a certified copy of a defendant’s prior conviction and establishing that the defendant is the person to whom the document refers.” *State v. Carreon*, 210 Ariz. 54, 65, 107 P.3d 900, 911 (2005). The defendant’s identity may be established by comparing his fingerprints obtained when he was arrested in the present case against fingerprints contained in the certified document of his conviction, or through a certified document of conviction containing his photograph. *E.g.*, *State v. Henry*, 176 Ariz. 569, 588, 863 P.2d 861, 880 (1993); *State v. Comer*, 165 Ariz. 413, 428, 799 P.2d 333, 348 (1990). But simply proving that the defendant and the person named in the certified document had the same name is not enough. *State v. Pennye*, 102 Ariz. 207, 208, 427 P.2d 525, 526 (1967).

The documents used must be properly self-authenticated and certified for admission under the Arizona Rules of Evidence (“ARE”). See A.R.S. § 13-751(B) (stating that the rules of evidence apply to the admissibility of information used to establish aggravating circumstances in a capital trial) (prior to January 1, 2009, section numbered as 13-703(B)). A document may be admitted into evidence if it bears a seal of a political subdivision of a State, and a signature of attestation or execution. Rule 902(1), ARE (domestic public documents under seal). But a *copy* of a certified copy is insufficient for admissibility. *State v. Stotts*, 144 Ariz. 72, 82-85, 695 P.2d 1110, 1120-23 (1985); *State v. Garcia*, 113 Ariz. 372, 375, 555 P.2d 330, 333 (1976).

Under Rule 902(2), ARE (domestic public documents not under seal), “a document can be self-authenticating if a public officer without seal signs the document so long as ‘a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certified under seal that the signer has the official capacity and that the signature is genuine.’” *State v. Hooper*, 145 Ariz. 538, 549, 703 P.2d 482, 493 (1985).

And for documents to be admissible under Rule 902(4) as certified copies of public records, the records must be, “certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) [foreign public documents] of this rule or complying with any applicable statute or rule.”

Make sure that the State actually has the documentation in proper form when attempting to prove a prior conviction under Arizona law. And keep in mind that taking judicial notice of court files and documentation is *not* an option in this situation. See *State v. Lee*, 114 Ariz. 101, 105, 559 P.2d 657, 661 (1976) (“We do not approve the procedure of asking the court to take judicial notice of a conviction for the purpose of establishing such a conviction *as an aggravating circumstance*.” (emphasis added)). Neither is relying on the allegation of a prior conviction in a presentence report. *Id.*; see also *Blakely v. Washington*, 542 U.S. 296, 312 (2004) (disapproving using for sentence aggravation, “facts extracted after trial from a report compiled by a probation officer who the judge thinks more likely got it right than got it wrong.”).

PRESUMING THE VALIDITY OF A PRIOR CONVICTION: AT LEAST WHEN IT COMES TO CAPITAL CASES, THE PRESUMPTION IS TRUMPED BY THE CONSTITUTION

In 1978, the Arizona Supreme Court recognized, in a capital case, that, “[a] state may not use a prior conviction to enhance punishment for a later conviction if the prior conviction was obtained in a constitutionally infirm manner.” *State v. Watson*, 120 Ariz. 441, 448, 586 P.2d 1253, 1260 (1978), citing *Burgett v. Texas*, 389 U.S. 109 (1967); accord *State v. Steelman*, 126 Ariz. 19, 24, 612 P.2d 475, 480 (1980) (capital case). Neither may a “constitutionally infirm conviction” be weighed against a defendant for a subsequent crime. *Steeleman*, 126 Ariz. at 24, 612 P.2d at 480, citing *United States v. Tucker*, 404 U.S. 443 (1972).

“Convictions obtained by means of a guilty plea without a valid waiver of the defendant’s trial rights are unconstitutional.” *Steeleman*, 126 Ariz. at 24, 612 P.2d at 480, citing *Boykin v. Alabama*, 395 U.S. 238 (1969). The foregone constitutional rights include: (1) the privilege against self-incrimination; (2) the right to a jury trial; and (3) the right to confront one’s accusers. Any waiver of those rights must affirmatively appear in the record. *E.g.*, *State v. Darling*, 109 Ariz. 148, 151, 506 P.2d 1042, 1045 (1973). “[W]e should indulge every reasonable presumption against a waiver of a fundamental constitutional right.” *Quinton v. Superior Court*, 168 Ariz. 545, 549, 815 P.2d 914, 918 (App. 1991). A defendant in a criminal case may only waive a constitutional right if that waiver is voluntarily, knowingly, intelligently and expressly made. *Id.*; accord *People v. Christian*, 125 Cal. App.4th 688, 698, 22 Cal.Rptr.3d 861, 867-68 (2005) (reversing the defendant’s conviction on the substantive charge, as well as the prior conviction allegations, because although it was clear that he had some kind of conversation with his counsel about the constitutional rights that he agreed to waive, the court did not know what counsel had told the defendant, and thus did not know if the waiver was valid).

The trial court must also, “establish a factual basis for a plea of guilty before it is constitutionally acceptable.” *Watson*, 120 Ariz. at 448, 586 P.2d at 1260, citing *North Carolina v. Alford*, 400 U.S. 25 (1970). The *Watson* Court determined that there was a sufficient factual basis for Watson’s prior conviction guilty plea, but only after reading the transcript of the guilty plea proceeding for that prior felony. 120 Ariz. at 448, 586 P.2d at 1260.

In *State v. McCann*, 200 Ariz. 27, 21 P.3d 845 (2001) (non-capital case), the Arizona Supreme Court adopted the reasoning of *Parke v. Raley*, 506 U.S. 20, 30 (1992) (non-capital case), which held that, “*Boykin* does not prohibit a state court from presuming, at least initially, that a final judgment of conviction offered for purposes of sentence enhancement was validly obtained.” 200 Ariz. at 29, 21 P.3d at 847. The constitutional right at issue in *Parke* was the right to counsel.

But although *McCann* held that there was a rebuttable presumption that prior convictions were valid, at least in non-capital cases, the Court emphasized that, “our ruling does not lessen the burden on the State, which retains the burden of establishing that a prior conviction is constitutionally valid, whether it is used as a sentence enhancement or as an element of a crime.” 200 Ariz. at 31, 21 P.3d at 849. “In cases in which a judgment of conviction results from the violation of constitutional rights, the conviction cannot be used either to establish an element of an offense or for purposes of sentence enhancement. Thus, prior convictions may be used by the State only if constitutionally valid.” *Id.*

The United States Supreme Court then decided *Ring v. Arizona (Ring II)*, 536 U.S. 584 (2002), where the Court mandated that juries, not judges, were now the triers of fact when determining the facts that were necessary to impose sentences in death-penalty-eligible cases. And that was because the Sixth Amendment entitled, “[c]apital defendants ... to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.” 536 U.S. at 589. Furthermore, Arizona’s labeling of the finding of at least one aggravating circumstance as a sentencing factor, rather than as *an element of capital murder*, was a matter of form over substance, because under Arizona’s capital statutory scheme, “Arizona’s enumerated aggravating factors operate as ‘the functional equivalent of an element of a greater offense.’” 536 U.S. at 609, quoting *Apprendi v. New Jersey*, 530 U.S. 466, 494 n.19 (2000). “[T]he dispositive question ... ‘is one not of form, but effect.’” “If a State makes an increase in a defendant’s authorized punishment contingent on *the finding of a fact*, that fact -- no matter how the State labels it -- *must be found by a jury beyond a reasonable doubt.*” *Ring II*, 536 U.S. at 602 (emphasis added). Thus, and regarding aggravating circumstance elements of a capital murder charge, the burden of proof is on the State, and that burden is one of beyond a reasonable doubt.

But in addition to Sixth Amendment concerns, there are also Eighth Amendment concerns regarding capital murder charges. Underlying the Eighth Amendment is, “a fundamental respect for humanity[.]” *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). Death as a punishment is “different,” and because of its unique severity and finality, there is a heightened need for sentencing *reliability* in capital cases under the Eighth Amendment. *E.g.*, *Sumner v. Shuman*, 483 U.S. 66, 72 (1987); *Woodson*, 428 U.S. at 305.

Thus, and because of this heightened need for reliability when the charge is *capital murder*, the “presumption of reliability” regarding prior convictions that was espoused in *Parke* must give way to the defendant’s constitutional protections. In procedural terms, this translates into the State having the burden to prove, beyond a reasonable doubt, that the prior conviction is not “constitutionally infirm.” At a minimum, this includes an affirmative showing that for prior convictions obtained by guilty pleas, the defendant must have knowingly, intelligently and voluntarily waived his rights before entering the plea that resulted in the conviction, and that there was a sufficient factual basis for the plea.

DEALING WITH THE ISSUE OF MENTAL RETARDATION: UNDER THE REASONING OF *ATKINS V. VIRGINIA*, THE STATE SHOULD NOT BE ABLE TO USE YOUR CLIENT’S PRIOR CONVICTIONS AS AN ELEMENT OF CAPITAL MURDER UNLESS THE STATE PROVES BEYOND A REASONABLE DOUBT THAT YOUR CLIENT WAS NOT MENTALLY RETARDED AT THE TIME THAT THE OFFENSE THAT RESULTED IN THE PRIOR CONVICTION WAS COMMITTED

The Eighth and Fourteenth Amendments prohibit “excessive” sanctions. *Atkins v. Virginia*, 536 U.S. 304, 311 (2002). The social purposes served by the death penalty are retribution and deterrence. 536 U.S. at 318-19. Regarding mentally retarded defendants and retribution, their lesser culpability does not warrant execution, which is the most extreme sanction available. 536 U.S. at 319. And regarding deterrence, executing mentally retarded defendants will not, “inhibit criminal actors from carrying out murderous conduct. . . . Nor will exempting the mentally retarded from execution lessen the deterrent effect of the death penalty with respect to offenders who are not mentally retarded.” 536 U.S. at 320.

More specifically, people with mental retardation who kill are both less culpable and less deterrable than the average murderer, because of their, “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” 536 U.S. at 318. “If the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution.” *Id.* Similarly, and with respect to deterrence, “[e]xempting the mentally retarded from [the death penalty] will not affect the ‘cold calculus that precedes the decision’ of other potential murderers.” *Id.* Thus, executing a mentally retarded defendant is “excessive” and prohibited under the Eighth and Fourteenth Amendments. 536 U.S. at 321.

Since it is constitutionally impermissible to execute a mentally retarded person who committed a murder, then under that same reasoning it should be constitutionally impermissible to use a prior conviction for an offense that was committed by a mentally retarded person when that prior conviction is alleged *as an element of capital murder*.

Let’s say that you have moved pretrial to have the death notice dismissed in your client’s case pursuant to A.R.S. § 13-753(A) (prior to January 1, 2009, section numbered as 13-703.02(A)), because your client is mentally retarded. You have proceeded through the statutory hearing, which places the burden on you to prove by clear and convincing evidence that your client is mentally retarded. § 13-753(G) (prior to January 1, 2009, section numbered as 13-703.02(G)). But the court rules that you have not met your burden, and the case proceeds as a capital murder case.

Your client is then convicted of first-degree murder, and the case moves on to the eligibility phase. The question regarding mental retardation then arises in a different context, with a different burden of proof, and a different party having the burden of persuasion. Now, *the State* should have to prove *beyond a reasonable doubt* that your client was not mentally retarded at the time that the offense was committed that resulted in the (F)(2) prior conviction element allegation. And that is because mentally retarded persons have, “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” *Atkins*, 536 U.S. at 318. Thus, executing them results in an “excessive” sentence and is prohibited by the Constitution. And that prohibition should include aggravating circumstance *elements* in a capital case.

MAY THE STATE USE PRIOR CONVICTIONS WHEN THE PRIOR OFFENSE WAS COMMITTED WHEN YOUR CLIENT WAS UNDER 18 YEARS OLD? UNDER THE REASONING OF ROPER V. SIMMONS, THE ANSWER SHOULD BE “NO”

Roper v. Simmons, 532 U.S. 551 (2005), held that the execution of juveniles who commit crimes while under the age of 18 is prohibited by the Eighth and Fourteenth Amendments. Before *Simmons*, the Court had already recognized that, “[t]he death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime. . . . These rules vindicate the underlying principle that the death penalty is reserved for a narrow category of crimes and offenders.” 532 U.S. at 568-69, *citing respectively Thompson v. Oklahoma*, 487 U.S. 815 (1988), *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Atkins*, *supra*.

The *Simmons* Court made observations analogous to those of the *Atkins* Court. With respect to culpability, the *Simmons* Court stated:

Whether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law’s most severe penalty is imposed on one whose

culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.

532 U.S. at 571. On the deterrence issue, the Court said that, “[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent.” 532 U.S. at 572, quoting *Thompson*, 487 U.S. at 837.

The reasoning here parallels the reasoning regarding the mentally retarded defendant and prior convictions. Since it is constitutionally impermissible to execute a juvenile who committed a murder, then under that same reasoning it should be constitutionally impermissible to use a prior conviction for an offense that was committed by a juvenile who was tried as an adult, or committed by a juvenile who was not charged until after he turned 18, when that prior conviction is alleged *as an element of capital murder*. This requires that for all previously existing prior convictions alleged under (F)(2), you obtain accurate information regarding how old your client was *at the time that the prior offense was committed*. If the client was under 18, a Motion To Dismiss Allegation Of Aggravating Circumstance may then be filed pursuant to Rule 13.5(c), ARCP, along with supporting documentation.

CONCLUSION

Litigating the (F)(2) allegation for previously existing prior convictions is not as cut and dried as one might think. There are actually issues to be argued on behalf of your client at the trial level. And if the trial judge rules against you, and your client is convicted of capital murder, you've preserved those issues for direct appeal and habeas review. Carry on!

Save the Date...

**7TH ANNUAL APDA
CONFERENCE**

June 17, 18 & 19, 2009

SPONSORED BY MARICOPA COUNTY PUBLIC DEFENDER,
APAAC AND APDA

Spring Professionalism Course

Friday, April 24, 2009

11:00am — 3:15pm

**Downtown Justice Center
620 W. Jackson,
2nd Floor Training Room**



Presenters include:

Russ Born,
Deputy Maricopa County Public Defender
Sylvia Lafferty,
Deputy Pinal County Attorney
Kevin Maricle,
Deputy Maricopa County Attorney
Art Merchant,
Deputy Maricopa County Juvenile Public Defender
Jeremy Mussman,
Deputy Director Maricopa County Public Defender
Barbara Marshall,
Deputy Maricopa County Attorney

This course is designed for newly admitted attorneys and will satisfy the State Bar of Arizona requirement.

May qualify for up to 4 hours Ethics CLE.
*Feel free to bring your lunch

To register or for questions, please contact
Celeste Cogley (MCPD)
602-506-7711 X37569 or email
cogleyc@mail.maricopa.gov

Practice Pointer

Does Date of Offense or Date of Conviction Determine Whether A Prior Felony is Allegeable? The Answer Is Yes.

By Jesse Turner, Defender Attorney

An offense is a historical prior felony conviction (A.R.S. § 13-604(w)(3)) if:

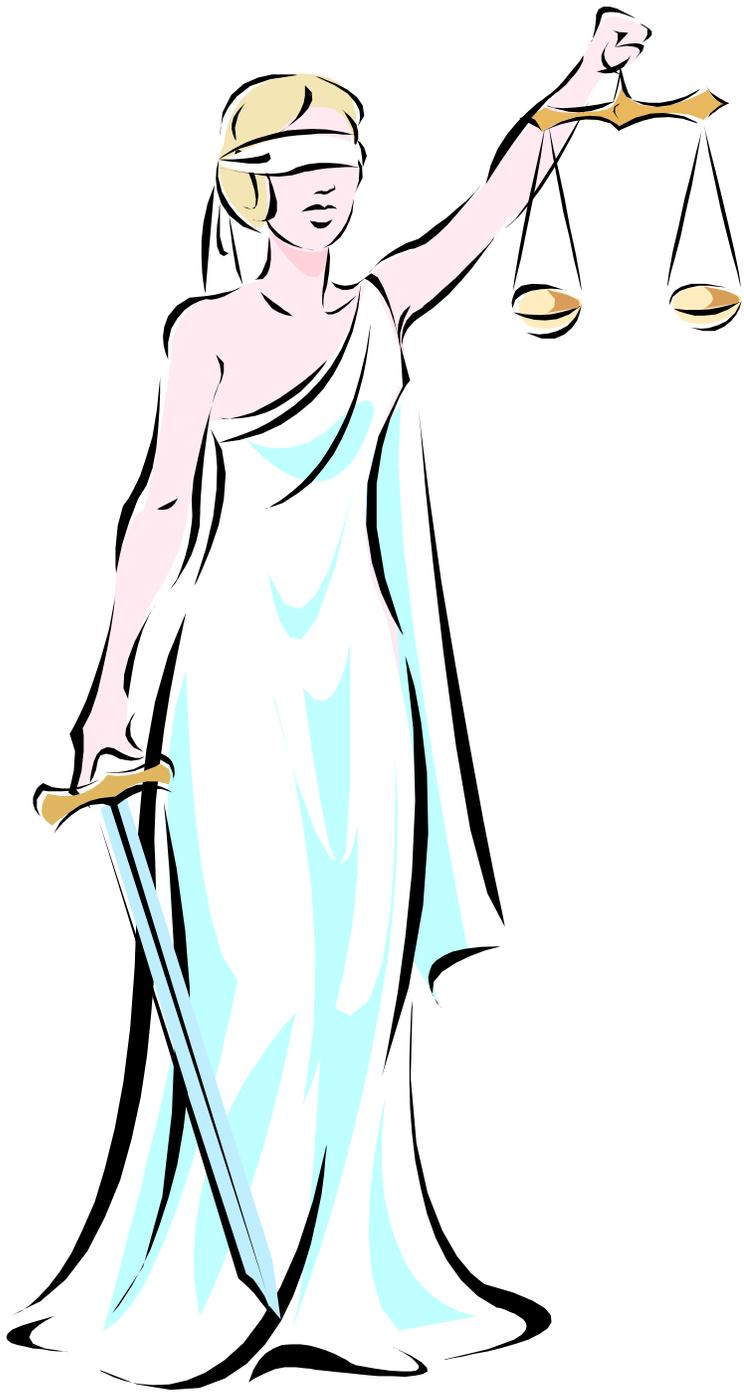
- It is a third or subsequent offense. (13-604(w)(3)(d)) OR
- It is a class two or three felony, committed within the previous ten years. (13-604(w)(3)(b)) OR
- It is a class 4-6 felony, committed within the previous five years. (13-604(w)(3)(c)) OR
- It requires a mandatory prison sentence, and is not a drug case over the threshold. (13-604(w)(3)(a)) OR
- It involves the intentional or knowing infliction of serious physical injury. (Id.) OR
- It involves the use or exhibition of a deadly weapon or dangerous instrument. (Id.) OR
- It involves the illegal control of a criminal enterprise. (Id.) OR
- It is an Aggravated DUI. (Id.) OR
- It is a Dangerous Crime Against Children. (Id.)

Until recently, it was assumed that a felony was a prior if the date of the offense was prior to the date of offense for the new offense. The Arizona Supreme Court has recently complicated and clarified that view. In *State v. Thomas*, 219 Ariz. 127, 194 P.3d 394 (2008), the Arizona Supreme Court has announced two different standards for determining the date an offense becomes a historical prior felony conviction under 13-604(w)(3). If an offense falls under 13-604(w)(3)(d) (otherwise known as a forever prior), then it is only a prior felony conviction if the date of *conviction* occurs prior to the *conviction* on the present offense. Those priors alleged under the five or ten year range remain priors only if the date of *offense* occurs prior to the date of *offense* for the present offense.

The court bases its analysis on the fact that the introduction to subdivision A states “Any prior felony *conviction* (emphasis added) for which the offense of *conviction*...” Subdivision B and C explicitly reference date of offense. The court notes this disparity in saying the language of subdivision A does not match the language in subdivisions B and C. “Had the legislature intended to apply a comparable time of commission limitation to felony convictions that fall within subdivision (a), it surely would have used the same clear language that it included in subdivisions (b) and (c).” (Paragraph 11).

The facts of *Thomas* are that the Defendant was arrested for drug sale in 2002. In 2003, he was arrested for Aggravated Assault, Hindering Prosecution, and Unlawful Imprisonment. In 2004, he was convicted for Aggravated Assault, Hindering Prosecution, and Unlawful Imprisonment. In 2005, he was convicted for the drug sale. The Court rules in this case that the Aggravated Assault conviction is a historical prior felony conviction to the drug sale because the conviction was one that mandated prison (thus making it a forever prior), and the conviction for the Aggravated Assault occurred prior to the drug sale conviction. Using the language in subdivision A, the Court concludes that for subdivision A, whether or not something is a prior will depend on date of conviction.

There you have it. We now have one standard for forever priors, and one for regular priors in determining what date counts. Good luck!



The Maricopa County
Public Defender's Office
Presents

***The 13th Annual
Trial College***

March 11, 12 & 13, 2009
Maricopa County Public Defender
Downtown Justice Center
Phoenix, AZ

Featuring:

Terry MacCarthy, nationally known speaker on Cross-Examination and Impeachment.

Josh Karton, nationally known communications instructor with a focus on Jury Communication.

*To register, please contact Celeste Cogley by phone at 602-506-7711 X37569 or by email cogleyc@mail.maricopa.gov

*For Defense Attorneys

2008 Annual Awards

By Jim Haas, Public Defender

On December 9, 2008, the office honored Appeals Secretary Sara Fierro for her 25 years of exceptional service to the office, and recognized two beloved members of our office who were lost in 2008, when the office's two annual awards were given posthumously to Pat Sharritts and Shelley Davis.

Sara Fierro

Sara is one of the most capable, hardest working and well-liked individuals in the office. She is for all intents and purposes the cornerstone of the Appeals Division secretarial staff. During her 25 years of service to the office, she has become intimately familiar with the procedural rules relating to criminal appeals and PCRs. Her knowledge

is so broad that she can generally provide answers to procedural questions faster than most of the appeals attorneys. Whenever a new attorney transfers to appeals and works with Sara, they inevitably comment on how wonderful a secretary she is.

In addition to her knowledge and experience, Sara possesses a warm, almost calming, personality that she brings to work with her each day. She is a joy to be around and in the sometimes hectic, last minute, appellate atmosphere that she works in, she selflessly finds a way to produce a superior product for our clients. The acknowledgment of Sara for her 25 years of service to the office is a well-deserved honor. She is the epitome of dedication by our staff to the cause of indigent defense.

Congratulations, Sara!

Pat Sharritts

The office's Commitment to Excellence Award was created many years ago. It was renamed in 2001 to honor Benita "Bingle" Dizon, who was a long-time and beloved secretary in our Appeals Division who was known for her extraordinary dedication to high quality work and our office. The recipient of this award is selected by a committee composed of attorneys and support staff representing all parts of our office.

The 2008 award was presented to the sons of Pat Sharritts in recognition of his long dedication to high quality service to the office.

Pat served as our office's process server for 16 years before his untimely death on May 10, 2008. His position brought him into contact with co-workers throughout the office, and he was universally



praised. Pat was known for his incredible work ethic, dependability and willingness to go the extra mile with a smile. He cared deeply about the office, his co-workers, and the quality of his work. No matter how busy Pat was, he would drop everything to help out. He was a true gentleman and a joy to work with.

Shelley Davis

The Joe Shaw Award was created in 1995 to honor Joe, a remarkable attorney who spent 20 years in our office, starting at the age of 65. Joe was known as a true gentleman and a skilled and dedicated attorney. The Shaw Award is given each year to an attorney, selected by the same committee that chooses the Dizon Award, who best demonstrates Joe Shaw's many qualities.

The 2008 Shaw Award honored Shelley Davis' dedication of her career to our office and our clients. Shelley died in a tragic accident on August 30, 2008. She had committed her entire 21-year legal career to our office, advancing from trial attorney to team leader to Trial Group Counsel to Trial Group Supervisor. She did an exceptional job in all of the positions she held in the office.

Shelley was a smart, compassionate, independent, funny, fearless, hard-working woman who dedicated her career to providing high quality legal representation for people who would otherwise not have a voice. Her legal skills, professionalism and work ethic earned her the respect of her co-workers and colleagues throughout the justice community. As a supervisor, Shelley was supportive, accessible and reliable. She was one of the true stalwarts of our office.



Maricopa County Public Defender presents

Eyewitness Testimony: Defending Eyewitness Identification Cases

Presented by
Ira Mickenberg

Friday, April 17, 2009
Board of Supervisor's Auditorium
205 W. Jefferson, Phoenix, AZ 85003

Check In : 8:30am - 9:00am

Session: 9:00am - 4:00pm (Lunch on your own)

No food allowed in the auditorium - bottled water only / Open to Defense Attorneys only

Registration Fees (checks only):

No Fee Public Defenders/Legal Defenders/Legal Advocate

\$100.00 City Public Defenders/Federal Defenders/Contract Counsel

\$125.00 Private Counsel

Registration Deadline: Friday, April 10, 2009

Contact Name: Celeste Cogley @ 602-506-7711 X37569

Eyewitness Testimony Friday, April 17, 2009

<p>Name: _____</p> <p>Office: _____</p> <p>Address: _____</p> <p>Phone: _____ Bar#: _____</p>	<p>Make checks payable to: Maricopa County Public Defender</p> <p>Mail to: Maricopa County Public Defender Attn: Celeste Cogley 620 W. Jackson, Suite 4015 Phoenix, AZ 85003</p>
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Jury and Bench Trial Results

October/November 2008

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
9/3 - 10/8	Dominguez Bradley Sain Curtis	Anderson	Lynch	CR07-124159-003DT Murder 1st Deg., F1	Guilty	Jury
10/14	Turner	Foster	Kuwata	CR07-182060-001DT POM, M1	Guilty	Bench
10/14 - 10/20	Farney Leigh	Blomo	Kittredge	CR08-117695-001DT Sexual Conduct w/Minor, F2 DCAC Kidnapping, F2 DCAC	Hung	Jury
10/20 - 10/21	Rosenberg Rosales Rankin Curtis	McMurdie	Prichard	CR08-125326-001DT Unlawful Flight, F5	Guilty	Jury
10/21	Smith Ralston	Hoffman	Wu	CR07-176744-001DT Agg. Assault, M1	Not Guilty	Bench
10/22 - 10/24	Turner Sain Ralston	McMurdie	Harris	CR08-119393-001DT Failure to Register, F4	Guilty	Jury
10/27	Whalin Sain Leigh	Spencer	Garcia	CR08-121200-001DT POM, M1	Not Guilty	Bench
11/3 - 11/4	Whalin Stewart Ralston	Gaines	Sponsel	CR08-118133-001DT MIW, F4	Guilty	Jury
11/12 - 11/14	Mullins Rosales Brazinskas Leigh	Harrison	Jencsok	CR08-121997-001DT TOMOT, F3	Not Guilty	Jury
11/20 - 11/25	Mullins Rankin Leigh	Harrison	Arino	CR08-147779-001DT Crim. Tresp. 1st Deg. Res. Struct., F6DV Threatening or Intimidating, M1 DV	Not Guilty of Threatening or Intimidating; Guilty of Trespass	Jury



Jury and Bench Trial Results

October/November 2008

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2						
10/1-10/7	Rosell Souther <i>Del Rio</i>	Kemp	Linn	CR07-162250-001DT Agg. Assault, F3D	Not Guilty	Jury
10/9 - 10/14	Davison	Svoboda	Torgoley	CR07-142387-001DT Sale or Trans. of Marij., F3 POM f/s, F4 PODP F6	Guilty all 3 counts	Jury
10/16-10/30	Rosell Souther	Anderson	Eidemenes	CR06-171111-002DT Agg. Assault, F3D	Hung Jury 4-4	Jury
11/13 - 11/24	Mestaz Reilly <i>Springer</i>	Spencer	Allen	CR08-007142-001DT Drive-by Shooting, F2D MIW, F4	Not Guilty both counts	Jury
Group 3						
10/2 - 10/6	Mata <i>Williams</i>	Lee	Susser	CR06-012383-001DT Taking Identity of Another, F4	Guilty	Jury
10/7 - 10/8	Mata <i>Williams</i>	Blomo	Diekelman	CR07-165508-001DT POND, F4	Guilty	Jury
11/12 - 11/14	Tivorsak Taradash Flannagan	O'Connor	Keer	CR08-136884-001DT PODD, F4	Not Guilty	Jury
11/13 - 11/17	Cooper O'Farrell Williams	Svoboda	White	CR08-138750-001DT Burg. 2nd Deg., F3 Burg. Tools Poss., F6	Guilty	Jury
11/24 - 11/26	Roach O'Farrell <i>Kunz</i>	Hannah	White	CR08-132352-001DT Crim. Tresp. 1st Deg., F6	Guilty	Jury
Group 4						
9/30	Sheperd	Whitten	Sponsel	CR07-109450-001SE POM, F6 PODP, F6	Guilty	Bench
9/30 - 10/1	Ditsworth	Abrams	Rademacher	CR08-107212-001SE TOMOT, F3	Not Guilty	Jury
10/14 - 10/16	Sheperd	Ryan	Losicco	CR07-180123-001SE PODD, F2 MIW, F4	PODD - Guilty MIW - Not Guilty	Jury
10/20 - 10/23	Ditsworth Salvato <i>Baker</i> <i>Cowart</i>	Abrams	Bonaguidi	CR08-133958-001SE Sexual Public Indecency, M1 Sexual Public Indecency, F5	Guilty	Jury

Jury and Bench Trial Results

October/November 2008

Public Defender's Office

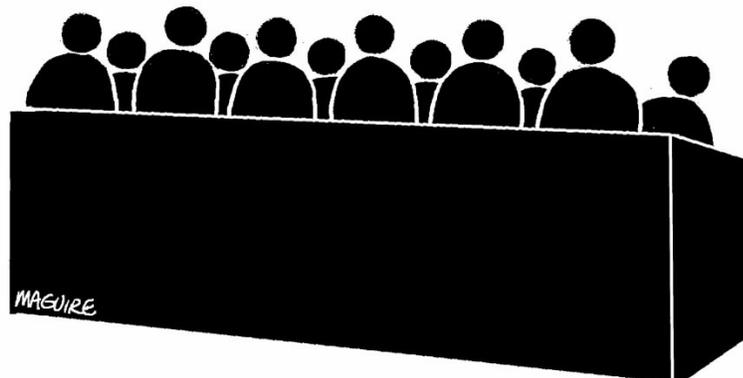
Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
10/21 - 10/23	Braaksma Beatty Thompson	Abrams	Clark	CR08-107917-001SE Child/Vul Adult-Physical Abuse, F4	Guilty	Jury
10/21 - 10/28	Crocker Lockard Salvato Coward	Contes	Basta	CR07-031293-001SE 2 cts. Agg. Assault, F3D Armed Robbery, F2D	Not Guilty	Jury
10/29	Gaziano	Contes	Judge	CR08-048253-001SE Agg. Assault, M1	Guilty	Bench
10/28 - 11/4	Ziamba Beatty Thompson	Blomo	Blum	CR07-118773-001SE Agg. Assault, F3D Burg. Tools Poss., F6	Not Guilty	Jury
11/3 - 11/4	Braaksma Thomas	Udall	Seeger	CR07-152987-001SE Theft, F5	Guilty	Jury
11/3 - 11/5	Engineer	Burke	Harames	CR08-116094-001SE PODD, F2 PODD, F6 POM, F6 2 cts. PODP, F6 2 cts. MIW, F4 Burg. Tools Poss., F6	PODD, POM, PODP, MIW - Guilty Burg. Tools Poss. - Directed Verdict (Rule 20)	Jury
11/5 - 11/13	Sitver	Gottsfeld	Harbulot	CR08-116342-001SE Agg. Assault, F3D Kidnap, F4	Agg. Assault- Guilty Kidnap-Guilty of Lesser Included of Unlawful Imprisonment, F6	Jury
11/10 - 11/24	Gaziano	Contes	Linn	CR07-181242-001SE Murder 1st Deg., F1D Kidnap, F2D Forgery, F4	Guilty	Jury
11/13 - 11/14	Lockard	Udall	Seeger	CR08-114934-001SE Unlaw Use of Means of Transp., F5	Not Guilty	Jury
11/18 - 11/20	Sheperd	Myers	Kelly	CR07-127192-001SE Agg. Assault, F3D	Not Guilty	Jury
11/20	Brink Arvanitas	Conti	Brady	JC08-141038-001TP Crim. Tresp., M3	Not Guilty	Bench
11/24 - 11/25	Sitver	Udall	Rodriguez	CR06-122084-001SE Unlawful Flight, F5	Not Guilty	Jury

Jury and Bench Trial Results

October/November 2008

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Vehicular						
10/01-10/6	Iniguez	Passamonte	Hom	CR05-034984-001 DT 2 cts. Agg DUI, F4	Guilty	Jury
10/15-10/17	Whitehead Califano	Passamonte	Walters	CR07-156535-001 DT 2 cts. Agg DUI, F4	Guilty	Jury
10/20-10/22	Black Conlon	Verdin	Gilla	CR06-012779-001 DT 2 cts. Agg Domestic Viol., F5	Guilty	Jury
10/23 -10/28	Carson Ryon	Lynch	Collins	CR06-007296-001DT 2 cts. Agg DUI, F4	Guilty	Jury
11/6 -11/18	Carson Ryon	Lynch	Collins	CR07-006252-001DT Agg Assault, F3D TOMOT, F3	Agg. Assault - Guilty ND; TOMOT Dismissed w/prejudice	Jury
11/12 - 11/14	Conter	Holding	Walters	CR07-134535-001DT 2 cts. Agg DUI, F4 2 cts. Agg - 3rd DUI, F4	Guilty	Jury
Capital						
4/16 - 11/6	Blieden Brown Raynak (Knapp) James Southern	Gottsfield	Kalish Letellier	CR03-017983-001DT Murder 1st Deg., F1 Child Abuse, F2 6 cts. Child Abuse, F4	Not Guilty on all counts.	Jury



Jury and Bench Trial Results

October/November 2008

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
10/2	Sanders	Bergin	AG	JD15423 Guardianship Trial	Guardianship Granted	Bench
10/6	Abernethy	Hannah	Swanstrom	CR08-121910-001DT POM, F6 PODP, F6	Guilty - POM, M1 PODP, M1	Bench
10/7	Ross	Brodman	AG	JD12090 Severance Trial	Severance Granted	Bench
10/7-10/9	Abernethy	Foster	Alegre	CR08-124701-001DT Agg. Assault, F3D	Not Guilty - Agg. Assault, F3D Guilty - Assault, F3	Jury
10/27-10/28	Jolly	Kemp	Cottor	CR07-158664-001DT POM, F6	Guilty	Jury
10/30	Dorr	Oberbillig	Diekelman	CR08-116176-001DT Promoting Prison Contraband, F2	Not Guilty	Jury
10/16-10/17	Sanders	Bergin	AG	JD14926 Severance Trial	Severance Granted	Bench
10/16-11/6	Wilhite	Donahoe	Murphy	CR08-105918-001DT Murder 2nd Degree, F1D Misconduct Involving Weapons, F4	Guilty	Jury
10/30-11/3	Reidy	Jones	Dixon	CR07-180987-001DT Escape 2nd Degree, F5	Guilty	Jury
10/30-11/13	Jolly	Ditsworth	Cottor	CR08-126209-001DT Agg. Assault, F3D	Guilty	Jury
11/4	Ross	McClennen	AG	JD14523 Severance Trial	Severance Granted	Bench
11/12	Hozier	Anderson	AG	JD11900 Severance Trial	Severance Granted	Bench
11/12	Kolbe	Thompson	AG	JD507007 Severance Trial	Severance Granted	Bench
11/14	Ross	Brain	AG	JD15300 Severance Trial	Seveance Granted	Bench
11/17	Bushor	Keppel	AG	JD507042 Severance Trial	Severance Granted	Bench
11/19	Ripa	Norris	AG	JD16958 Dependency Trial	Dependency Found	Bench
11/24	McGuire	Talamante	AG	JD507393 Dependency Trial	Dismissed	Bench

Jury and Bench Trial Results

October/November 2008

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
8/27 to 10/28	Glow Mullavey Sinsabaugh	Duncan		CR06-180256-001-DT Att. Murder, F2	Hung Jury	Jury
10/8 to 10/20	Roskosz	Weinberg		CR07-007912-002-DT Felony Murder, F1 Armed Robbery, F2D Burglary 1st Deg, F2D 3 Cts. Agg. Assault, F3D	Guilty on All Counts	Jury
10/21 to 10/22	Miller Mullavey Rood	Micflikier		CR08-129963-001-DT Theft-MOT, F3	Guilty	Jury
10/22 to 10/28	Zabor Rose Rood	Sponsel		CR07-133651-001-DT 6 Cts. of Burglary, F4	Guilty	Jury
10/27 to 10/29	Schmich Coquelet Lopez Stovall	Cohen		CR07-168175-001-DT 1 Ct. Sex. Cond W/Minor, F2 1 Ct. Child Molest, F2	Not Guilty	Bench
10/28 to 11/12	Tucker	Verdin	Leckrone Hum	CR08-006114-001-DT 2 Cts. Agg. Assault-Dang, F3 POND, F4 POM, F6	Guilty on All Charges	Jury

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal, ...[and] the treatment of crime and the criminal mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue within it." - Winston Churchill



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for The Defense

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, James J. Haas, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

