

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

James J. Haas, Maricopa County Public Defender

Volume 19, Issue 5

August - October, 2009



*Delivering America's
Promise of Justice for All*

for The Defense

Editor: Jeremy Mussman

Assistant Editors:
Dan Lowrance
Susie Graham

Office:
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
(602) 506-7711

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A.R.S. §13-4051: Can Your Client's Record Be Cleared?

By Christine Whalin, Defender Attorney

You have successfully argued to get your client's case dismissed - you print the last minute entry, finish documenting the file with notes, and close the case. Is your job done? Maybe not: on some occasions, you may have a valid reason to file a motion pursuant to §13-4051 and request to have your client's arrest record cleared. But the question is, when does that occasion arise?

A.R.S. §13-4051 provides that if a client was wrongfully arrested, indicted, or otherwise charged for any crime, a motion may be filed to determine if it would be appropriate to clear the arrest record and seal the case file. In *State of Arizona v. Franco*, 153 Ariz. 424, 737 P.2d 400 (1987), Division 2 of the Court of

Appeals held that this statute was intended to "apply only in cases where the court finds that the petitioner was wrongfully charged with a crime in that either there was no legal basis for the arrest, or no legal or factual basis for the charge, or where the parties so stipulate." 153 Ariz. At 426, 737 P. 2d at 402. If your client meets this criteria, file a motion and request a hearing. Pursuant to subsection B, if the judge agrees that justice requires the issuance of an order sealing the entire record, including his arrest record, the court shall issue an order to that effect and fax or deliver the signed order to any agency involved in the wrongful arrest or indictment. Additionally, subsection C of this statute states that if any person with notice of the order fails to comply with its directives, that person shall be liable for damages in civil court.

The following draft motion should get you started:



*

AZ State Bar No. *

LAW OFFICE OF THE PUBLIC DEFENDER

620 W. Jackson, Suite 4015

Phoenix, AZ 85003-2423

(602) 506-7711

PD_Minute_Entries@mail.maricopa.gov

Attorney for Defendant

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA,

Plaintiff

v.

Defendant.

No. CR*

**MOTION TO CLEAR ARREST
RECORD PURSUANT TO A.R.S.
§13-4051**

Honorable * ____

(Oral Argument Requested)

Defendant, by and through undersigned counsel, and respectfully requests the Court make entry upon all court records, police records and any other records of any other agency relating to Mr. _____'s arrest noting that he has been cleared of these charges, pursuant to A.R.S. §13-4051.

FACTS

*

LAW

A.R.S. §13-4051 provides:

- A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry upon all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.
- B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on

such records, with accompanying justification therefore, and shall cause a copy of such order to be delivered to all law enforcement agencies and courts. The order shall further require that all law enforcement agencies and courts shall not release copies of such records to any person except upon order of the court.

There is very little case law addressing this issue. *State of Arizona v. Franco*, 153 Ariz. 424, 737 P.2d 400 (App. 1987), is the only case citing this statute as it is currently written, however that case is factually different from the issue in the present matter. In *Franco*, the defendant had been arrested and charged with misdemeanor DUI and felony possession of marijuana, ultimately resolving with a plea agreement where she admitted guilt to the DUI with the benefit of having the felony charges dismissed. *Id.* Eight years later *Franco* requested a clearance notation be entered on her official record for the dismissed marijuana charge pursuant to A.R.S. §13-4051, and the lower court granted her request. *Id.* On appeal, Division 2 of the Arizona Court of Appeals reversed the lower court's decision to enter an order pursuant to A.R.S. §13-4051 indicating that *Franco* had failed to show that she was wrongfully arrested or indicted on these charges and the legislature intended this section of the code to "apply only in cases where the court finds that the petitioner was wrongfully charged with a crime in that either there was no legal basis for the arrest, or no legal or factual basis for the charge, or where the parties so stipulate." *Id.* at 425-426. The case against Mr. _____ is completely different than that in *Franco*.

Mr. _____ was wrongfully arrested and indicted. Given this information, Mr. _____ respectfully requests the Court make entry upon all court records, police records and any other records of any other agency relating to Mr. _____'s arrest noting that he has been cleared of these charges, pursuant to A.R.S. §13-4051.

RESPECTFULLY SUBMITTED this _____ day of _____, 2009.

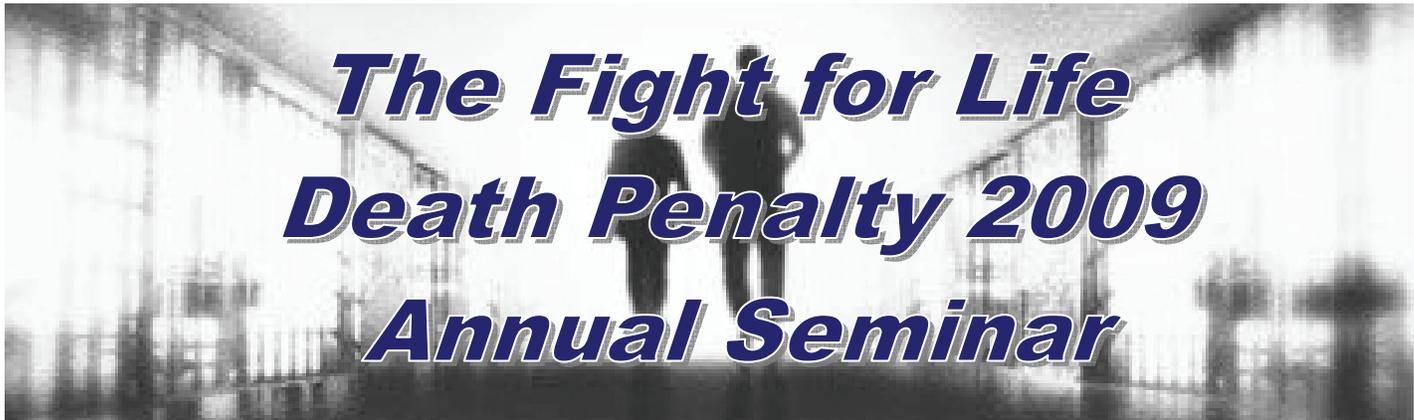
MARICOPA COUNTY PUBLIC DEFENDER

By: _____

*

Deputy Public Defender

Maricopa County Public Defender, Office of the Legal Defender, Office of the
Legal Advocate and Office of the Federal Public Defender-Capital Habeas Unit
Presents



**Phoenix Convention Center - West Building
100 N. Third Street
Phoenix, AZ 85004**

.....

December 2, 2009

Pre-Conference Sessions—AZ Death Penalty Essentials

12:00pm—1:00pm Registration

1:00pm—4:30pm

Death Penalty Process

Death Penalty Statute

Capital Case Law Updates and Capital Mitigation

December 3, 2009 Full-Day and December 4, 2009 Half-Day

Death Penalty Conference 2009

8:30am—Check-in each day/Continental Breakfast

9:00am—4:30pm December 3rd

9:00am—12:00pm December 4th

Session Topics include:

The Rush to Death in Maricopa County

Making the Record for Appeal

Effective Themes for Life Sentences

Competency Issues

And More...

This seminar is designed to meet the Arizona Supreme Court C.L.E. requirements for criminal defense attorneys engaged in death penalty litigation under Rule 6.8, AZ Revised Criminal Procedures.

Registration Form and Map on Following Pages

Maricopa County Public Defender, Office of the Legal Defender,
Office of the Legal Advocate and Federal Public Defender
Capital Habeas Unit Presents:

The Fight for Life: Death Penalty 2009

December 2—4, 2009

Phoenix Convention Center, West Building
Rooms 101 A, B & C

Registration Form

Please return forms by 11/20/09 (No Refunds after 11/27/09)
For Defense Community Only

Please Mark if you are attending the Pre-Conference and/or the Conference only.

Pre-Conference December 2, 2009 Afternoon Only

No Fee Federal, County Public & Legal Defenders and Legal Advocate
\$25.00 Court Appointed/Contract Counsel; City Public Defenders
\$50.00 Other/Private

Conference December 3, 2009 Full-Day and December 4, 2009 Morning Only

No Fee Federal, County Public & Legal Defenders and Legal Advocate
\$75.00 Court Appointed/Contract Counsel; City Public Defenders
\$ 150.00 Other/Private

Total Cost \$ _____ \$ 15.00 Late Fee (After November 20, 2009)

Last Name _____ First _____ MI _____

AZ State Bar # _____

Title/Office _____

Office Address _____

City _____ ZIP _____

E-Mail Address _____

Phone () _____ FAX () _____

- This form must be filled out completely and legibly.
- Enclose a check or money order payable to **Maricopa County Public Defender**

Send to: Maricopa County Public Defender, Attn: Celeste Cogley,
Downtown Justice Center, 620 W. Jackson, Suite 4015
Phoenix, AZ 85003

**If you have questions or need ADA accommodations, please contact
Celeste Cogley at 602-506-7711 X37569**

DEATH PENALTY PRE-CONFERENCE & CONFERENCE

All sessions will be held in the **West Building, Rooms 101A-C.**
Use the 2nd Street and Adams entrance.

PARKING—\$10.00 ALL DAY PARKING

- The **North Garage** is located in the North Building—5th Street and Monroe (#4)
- The **Heritage & Science Center Garage** is located off of Monroe and 5th Street—just one block east of the North Building (#2)
- The **Convention Center East Garage** is located at 5th Street and Jefferson -- just east of the Conference Center South Building (#5)
- Alternate downtown public parking garages P

Phoenix Convention Center Parking



Another Look at Restitution

By Richard Randall, Defender Attorney

Often, restitution arises as an afterthought playing second fiddle to plea negotiations, trials, and probation hearings. Unfortunately, restitution issues have lingering consequences that may affect a convicted defendant's ability to thrive in the community and overcome the detrimental effects of a guilty verdict or plea. Restitution amounts are a part of a defendant's sentence. For that reason, defense attorneys should exercise the same oversight when reviewing and contesting restitution awards that they do when reviewing and arguing incarceration and probation terms. The restitution cases and general rules below are intended to provide a basis from which to structure arguments to limit restitution awards to the legal parameters developed by statute and case law.

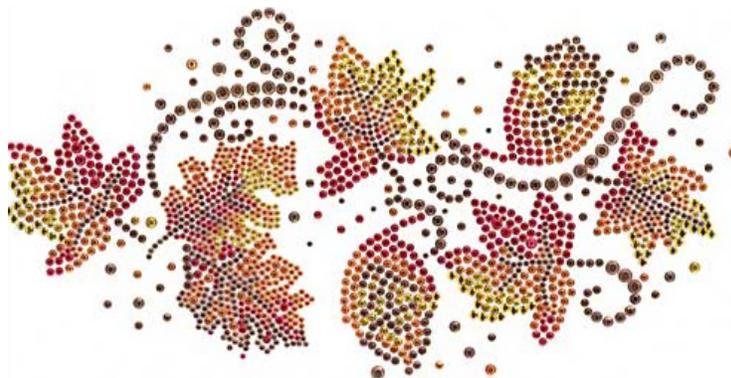
1. Although defendants are not entitled to the same level of protection in restitution hearings as they are in trial, due process requires that defendants be given an opportunity to contest evidence upon which a restitution award is based, to present relevant evidence, and to be heard. *State v. Fancher*, 169 Ariz. 266, 253, 818 P.2d 251, 268 (App.1988), *United States v. Palma*, 760 F.2d 475, 477(3d Cir.1985).
2. Restitution is a part of the sentencing process. *State v. Cummings*, 120 Ariz. 69, 71, 583 P.2d 1389, 1391 (App.1978) *State v. Scroggins*, 168 Ariz. 8, 9, 810 P.2d 631, 632 (App.1991).
3. As a general rule, courts may consider hearsay at sentencing. *Williams v. New York*, 337 U.S. 241, 69 S. Ct. 1070, 93 L.Ed. 1337 (1949).¹
4. Testimonial hearsay presented at sentencing must be "accompanied by sufficient indicia of reliability." *State v. McGill*, 213 Ariz. 147, 160, 140 P.3d 930, 943 (2006).
5. "The Confrontation Clause does not apply to rebuttal testimony at a sentencing hearing because (1) the penalty phase is not a criminal prosecution, (2) historical practices support the use of out-of-court statements in sentencing, and (3) the sentencing body requires complete information to make its determination." *State v. McGill*, 213 Ariz. 147, 59, 140 P.3d 930, 942 (2006), *United States v. Littlesun*, 444 F.3d 1196, 1200 (9th Cir.2006), Cert denied _____ (holding that *Crawford* does not overrule *Williams*); however, note *State v. Hanley*, 108 Ariz. 144, 493 P.2d 1201 (1972) (Holding that a defendant has a right to produce mitigation evidence through cross-examination at sentencing).²
6. A defendant can only be ordered to pay restitution on charges he has admitted, on which he has been found guilty or upon which he has agreed to pay. *State v. Pleasant*, 145 Ariz. 308, 701 P.2d 15, 16 (App.1985). A defendant cannot be required to pay restitution for an uncharged offense unless the defendant admits having committed the offense and there is evidence to support it or the person has agreed to pay restitution for that offense. *State v. Lindsley*, 191 Ariz. 195, 197, 953 P.2d 1248, 1250 (App.1997).
7. In determining the amount of a restitution award, the court may consider "evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings." A.R.S. § 13-804(I).
8. To provide a basis for restitution, the court must find, by a preponderance of the evidence, that the loss is: (1) economic, (2) one that the victim would not have incurred but for the defendant's criminal offense, and (3) one that results directly from the criminal conduct. *State v. Wilkinson*, 202 Ariz. 27, 29, 39 P.3d 1131, 1133 (2002), *In re Stephanie B.*, 204 Ariz. 466, 469, 470, 65 P.2d 114, 117, 118 (App. 2003).

9. "Economic loss means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses which would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages." A.R.S. § 13-105(14) (Supp. 2007).
10. An economic loss is directly caused by criminal conduct if it results without the intervention of additional causative factors. *Wilkinson*, 202 Ariz. At 29, 39 P.3d at 1333. If economic loss is not directly caused by the criminal conduct, the loss is consequential damage and non-recoverable. *Wilkinson*, 202 Ariz. At 29, 39 P.3d at 1333. Consequential damages are those that "are not produced without the concurrence of some other event attributable to the same origin or cause; such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from the consequences or results of such act." 25 C.J.S. *Damages*, § 2 at 617 (2002). See *State v. Lindsley*, 191 Ariz. 195, 198, 953 P.2d 1248, 1251 (App. 1997 (adopting C.J.S. definition)).
11. The State does not represent victims of economic loss at a restitution hearing, but the State may present evidence or information relevant to the issue of restitution. A.R.S. § 3-804(G)
12. A victim's restitution in criminal cases is limited to compensation for direct losses. The proper place to determine a victim's actual damages, including damages for pain and suffering, punitive damages, and consequential damages is before a civil jury. *Town of Gilbert Prosecutor's Office v. Downie ex rel County of Maricopa*, 218 Ariz. 466, 469, 189 P.3d 393, 396 (2008).
13. A restitution order "does not preclude a victim from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order." A.R.S. § 13-807 (2001).
14. Arizona's statutory restitution scheme is based on the principle that the offender should make reparations to the victim by restoring the victim to his economic status quo that existed before the crime occurred. *In re William L.*, 211 Ariz. 236, ___ 119 P.3d 1039, _____ (Ariz.App.2005) The primary purpose of restitution is to make the victim whole, not to punish the defendant. A court should not award restitution in an amount greater than the victim's actual economic losses so as to provide a windfall to the victim. *State v. Iniquez*, 269, Ariz. 533, 821 P.2d 194, 198 (App.1991).
15. A trial court's restitution award will be upheld if the award bears a reasonable relationship to the victim's loss. *State v. Madrid*, 207 Ariz. 296, 298, 85 P.3d 1054, 1056 (App. 2005).
16. The measure of a victim's full economic loss for the loss of personal property is the fair market value of the property at the time of the loss. However, the court has discretion to use other measures of economic loss when fair market value will not make the victim whole. *State v. Ellis*, 172 Ariz. 549, 550, 838 P.2d 1310, 1311 (App. 1992). See *In re William L.*, 211 Ariz. 236, 240-214, 119 P.3d 1039, 1043-1044 (App. 2005) (Holding the court did not abuse its discretion by ordering the defendant to pay restitution of the entire amount by which the encumbrance exceeded the insurance payout despite the fact that the restitution amount exceeded the fair market value of the vehicle).
17. Generally, lost profits are consequential damages and excluded from economic loss. *State v. Pearce*, 156 Ariz. 287, 289k 751 P.2d 603, 605 (App. 1988), *State v. Barrett*, 177 Ariz. 46, 49, 864 P.2d 1078, 1081 (App. 1993); however, note *State v. Young*, 173 Ariz. 287, 842 P.2d 1300, (App. 1992) (Holding that, where employee kept complete proceeds of sales, lost profits were a part of economic loss.)

18. The Court may order the deposition of a victim if the defendant can show that the victim was involved in preparing calculations given to the court in support of a restitution award. *State v. Williams*, 208 Ariz. 48, 53, 90 P.2d 785,790 (App. 2004) (Holding that the trial judge did not abuse his discretion when he failed to order a deposition of the ADOC director where the defendant did not show that the director had been involved in preparing restitution calculations.).
19. Restitution may be ordered to the victim's immediate family in the event of the victim's death. A.R.S. § 13-603(C), Ariz. Const. Art. 2, § 2.1(C).
20. If the Court lacks sufficient evidence to support a restitution amount, the court may conduct a hearing. A.R.S. § 13-804(G). However, some evidence must be presented that the amount of restitution bears a reasonable relationship to the victim's loss before restitution can be imposed. *State v. Fancher*, 169 Ariz. 266, 268, 818 P.2d 251, 253 (App. 1991).
21. A finding of guilty except insane is not a "conviction" within the meaning of the restitution statutes. *State v. Heartfield*, 196 Ariz. 407, 998 P.2d 1080 (App. 2000).
22. Restitution to a victim of crime is not a criminal punishment exacted by the state. *State v. Reese*, 124 Ariz. 212, 215, 603 P.2d 104, 107 (App. 1979).

(Endnotes)

1. Rule 26.7(b) of the Arizona Rules Of Criminal Procedure specifically allows introduction of reliable hearsay in presentence hearings to show aggravating or mitigating circumstances, to show why sentence should not be imposed, or to correct or amplify presentence reports. A.R.S. § 13-344 provides that a court may consider a verified statement of the victim or victim's estate to determine restitution. However, unlike hearsay evidence in probation or pretrial hearings, hearsay in a restitution hearing context after sentencing, is not specifically addressed by Rule or Statute.
2. The issue of Crawford's affect at sentencing may be further developed in the future. For an analysis of the Crawford issues in a sentencing context see the Writ of Certiorari filed in *Little Sun v. United States of America*, 2006 WL 2055469 (U.S.) (Appellate Petition, Motion and Filing).



Doctrine of Completeness in Arizona

By Joanna Gaughan, Law Clerk, Office of the Pima County Public Defender

I. The Common-Law Rule of Completeness

The common-law rule of completeness was designed to prevent the prejudice which may result when a finder-of-fact is presented with a portion of a statement taken out of context, which portion gives a misleading impression of the meaning of the statement as a whole. *Beech v. Rainey*, 488 U.S. 153, 171 (1988). The U.S. Supreme Court cited favorably a legal treatise which states the common-law rule as follows: “[T]he opponent, against whom a part of an utterance has been put in, may in his turn complement it by putting in the remainder, in order to secure for the tribunal a complete understanding of the total tenor and effect of the utterance.” *Id.* at 171 (internal citation omitted). The Court stated that it is this common-law rule of completeness which underlies Federal Rule of Evidence 106. *Id.* at 171. It therefore underlies Arizona Rule of Evidence 106 as well, since this was adopted verbatim from the Federal Rule. *State v. Prasertphong*, 210 Ariz. 496, 499 (2005).

II. Arizona Rule of Evidence 106

Arizona Rule of Evidence 106 is the main expression of the “rule of completeness” in the State of Arizona.¹ The rule is as follows:

Rule 106. Remainder of or Related Writings or Recorded Statements:
When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

III. Implementation of Rule 106 and the Rule of Completeness in Arizona

A. Rule 106 pertains to unrecorded oral statements as well as writings and recorded statements.

Although the text of the Rule only refers to “writing[s] or recorded statement[s],” the Supreme Court of Arizona has extended the same rationale to unrecorded oral statements. *State v. Ellison*, 213 Ariz. 116, 131 (2006).

B. Evidence that would otherwise be inadmissible may be admissible under the rule of completeness.

1. In general

In *Prasertphong*, the Supreme Court of Arizona held that the rule of completeness confers upon trial judges the discretion to admit otherwise inadmissible evidence in order to rebut evidence introduced by the adverse party. *State v. Prasertphong*, 210 Ariz. 496, 500-501 (2005). This does not necessarily mean that the additional evidence has been deemed to be reliable, but simply that it would be unfair to allow one party to mislead the jury by admitting a redacted portion of a statement that does not reflect the sense of the statement as a whole. *Prasertphong* at 502.

2. Evidence otherwise inadmissible as irrelevant

“[W]hen one party has made use of a portion of a document, such that misunderstanding or distortion can be averted only through presentation of another portion, the material required for completeness is *ipso facto* relevant and therefore admissible...” *Beech v. Rainey* at 172.

3. Evidence otherwise inadmissible as hearsay

Hearsay is an example of otherwise inadmissible evidence that may become admissible under the rule of completeness in Arizona. *Prasertphong* at 501.

C. The “rule of completeness” versus the “rule of curative admissibility.”

The rule of curative admissibility provides that “otherwise inadmissible evidence will be admitted to rebut inadmissible evidence placed before the fact-finder by the adverse party.” Black’s Law Dictionary 387 (7th Ed.1999). Thus it is almost exactly the same as the rule of completeness, the only difference being that the rule of completeness applies only to statements, whereas the rule of curative admissibility appears to apply to other forms of evidence as well. Certainly, the two rules have the same underlying purpose and rationale. *Prasertphong* at 500-501.

D. Admission of the entire statement not necessarily required.

The rule of completeness does not always require the admission of the entire statement. It requires only the admission of those portions of the statement that are “necessary to qualify, explain or place into context the portion already introduced.” *Prasertphong*, 210 Ariz. at 499, quoting *United States v. Branch*, 91 F.3d 699, 728 (5th Cir.1996).

E. The rule of completeness only requires the introduction of relevant evidence; parties are not entitled to exclude one portion of a writing because of the absence of other portions of the writing which are not **relevant** to the issue at hand.

In *Passarelli*, defendant was prosecuted for filing a fraudulent insurance claim. *State v. Passarelli*, 130 Ariz. 360 (1981). On the issue of whether defendant obtained insurance on the truck in question, the State introduced a copy of the front page of the insurance contract. Defendant was convicted, and claimed on appeal that the front page should have been excluded because of the absence of the back page (which only contained standard fine-print). The Court of Appeals, Division 2, affirmed, holding that Rule 106 and the doctrine of completeness in general “require only the introduction of *relevant* evidence” (emphasis added) and that the second page of the form contract was not relevant on the issue in question. *Passarelli* at 363.

F. Under Rule 106, when one party introduces a portion of a writing or statement, the adverse party may decide when to introduce the other portion of the writing or statement “which ought in fairness to be considered” with it.

Rule 106 states, “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction *at that time* of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” (emphasis added). In *Dunlap*, the Court of Appeals, Division 1, held that this part of the Rule is meant to expand rather than limit the adverse party’s options as to when to introduce the other portions of the statement. *State v. Dunlap*, 187 Ariz. 441 (Ariz.App. Div. 1, 1996). The *Dunlap* court emphasized the word “may” in the Rule, holding that the Rule permits but does not require the adverse party to introduce the other portions contemporaneously. Instead, the adverse party may choose to wait until re-cross or until the presentation of the adverse party’s own case to introduce the rest of the statement. *Dunlap* at 455.

G. Whether or not the additional statement sought to be introduced was part of the same statement as the already-admitted portion is not dispositive in determining whether the additional statement will be admitted. Comments made contemporaneously with the portion already admitted are not always themselves admitted. On the other hand, statements made months after the admitted statement may themselves be admitted if the court considers them necessary to clarify the already-admitted statement.

Whether or not admission of the latter statement is necessary to correct any misleading impression is more important than whether the latter statement was made at the same time as the already-admitted statement. See for example *Soto-Fong* (below at IV.B), in which the State was permitted to enter a statement made several months after the already-admitted statement, versus *Wormley* (unpublished case described in Footnote 2), in which defendant was excluded from admitting a portion of the same statement part of which had already been admitted. See also *Cruz* (below at IV.A). This emphasis on necessity of admitting the corrective statement versus time the corrective statement was made (i.e. whether it was part of the same statement as the portion already admitted, or whether it was part of a statement made separately) is in keeping with the language of Rule 106, which states, “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part **or any other writing or recorded statement** which ought in fairness to be considered contemporaneously with it.” (emphasis added)

IV. Use and Attempted Use of the Rule of Completeness by Defendant

A. When defendant’s inculpatory statement is admitted, the trial court may exclude an exculpatory statement made by defendant in either the same or subsequent conversations when admission of that latter statement is not necessary to correct any misleading impression left by the first statement.

In *Cruz*, defendant Cruz was accused of having shot and killed a police officer. *State v. Cruz*, 218 Ariz. 149 (2008). On being apprehended by another officer, defendant stated, “Just do it.... Just go ahead and kill me now. Kill me now. Just get it over with.” *Id.* at 156. Over thirty minutes later, defendant told a paramedic that “Arturo Sandoval” had shot the police officer. *Id.* at 161-162. The trial court admitted the “just shoot me” statement, but excluded the exculpatory “Arturo Sandoval” statement. Defendant was convicted.

On appeal, defendant argued that his exculpatory statement should have been admitted under the rule of completeness. *Id.* at 162. The Supreme Court of Arizona disagreed, holding, “Rule 106 does not create a rule of blanket admission for all exculpatory statements simply because an inculpatory statement was also made. Because Cruz’s statement does not ‘qualify, explain or place into context’ the ‘just shoot me’ statement, the trial court did not abuse its discretion by excluding it.” *Id.* at 162.

It is important to note that the *Cruz* court did not exclude the “Arturo Sandoval” comment on the basis that it was part of a separate statement than the “just shoot me” comment. (In fact, the Court has in at least one case admitted a statement made several months after the first statement in order to clarify the first statement; see *Soto-Fong*, part B below.) Rather, the Court excluded the “Arturo Sandoval” statement because it had no *direct connection* to the “just shoot me” statement; it did not serve to modify, clarify, or place into context that statement. *Id.* at 162. Because of this lack of connection, the “just shoot me” statement could not be used as a “hook” to bring in the (otherwise inadmissible) “Arturo Sandoval” statement.

Therefore, *Cruz* confirms the point made in section III.G above, namely that the rule of completeness does not mean that a statement is *not* admissible simply because it was made at a *different time* than the statement already introduced (nor does it mean that one portion of a statement is admissible merely because it was made at the *same time* as another portion which was admitted). The only relevant question in determining whether a statement or portion must be admitted is whether the additional statement or portion serves to **correct a misleading impression** or to **“qualify, explain, or place into context”** the portion already introduced. Further examples of this can be found in several unreported cases.²

B. If the state is permitted to enter part of defendant’s statement which inculpatates defendant, then severely limiting defendant’s ability to develop testimony as to the exculpatory portion of the statement which is necessary to clarify or place in context the inculpatory statements is reversible error.

The only case on point for this rule is an unpublished case. Although it cannot be cited, this case may be helpful in developing a line of argument. See also *Buckley* in section V.C below (also unreported).

In *Reed*, two defendants were charged with rape. *State v. Reed*, unreported case, 2009 WL 1025572 (Ariz.App Div. 1). Each defendant, in separate interviews, admitted engaging in sexual intercourse with the alleged victim, but they each also asserted that she had consented. The trial court allowed the State to introduce defendants’ statements that they had intercourse with the victim. Defendants then sought to admit the portions of the interviews in which they asserted the sex was consensual. The court finally held that defendants’ statements that the intercourse was consensual would be admitted, but permitted defense counsel to ask only one substantive question of the testifying police detective to elicit this information: “You stated that my client admitted to having or engaging in a sex act with the victim. Did my client also indicate to you or tell you it was consensual?” Defense counsel was not permitted to ask if defendants “repetitively” told the detective it was consensual or to develop this testimony any further. Both defendants were convicted.

On appeal, defendants argued that the limitation described above was a violation of Rule 106. The Court of Appeals agreed, holding that “when the State introduced the detective’s testimony that Appellants admitted having intercourse with the victim, the **concept of fundamental fairness embodied in part in Rule 106** required the court to allow defense counsel to elicit testimony necessary to provide a complete story...and to avoid misleading the jury...[P]ermitting only one specific question to be asked to complete the story was insufficient.” The Court of Appeals reversed and remanded. (emphasis added).

C. Although not technically a “rule” under statute or case law, courts may be reluctant to admit additional statements (or portions thereof) which seem to have been made by defendants disingenuously and purely in an attempt to exculpate themselves.

In *Cruz*, shortly after being detained, defendant complained of chest pains. *Cruz* at 161. Paramedics were called, and not until the trip to the hospital at least thirty to forty minutes after his initial apprehension did defendant mention to anyone that “Arturo Sandoval” had shot the police officer. *Id* at 161-162. Although the *Cruz* court did not allude to any such reluctance in its reasoning, it is conceivable that the court was skeptical about defendant’s sudden statement, “Arturo Sandoval shot the police officer,” made over half an hour after being apprehended.

Similarly, in an unreported case, while the Court of Appeals based its holding on the lack of any need to correct a misleading impression, it did take the opportunity to note no less than four times, in a way that might be interpreted as disapproving, that the statement sought to be admitted was “self-serving.”³

V. Use of the Rule of Completeness by the State

A. If defendant introduces portions of a third party statement which are exculpatory of defendant, the State may admit additional portions of that statement if the additional portions are necessary to correct any misleading impression left by the first statement. This does NOT violate the Confrontation Clause.

If it is the *defendant* who has introduced portions of a statement made by a third party not testifying in court, the defendant has forfeited his Confrontation Clause rights with regard to

admissibility of other portions of that same statement. *State v. Prasertphong*, 210 Ariz. at 499-500, 502.⁴ Under Rule 106, the state may be permitted to introduce other portions of that same statement, including those which may inculpate defendant, so that the jury will not be confused or misled by those portions selected by defendant.

In *Prasertphong*, defendant had allegedly committed multiple homicide together with accomplice Huerstel. At trial, defendant sought to introduce portions of Huerstel's statement to the police in which Huerstel admitted that he (Huerstel) shot all three victims. The State argued that under Rule 106, the entire statement, including statements that shifted some blame to Prasertphong, should be admitted. Defendant maintained that admission of the entire statement would violate his Sixth Amendment right to confront witnesses against him. The trial judge disagreed, ruling that if Prasertphong decided to introduce the self-incriminating portions of Huerstel's statement to police, the remaining portions of Huerstel's statement would be admitted. Defendant was convicted.

The Supreme Court of Arizona affirmed on appeal, holding that the admission of Huerstel's entire statement under Rule 106 did not raise Confrontation Clause problems because it was Prasertphong himself who introduced selected portions of the statement, and that it was necessary to introduce the entire statement of Huerstel so as not to mislead the jury. (Note: The Supreme Court used even stronger language in *Ellison*, described in greater detail below, holding that in such situations, "the Confrontation Clause is not even implicated." *State v. Ellison*, 213 Ariz. 116, 130 (2006).)

In *Ellison*, defendant sought to admit statements made by accomplice which tended to exculpate defendant, but to exclude statements made by accomplice almost immediately thereafter which tended to inculpate defendant. *Ellison*, 213 Ariz. 116 (2006). The trial court held that if the exculpatory statements were introduced, then the State could cross-examine the accomplice with those statements for impeachment purposes. Essentially this meant that the inculpatory statements would be admitted if the exculpatory ones were. Defense counsel decided therefore not to introduce the exculpatory evidence. Defendant was convicted.

On appeal, the defendant held that the trial court should have ruled the accomplice's other statements inadmissible, even for impeachment purposes, under the Confrontation Clause. The Supreme Court affirmed, citing *Prasertphong* for the rule that when a defendant seeks to admit portions of his accomplice's recorded statements, the trial judge may, under Rule 106, admit the remaining statements *if* necessary to avoid confusing the jury.

See also *Soto-Fong* (part B, below)

B. If defendant introduces a third party statement, state may introduce a separate statement made by that third party, if admission of the latter statement is necessary to correct any misleading impression left by the first statement. This does not violate the Confrontation Clause.

Under the rule of completeness, if defendant introduces a statement made by a third party, the state may be permitted to introduce an additional statement made by that same third party. *State v. Soto-Fong*, 187 Ariz. 186, 192-193 (1996); *Prasertphong* at 500. In *Soto-Fong*, an informant made two separate statements to police. Soto-Fong attempted to introduce the first statement, in which the informant said that "Cha-Chi" was the murderer. The state argued that it should then be able to introduce the second statement, in which the informant identified "Cha-Chi" as "Martin [Soto-Fong], Betty Christophers boyfriend." The Supreme Court of Arizona upheld the trial court's ruling that if Soto-Fong introduced the first statement, the state would be permitted to introduce the subsequent statement even though it inculpated Soto-Fong.

C. If at trial, defendant questions a testifying witness about a statement that he made, the state is permitted under Rule 106 to elicit testimony, otherwise inadmissible as hearsay, that is necessary to clarify the statement or put it in context.

The only case on point for this rule is an unpublished case. Although it cannot be cited, this case may be helpful in developing a line of argument. See also *Reed* in section IV.B above (also unreported).

In *Buckley*, defendant was accused of aggravated assault, reckless endangerment, and other charges arising out of a car accident. *State v. Buckley*, unreported case, 2008 WL 3863879 (Ariz. App. Div. 1). As a defense, defendant claimed that he was fleeing from his wife, whom he feared, and who was pursuing him in another vehicle at the time. He claimed that she sideswiped him and that she caused the crash.

Among the officers responding to the accident were Deputy McGehee and Officer Stutsman. At trial, defense counsel asked Deputy McGehee, "Did you tell Officer Stutsman that [defendant's wife] had caused the accident?" The state objected on the grounds of hearsay; the trial court overruled the objection.

On redirect, the state asked, "Deputy, let's complete what you told Sergeant Stutsman. You also told Sergeant Stutsman that [defendant's wife] had an Order of Protection against the defendant?" Defense counsel objected on the ground that evidence of the order of protection was improper other act evidence under Arizona Rule of Evidence 404(b) and that Deputy McGehee had no personal knowledge about the order of protection. In response, the state asserted that defendant opened the door to admission to all of Deputy McGehee's statements to Deputy Stutsman. He argued that he was putting the statement in context and "merely completing the story pursuant to Rule 106." The trial court overruled the objection because defense counsel "clearly opened the door," and the prosecutor was "completing the story." Defendant was convicted and appealed on this issue.

The Court of Appeals, Division One, affirmed, holding, "Under Rule 106, the state was entitled to ask the deputy about the remainder of his statement in order to qualify the statement and put it in context."

VI. Conclusion

The cases cited in this article might lead one to conclude that the Arizona courts are more willing to use the rule of completeness in favor of the State than in favor of the defendant (see *Passarelli*, *Cruz*, *Galvin* (unpublished), and *Wormley* (unpublished), in all of which defendant was denied admission of the desired evidence under the rule of completeness, versus *Prasertphong*, *Soto-Fong*, *Ellison*, and *Buckley* (unpublished), in all of which the State was permitted to introduce evidence against defendant under the rule of completeness).

However, when one keeps in mind that the purpose of this rule is to correct a misleading impression created by the initial evidence, defendant's claims in the above cases that the rule of completeness should have allowed them to introduce the desired evidence were very weak. In *Passarelli*, the evidence defendant sought to introduce had nothing to do with the issue at question. In *Cruz* and *Galvin*, defendants sought to introduce self-serving statements which seemed to be disingenuous and in any case did not serve to clarify or correct the statements that had been entered into evidence by the State. Similarly, in *Wormley*, the exculpatory statements defendant sought to introduce were not necessary to qualify or explain the statements already admitted.

On the other hand, in *Prasertphong*, *Soto-Fong*, *Ellison*, and *Buckley*, it was clear that the additional statements or portions of statements the State sought to introduce did in fact serve to clarify or correct misleading impressions created by the statements introduced by defendants. In

Prasertphong, *Ellison*, and *Buckley*, the defendants sought to introduce portions of statements made by accomplices or witnesses which tended to exculpate them (defendants) while excluding portions of those same statements which tended to inculpate them; the courts rejected this. And in *Soto-Fong*, defendant sought to introduce evidence that the crime was committed by “Cha-Chi,” while excluding evidence that Cha-Chi was defendant’s own nickname; again, the court denied this. Any of the above motions by defendants would have misled the juries if granted; therefore it seems reasonable that the courts denied them.

A more correct interpretation of the above cases is that the Arizona courts have been very consistent in holding that the key factor in determining whether or not an additional statement or an additional portion of a statement will be admitted is ***whether or not admission of that latter statement is necessary to correct any misleading impression left by the first statement.***⁵ See for example *Dunlap* and *Reed* (above in sections III.F and IV.B), in which defendants were permitted to introduce additional portions of statements for just this reason.

In fact, as described above in section III.G, whether or not admission of the latter statement is necessary to correct any misleading impression is more important than whether the latter statement was made at the same time as the already-admitted statement. See for example *Soto-Fong* (in which the State was permitted to enter a statement made several months after the already-admitted statement) versus *Wormley* (in which defendant was excluded from admitting a portion of the same statement which had already been admitted in part). This is in keeping with the language of Rule 106, which states, “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part ***or any other writing or recorded statement*** which ought in fairness to be considered contemporaneously with it.” (emphasis added).

Therefore, in attempting to introduce otherwise inadmissible evidence under the rule of completeness (Rule 106), it is essential to frame the issue with reference to the goal of the rule, which is ***to avoid permitting one party to distort the true meaning of a statement and/or mislead the finder-of-fact by introducing only selected portions of a statement.*** If a defendant can successfully demonstrate that admission of a portion of a statement is necessary in order to “correct any misleading impression” or to “qualify, explain, or place in context” the initial portion of the statement, that latter portion should be admitted.

(Endnotes)

1. The Supreme Court of Arizona has referred to Rule 106 as a “*partial* codification of the rule of completeness.” *State v. Prasertphong*, 210 Ariz. 496, 499, (2005) (emphasis added). The U.S. Supreme Court similarly observed that Federal Rule of Evidence 106 “*partial* codified” the rule of completeness. *Beech v. Rainey* at 172. This leaves open the possibility of arguing there is more to the rule of completeness than is contained in either Rule 106.
2. In *Galvin*, defendant was accused of drunk driving. *State v. Galvin*, unreported case, 2008 WL 2589030 (Ariz.App. Div. 1). Defendant told police officers that he had had six or seven drinks. A short time later, defendant spontaneously said to officers, “I wasn’t driving. My wife was. Write that down.” At trial, the court excluded the latter statement. Defendant was convicted. On appeal, defendant argued that the trial court erred in excluding this latter statement, pursuant to the rule of completeness, to qualify or explain his statement that he had drunk six to seven drinks. The Court of Appeals found no error, holding, “Defendant’s spontaneous, self-serving, statement to the officer that he was not driving did not occur during the same conversation as defendant’s statement that he had drunk six to seven drinks. ***Nor was it necessary to correct any misleading impression left by taking his statement that he had drunk six to seven drinks out of context, as necessary for application of the rule of completeness.***” (emphasis added)

Wormley goes even farther, with the court excluding exculpatory statements made in the *same conversation* as inculpatory statements which were admitted. *State v. Wormley*, unreported case, 2008 WL 3876387 (Ariz.App. Div. 1). There, defendant was accused of having shot victim T.L. in a gang-related incident at a restaurant called “Scott’s.” During the trial, the State was permitted to introduce certain inculpatory statements made by defendant to a police officer. The officer testified that defendant had told him he had seen the victim *the night before* at Scott’s and that the victim was not supposed to be in the neighborhood. During that same interview, defendant had also made certain exculpatory statements to the officer – that on the night of the incident he had left Scott’s, heard gunshots as he was walking away, and found out later that T.L. had been shot, but that he did not shoot T.L. and did not know who did. However, defendant was not permitted to admit these exculpatory statements. On appeal, defendant argued that the exclusion of these exculpatory statements was error. The Court of Appeals, Division One, held that it was not error, because the exculpatory statements were not needed to clarify, explain, or place in context the inculpatory statements that were introduced. The inculpatory statements related to the jury did not imply defendant had admitted he was at Scott’s when the victim was shot. Therefore, even though the exculpatory comments were part of the same complete statement as the inculpatory ones, they were not admissible under the rule of completeness.

3. *State v. Galvin*, unreported case, 2008 WL 2589030 (Ariz.App. Div. 1).
4. In this situation, “the rule of completeness, like the rule of forfeiture, extinguishes confrontation claims essentially on equitable grounds.” *Prasertphong* at 502.
5. Other terms used by the Arizona courts in explaining why they admitted additional statements or additional portions of a statement is that this was necessary in order to “clarify” or to “qualify, explain, or place in context” the initial portion. *Prasertphong* at 499, 501; see also *Cruz* at 162.



Jury and Bench Trial Results

June/July/August 2009

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						
5/18 - 6/3	Farney Reece Brazinskas <i>Leigh</i>	Spencer	Kitredge	CR07-008284-001DT Murder 2nd Deg., F1D	Guilty	Jury
5/28 - 6/2	Baker	Hoffman	Sammons	CR08-171815-001DT POND f/s, F2 Tamper w/Phys. Evidence, F6	Not Guilty of POND f/s - Guilty of lesser Included POND, F4; Guilty of Tampering	Jury
6/1 - 6/3	Turner Brazinskas	Harrison	Henderson	CR08-173467-001DT Resist. Arrest, F6 Disorderly Conduct, M1 False Reporting, M1	Not Guilty of Resist. Arrest and Disorderly Conduct; Guilty of False Report.	Jury
6/9 - 6/12	Whalin Rock Ames	Whitten	Garcia	CR09-104465-001DT TOMOT, F3 Identity Theft, F4	Mistrial on TOMOT due to jury misconduct - later dismissed; Guilty of Identity Theft	Jury
6/10	Covil	Foster	Crowley	CR08-179936-001DT POM, M1	Guilty	Bench
6/15 - 6/16	Bradley	Lynch	Henderson	CR08-154697-001DT Assault, M3 Agg. Assault, M1	Not Guilty of Assault; Guilty of lesser included Agg. Assault, M2	Bench
6/23 - 6/26	Baker	Gottsfeld	Jencsok	CR07-176688-001DT TOMOT, F3 Poss. Burg. Tools, F6 POND, F4	Guilty	Jury
6/30 - 7/1	Rolstead	Gottsfeld	White	CR08-161710-001SE TOMOT, F3	Guilty	Jury
7/6 - 7/10	Banihashemi Bublik	Dunevant	Starr	CR09-111596-001DT Burg. 3rd Deg., F4 Burg. Tools Poss., F6	Guilty both counts	Jury
7/6 - 7/16	Fridde Ames <i>Ralston</i>	Harrison	Voyles	CR08-107538-001DT 3 cts. Agg. Assault, F2D	Guilty	Jury
7/7	Ramos	Ditsworth	Susser	CR08-129939-001DT Agg. Assault, F6	Guilty	Bench
7/7 - 7/16	Colon	Flores	Gatusso	CR09-005946-001DT Dischg. Firearm, F6D 2 cts. MIW, F4 Disorderly Conduct, F6D Agg. Assault, F3D Assault-Intent Reck. Injury, M1 Burg. 1st Deg., F2D	Guilty all counts	Jury

Jury and Bench Trial Results

June/July/August 2009

Public Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1 (Continued)						
7/8 - 7/10	Steinfeld Souther <i>Springer</i>	Roberts	Swanstrom	CR08-181384-001DT POM, F6	Guilty	Jury
7/8 - 7/13	Foundas Rock <i>Leigh</i>	Passamonte	Rapp	CR08-159940-001DT POND, F4	Not Guilty	Jury
7/14 - 7/17	Farney Sain	Mangum	Rapp	CR08-161198-001DT Burglary 2nd Deg., F3	Guilty	Jury
7/16 - 7/20	Martin Rock <i>Armstrong</i>	Blomo	Crowley	CR09-107347-001DT PODD, F4	Guilty	Jury
7/20 - 7/22	Fischer Ames	Gaines	Henderson	CR09-112200-001DT Agg. Assault, F3D Disorderly Conduct, F6D	Not Guilty	Jury
7/20 - 7/29	Reece <i>Leigh</i>	Flores	Lish	CR09-112108-001DT Kidnap, F2 (DCAC) Molest. of a Child, F2 (DCAC)	Hung jury on both counts.	Jury
8/3 - 8/5	Agnick Ames <i>Ralston</i>	Vandenberg	Pollak	CR09-005934-001DT Burg. 3rd Deg., F4	Guilty	Jury
8/3 - 8/5	Akins	Foster	Voyles	CR08-160350-001SE Burg. 2nd Deg., F3	Not Guilty	Jury
8/3 - 8/14	Reece Sain <i>Leigh</i>	Ditsworth	Kittredge	CR06-010737-001DT Murder 2nd Deg., F1D Att. Murder 2nd Deg., F2D	Not Guilty	Jury
8/13	Covil	Hannah	Crowley	CR09-113242-001DT POM, M1	Guilty	Bench
8/19 - 8/26	Whalin Foundas Brazinskas <i>Ralston</i>	Hannah	Eidemanis	CR09-123670-001DT 3 cts. Agg. Assault, F3D 2 cts. Endangerment, F6D	Not Guilty on all charged counts; Guilty of lesser included 3 counts Misdemeanor Assault	Jury
8/25 - 8/27	Akins	Gottsfeld	Brady	CR08-158011-001SE Agg. Assault, F4	Not Guilty	Jury
8/26	Mullins Rankin <i>Leigh</i>	Passamonte	Hall	CR05-113850-001DT POM, M1	Guilty	Bench
8/26 - 8/31	Turner Rankin	Barton	Baek	CR08-179796-001DT Agg. Assault, F3D	Guilty	Jury

Jury and Bench Trial Results

June/July/August 2009

Public Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2						
06/4 - 6/16	Colon	Spencer	Pokrass	CR08-160268-001 DT Burg. 3rd Deg., F4 Unlawful Flight, F5	Not Guilty of Burg. Guilty of Unlawful Flight	Jury
6/8 -6/9	Ramos Taradash	Whitten	Verdura	CR08-169421-001 DT 2 cts. POND, F4	Guilty	Jury
6/10 - 6/16	Baker	Rassas	Davis	CR08-009398-001DT 3 cts. Promot. Prison Contraband, F4	Not Guilty	Jury
6/22 - 6/24	Garcia Taradash Springer	Buttrick	Kennelly Steinberg	CR09-106847-001DT PODD, F4	Guilty-In Absentia	Jury
6/22 - 6/25	Salter Rosell Urista	Foster	Lynas	CR09-100007-001DT MIW, F4 Unlawful Discharge of Firearm, F6	Not Guilty	Jury
6/29 - 7/6	Taradash Urista	Grant	Mayer	CR08-177444-001DT Burg. 3rd Deg., F4 Burg. Tools Poss., F4	Guilty both counts	Jury
7/7	Ramos	Ditsworth	Susser	CR08-129939-001DT Agg. Assault, F6	Guilty	Bench
7/7 - 7/10	Banihashemi Bublik	Dunevant	Starr	CR09-111596-001DT Burg.3rd Deg., F4 Burglary Tools Poss., F6	Guilty on both counts	Jury
7/7 - 7/16	Colon	Flores	Gatusso	CR09-005946-001DT Agg. Aggault F3 Dischg. Firearm City F6 Burg.1st Deg. F2 Assault Intent/Reck/Inj M1 Disorderly Conduct F6 2 cts. MIW F4	Guilty all counts	Jury
7/8 - 7/10	Steinfeld Souther Springer	Roberts	Swanstrom	CR08-181384-001DT POM, F6	Guilty	Jury
7/30 - 8/3	Teel Urista	Smith	Kennelley	CR08-156273-001DT POND, F4 PODP, F6	Guilty both counts	Jury
8/24 - 8/26	Steinfeld	Reyes	Starr	CR09-110730-001DT Agg. Assault, F3 Resist Arrest, F6 Shoplifting, M1	Agg. Assault Guilty of lesser F6 Resist - Guilty Shoplifting - Guilty	Jury

Jury and Bench Trial Results

June/July/August 2009

Public Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3						
6/15 - 6/16	Cooper O'Farrell Browne	Mahoney	Jencsok	CR08-005632-001DT TOMT, F3	Guilty	Jury
6/23 - 7/1	Kalman Munoz Hagler Browne	Spencer	Carper	CR09-048050-001DT Agg. Assault, F5	Not Guilty of charge Guilty of Lesser Assault, M3	Jury
7/6 - 7/8	Smith Schreck O'Farrell Browne	Smith	Mandigo	CR09-113139-001DT 2 cts. Agg Assault, F4 Resist Arrest, F6	Not Guilty on all counts	Jury
7/10	Becker Flannagan Ortiz	Brnovich	Carper Kolsrud	CR08-114482-001DT MIW, F4	Guilty	Bench
7/13	Smith Schreck O'Farrell Trimble Browne	Vandenberg	Ogus	CR09-109933-001DT Resist Arrest, F6	Guilty	Bench
7/15 - 7/20	Blackwell Schreck Muñoz Browne	Vandenberg	Waters	CR06-108910-001DT Take ID of Another, F4	Guilty	Jury
7/20 - 7/23	Tivorsak Flannagan	Gottsfeld	Carper	CR08-157317-001DT 2 cts. Agg. Assault, F5 Agg. Assault, F3	Guilty of lesser offense disorderly conduct, M1	Jury
7/22 - 7/29	Naegle Rock ProPer	Hoffman	Ogus	CR08-009345-001DT 2 cts. Disorderly Conduct, F6 MIW, F4	Not Guilty on 2 cts. Disorderly Conduct Dang, Hung Jury on MIW	Jury
7/23 - 7/24	Blackwell Schreck Muñoz Browne	Donahoe	Savage Martinez	CR08-178902-001DT Agg. Assault F6 Agg Assault, M1 Theft, M1	Agg. Assault - Not Guilty Agg. Assault - Guilty Misd. Dom. Viol. Theft - Guilty	Bench
7/23 - 7/28	Tivorsak Browne	Vandenberg	Kolsrud Rule 38 Student Natalie LaPorte	CR09-112449-001DT POM, F6 PODP, F6 MIW, F4	Not Guilty on all counts	Jury
7/29	Roach	Vandenberg	Reed	CR09-111266-001DT POM, F6	Guilty	Bench
7/30 - 8/7	Tivorsak	Lynch	Kolsrud	CR09-116182-001DT Agg. Assault, F3D	Guilty - Dangerous	Jury
8/4	Becker Flannagan	Newell	Allen	CR09-111509-001DT POM, M1	Guilty	Bench

Jury and Bench Trial Results

June/July/August 2009

Public Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3 (Continued)						
8/12 - 8/17	Blackwell Conlon	Smith	Kuwata	CR08-150355-001DT Fraud. Schemes/Art., F2 2 cts. Take ID of Another, F4	Guilty	Jury
8/17 - 8/18	Tivorsak	Gaines	Torgoley	CR09-115813-001DT POND for Sale, F2	Guilty of Lesser Poss. of Drugs	Jury
8/19 - 8/27	Kirchler Hagler Curtis	Gaines	Vick	CR09-122238-001DT Agg. Assault F2 MIW, F4 Criminal Tresp. 1st Deg., M1	Guilty	Jury
Group 4						
5/27 - 6/1	Sheperd	Gaines	Kelly	CR08-166186-001SE Burg. 3rd Deg., F4 PODP, F6 2 Cts. Shoplifting, M1	Burg.-Not Guilty PODP-Guilty 2 cts. Shoplift-Guilty	Jury
6/1 - 6/2	Rolstead	Mahoney	Bhatia	CR08-151201-001SE POM, F6	Not Guilty	Jury
6/2 - 6/4	Gaziano	Smith	Seeger	CR08-149103-001SE Armed Robbery, F2D Kidnap, F2D	Guilty	Jury
6/11 - 6/16	Barnes	Ronan	White	CR07-048501-001SE Burg. 2nd Deg., F3 Theft, F3	Burg. - Guilty Theft, F3-Guilty of Lesser Chg. of Theft, M1	Bench
6/11 - 6/16	Barnes	Ronan	White	CR07-153667-001SE TOMOT, F3	Guilty	Bench
6/12	Rolstead	Hamblen	Millington	TR08-176152-001WM DUI-Liquor/Drugs/Vapors, M1 DUI w/BAC .08 or more, M1 DUI/Drugs/Metabolite, M1	DUI-Liquor-Not Guilty DUI w/BAC .08 - scratched before trial DUI/Drugs-Guilty	Jury
6/17 - 6/24	Corbitt Salvato	Ronan	Kelly	CR08-165044-001SE Robbery, F4	Guilty	Jury
6/22 - 6/23	Engineer	Blomo	White	CR08-177484-001SE Unlawful Use of Means of Transportation, F5	Guilty	Jury
6/22 - 6/24	Dehner	Lynch	Plicht	CR09-104812-001SE Agg. Domestic Violence, F5	Not Guilty	Jury
6/24	Braaksma	Strong	Grabowski	TR09-113626-001SM DOSL, M1	Not Guilty	Bench
7/6 - 7/8	Barnes	Barton	Bhatia	CR09-110342-001SE Armed Robbery, F3D	Directed Verdict	Jury
7/13 - 7/16	Ditsworth	Roberts	Tait	CR08-123511-001SE Theft, F6 MIW, F4	Guilty on both counts	Jury

Jury and Bench Trial Results

June/July/August 2009

Public Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
7/23	Braaksma	Frankel	Green	TR09-123441-001CH DOSL, M1	Guilty	Bench
7/23	Braaksma	Calendar	Darmody	TR09-116439-001TP DOSL, M1	Guilty	Bench
8/10	Braaksma	Calendar	Diederich	JC08-167389-001-TP Interfering w/Judicial Proceedings, M1	Guilty	Bench
8/10	Braaksma	Calendar	Diederich	JC08-146918-001-TP Interfering w/Judicial Proceedings, M1	Guilty	Bench
8/17 - 8/19	Houck	Svoboda	Judge	CR08-123226-001SE PODD, F4 PODP, F6	Guilty	Jury
8/18 - 8/20	Engineer	Abrams	Reames	CR08-174290-001SE Theft, F4	Not Guilty	Jury
Vehicular						
7/6 - 7/9	Carrillo	Svoboda	Reed	CR07-168443-001 DT 3 cts. Agg. DUI - Pass. U/15, F6	1 count - Guilty 2 & 3 counts - Not Guilty	Jury
7/16 - 7/22	Black	Svoboda	Reed	CR05-034929-001 DT 4 cts. Agg. DUI, F4	Guilty	Jury
8/5 - 8/14	Iniquez Ryon Cassanova	Gottsfeld	Colins	CR08-007461-001 DT Manslaughter, F2D Agg. Assault, F3D Endangerment, F6D	Not Guilty	Jury
8/10 - 8/18	Sloan	Passamonte	Walters	CR08-140341-001 DT 2 cts. Agg. DUI, F4N	Not Guilty	Jury
Capital						
4/9 - 7/27	Bevilacqua Stazzone Carson Ericksen	Sanders	Hoffmeyer Grimmsman	CR99-095294 Murder 1st Deg., F1 Child Abuse, F2	Jury trial for capital re- sentencing - Sentenced to death.	Jury
6/22 - 8/20	Washington Nurmi Page Berry	Kemp	Kalish	CR05-127282-001DT 2 cts. Murder 1st Deg., F1 Kidnapping, F2D Burglary, F2D	Guilty - Death as to 2 cts. Murder; Natural life as to other counts.	Jury
8/10 - 8/24	Mathew Dominguez Page Sandberg	Barton	Charbel	CR05-112128-001DT Capital Murder, F1D	Retrial of penalty phase. Once death allegation was withdrawn, Natural Life or Life w/poss of release at 25 yrs will be end result. Was originally a jury trial, but the State w/d death minutes before jury sworn in.	

Jury and Bench Trial Results

June/July/August 2009

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
4/15 - 6/14	Verdier Ripa	Bergin	AG	JD17680 Dependency Trial	Dismissed	Bench
4/23 - 5/26	Ripa	Gama	AG	JD15381 Severance Trial	Severance Granted	Bench
5/26	Ross	Brodman	AG	JD17761 Dependency Trial	Dependency Found	Bench
6/1	Sanders	Davis	AG	JD17827 Guardianship Trial	Dismissed	Bench
6/1 - 6/11	Bogart Otero	Welty	Cohen	CR08-006749-001DT Molestation of Child, F2 3 cts Sexual Conduct with Minor, F2	Guilty	Jury
6/3 - 6/5	Cuccia	Oberbilling	Caputo	CR08-122450-001DT Disorderly Conduct, F6D	Not Guilty	Jury
6/3 - 6/20	Sanders	Sinclair	AG	JD15758 Severance Trial	Severance Granted	Bench
6/11	Sanders	Bergin	AG	JD16172 Severance Trial	Severance Granted	Bench
5/20 - 7/29	Schaffer Jolly Bumpus Williams	Steinle	Imbordino	CR06-012721-002DT - Penalty Phase 2 Cts, Murder, 1st Degree, F1D 2 Cts. Drive by Shooting, F2D Agg. Assault, F3D 2 Cts. Arson of Structure/ Property, F3	Sentenced - Life	Jury
6/30 - 7/5	Ripa	Brain	AG	JD10210 Dependency Trial	Dependency Found	Bench
7/6 - 7/9	Allen	Davis	Kelly	CR08-166666-003SE Armed Robbery, F2D	Not Guilty	Jury
7/8 - 7/15	Reidy	Newell	Reamer	CR08-173818-001DT Unlawful Use of Means of Trans., F6	Mistrial - Hung Jury	Jury
7/14 - 7/16	Collins	Stewart	Hoffman	CR08-123720-001DT Forgery, F4	Not Guilty	Jury
7/15	Ross	McClennen	AG	JD15300 Severance Trial	Severance Granted	Bench
7/21	Gaunt	Holt	AG	JD14597 Severance Trial	Severance Granted	Bench
7/23	Storrs	Gottsfeld	Jencsok	CR09-006130-001DT Theft-Means of Trans., F3	Mistrial	Jury
7/27 - 7/29	Storrs	Gottsfeld	Jencsok	CR09-006130-001DT Theft-Means of Trans., F3	Mistrial	Jury

Jury and Bench Trial Results

June/July/August 2009

Legal Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
7/13 - 8/26	Nies	Norris	Siegel	JD15224 Severance Trial	Severance Dismissed	Bench
8/3	Lee	Abrams	Maggi	CR08-148974-001SE POM, F6 PODD, F6	Guilty - POM, M1, PODD, M1	Bench
8/10	Kolbe	Akers	Gonzales	JD507256 Severance Trial	Severance Granted	Bench
8/12	Ripa	Gentry- Lewis	AG	JD17765 Dependency Trial	Dependency Dismissed	Bench
8/12	Villanueva	Brain	AG	JD17956 Dependency Trial	Dependency Found	Bench
8/12 - 8/24	Gaunt	Holt	AG	JD16788 Severance Trial	Severance Granted	Bench
8/14	Ripa	Bergin	AG	JD16361 Severance Trial	Severance Granted - Client FTA	Bench
8/20	Ripa	Bergin	AG	JD17585 Dependency Trial	Dependency Found - Client submitted on 1st day of trial	Bench
8/20 -8/26	Pulver	Thompson	Siegel	JD507329 Severance Trial	Severance Granted	Bench
8/20 -8/26	Reidy	Blomo	Strange	CR08-007839-001DT Dschg Firearm at Structure, F2D Drive by Shooting, F2D	Guilty	Jury
8/24	Nies	Norris	AG	JD15519 Dependency Trial	Dependency Found	Bench
8/24 - 8/25	Collins	Harrison	Torgoley	CR09-1101104-001DT 3 cts. Sale or Transportation of Dangerous Drugs, F2 PODD for Sale, F2	Guilty - 3 cts.Sale or Transportation of Dangerous Drugs Directed Verdict/ Dismissed - PODD for Sale	Jury
8/27	Kolbe	Akers	Gonzales	JD507762 Severance Trial	Severance Granted	Bench

Jury and Bench Trial Results

June/July/August 2009

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
2/6 & 6/5	Rich Mullins	Gama	JD15363 - Termination	Termination of Parental Rights	Bench
5/26 - 6/2	Smith Indovino	McClennen	JD15235	Under Advisement	Bench
6/3	Owsley Marrero	Gama	JD8828	CPC Denied	Bench
11/18 - 6/22	Owsley Marrero	Broadman	JD8828	Severance - taken under advisement	Bench
6/22 - 6/25	Rose Brauer	Roberts	CR09-108431-001 3 Cts Agg Asst, F3 severed Ct. 4	Charges amended day of Trial to 3 Cts Disorderly Conduct; CF6; Guilty of Disorderly Conduct; CF6/Non-Dang	Jury
6/9 - 6/11	Zabor Hayes	Grant	CR08-144534-001-DT MIW, F4	Guilty - Trial in Abstentia	Jury
6/25 - 7/7	Zabor Mullavey	Lynch	CR09-108503-001-DT TMOT, F3	Not Guilty	Jury
7/13 - 7/15	Rose Rood	Smith	CR09-106696-001-DT Forgery, F4	Guilty	Jury
7/28	Christian Christensen	Ishikawa	JD 507314 - Severance	Severance Granted	Bench
6/30 - 7/8	Roskosz Stapley	Mahoney	CR08-170870-001-DT Armed Robbery, F2D Agg. Asst, F3D MIW, F4	Guilty On All Counts	Jury
6/6 - 7/21	Timmes Gill	Thompson	JD507773 and JD507774 - Dependency	Dependency Granted	Bench
7/24	Timmes Gill	Thompson	JR507868 - Dependency	Dependency Granted	Bench
5/26 - 8/19	Agan Glow Joseph Mullavey	Mroz	CR06-158425-001-DT Death Penalty (2 Counts) Aggravated Assault, F3	Guilty; Two Life Sentences; Not Guilty on Aggravated Assault	Jury
8/24 - 8/27	Glow	Kemp	CR2008-170398-001-DT Armed Robbery, F2 Shoplifting, M1	Guilty Lesser Aggravated Robbery-Non-Dangerous; Guilty - Shoplifting	Jury
4/20 - 8/3	Owsley Marrero	Norris	JD15731 - Severance	Severance Granted	Bench
6/24 - 8/24	Owsley Marrero	Bergin	JD12289 - Severance	Severance Granted	Bench

Jury and Bench Trial Results

June/July/August 2009

Legal Advocate's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
8/18 - 8/24	Zabor Miller Hayes	Newell	CR2009-112710-001-DT Unlawful Flight, F5 MIW, F4	Guilty on Both Charges	Jury
8/17 - 8/24	Garcia Centeno-Fequiere	McMurdie	CR2009-006363-001-DT Armed Robbery, F2D; Burglary - 1st Degree, F3D 10 Cts Endangerment, F6D	9 Not Guilty; 3 Guilty; Mistrial; Judge Dismissed the 10 Counts of Endangerment	Jury
8/4 - 8/7	Christian Christiansen	Udall	JD506311 - Severance	Severance Granted	Bench
7/7 - 8/18	Youngblood Gutierrez	Holt	JD17920 - Severance	Severance Granted	Bench
8/25	Russell Miller	Brodman	JD16708 - Severance	Severance Granted	Bench
8/27	Russell Miller	Bergin	JS17531 - Severance	Severance Granted	Bench



Maricopa County
Public Defender's Office
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
Tel: 602 506 7711
Fax: 602 506 8377
pdinfo@mail.maricopa.gov

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.

