

# JUDICIAL CONFERENCE CASE LAW 2023 CONFERENCE

---

JUDGE JAMES BLAKE, ASSOCIATE JUDGE  
SCOTTSDALE CITY COURT

# I) STATE V. HON. MANDELL, 253 ARIZ. 97, 509 P.3D 405, (APP. DIV. I, FILED ON 04/19/22).

---

- This is a case where the state special actioned a court order which required that the state turn over the victim's medical records, which the state did not possess, for an in-camera inspection. "In this criminal matter, the state seeks special action relief from an order that it produce a victim's mental health records for in-camera review. We accept jurisdiction because there exists no adequate remedy by appeal. We hold that the order should first have been directed to the victim instead of the state, and we grant relief because the defendant's generalized and speculative production request was insufficient to overcome the victim's constitutional and statutory rights."

## 2) STATE V. TERAN, 253 ARIZ. 165, 510 P.3D 502, (APP. DIV. I, FILED ON 04/19/22).

---

- This case involved a dui drugs where a person is convicted of among other things manslaughter. It is a contested issue as to whether the person was in a cross walk. The court has an off the record discussion on jury instructions, then goes on the record and refuses to give a right of way instruction when a person is or is not in a cross walk. The manslaughter conviction is reversed and the parties are reminded of the importance of not discussing important matter off the record.

### 3) STATE V. WILSON, 253 ARIZ. 191, 510 P.3D 258, (APP. DIV., 2, FILED ON 05/18/22).

---

- This is a murder case which is overturned because court did not give some justification instructions. The court did give one instruction but not others. One instruction was not given because the parties did not realize that the statute had been amended, crime prevention. “Generally, a defendant is entitled to an instruction on any theory of the case reasonably supported by the evidence. The slightest evidence of justification is sufficient to entitle the defendant to an instruction...In determining slightest evidence, we view the facts in the light most favorable to the party requesting the instruction...”

## 5) MORGAN/NEFF V. DICKERSON, IN AND FOR COCHISE, 253 ARIZ. 207, 511 P.3D 202, (SUP. CT., FILED ON 06/14/22).

---

- The court assigned prospective jurors number rather than use their names. The parties do not object but the press does saying this is a violation of the first amendment. “We hold the First Amendment does not prohibit the court’s practice.”

## 7) STATE V. MUHAMMAD, 253 ARIZ. 371, 513 P3D 1095, (SUP. CT., FILED ON 07/15/22).

---

- This case overturns an earlier case. “This case asks us to determine whether, in a case where a criminal defendant’s competency has been put at issue, a trial court must make a specific finding of heightened competency before determining the defendant’s waiver of the right to a jury trial is knowing, voluntary, and intelligent. We conclude that Arizona law does not require such a specific finding of heightened competency with respect to a jury-trial waiver.”

## 8) STATE V. CASTANEDA, JR., COURT OF APPELAS, NO. I, CA-CR 21-0525, FILED ON 09/13/22.2

---

- The case involves when is a child too young to testify. The answer is never. The child was four when the event happened and five while testifying. “On appeal, this court defers to the superior court’s determination regarding a witness’s competency to testify. This court will reverse the superior court’s competency decision only if the decision constitutes a clear abuse of discretion...In any criminal trial every person is competent to be a witness.” “Neither age, mental capacity nor feeble-mindedness renders a witness incompetent or disqualified. Instead, competency depends on a witness’s ability to observe, recollect, and communicate about the event in question.”

## 9) STATE V. STOWE, COURT OF APPEALS, NO. I, CA-CR 21-0422, FILED ON 11/01/22.

---

- “Arizona law requires a person convicted for extreme driving under the influence of intoxicating liquor to serve at least 45 days in jail. The legislature has authorized the superior court to suspend all but 14 days of that sentence when the person equips a vehicle she operates with an ignition interlock device for a year. We address here whether a person who does not own or operate any vehicle for a year must, nonetheless, equip a vehicle with the device before the court may reduce her jail time. We conclude the law allows the court to reduce otherwise mandatory jail time for a person who does not own or operate any vehicle for a year.” The court twice used the work absurd to describe the alternative theory.



# 10) AZ. ATT. FOR CRIMINAL JUSTICE V. DOUG DUCEY ET AL, NO.CV-17-91322-PHX-SPL, FILED ON 11/02/22

---

- This case declared A.R.S. 13-4433(B) (defense attorneys or their agents must go through the prosecutors to contact the victims) to be in violation of the United State Constitution free speech Amendment and enjoined its enforcement.

## 11) STATE V. HON. LABIANCA/PEDRO, COURT OF APPEALS, NO. 1, CA-SA 22-0157, FILED ON 11/03/22.

---

- “The state petitions for special action review of the superior court’s order denying its request to have the state’s expert examine the defendant before an Arizona Rules of Evidence (“Rule”) 404(c) hearing. We accept jurisdiction and grant relief in part, holding that if the court allows a defendant’s expert to testify at an evidentiary hearing about the defendant’s mental health based on that expert’s examination of the defendant, the court must also allow the state’s expert to examine the defendant upon request.”

## 12) STATE V. MACHARDY, COURT OF APPEALS, NO. 2, CA-CR 2021-0021, FILED ON 11/10/22.

---

- This is a case involving child pornography. There are several issues but the one that involves us is waiver of a jury trial for a bench trial. The defendant signed a written waiver and was repeatedly addressed in court by the judge on the record. After conviction, the defendant appealed saying the judge did not find specifically that the waiver was voluntary like would be required for a plea. “Under our criminal rules, a defendant’s waiver of that right must be in writing or on the record in open court. And the trial court must address the defendant personally, inform the defendant of the defendant’s right to a jury trial and determine that the defendant’s waiver is knowing, voluntary, and intelligent” The waiver was upheld but always, if appropriate, find the waiver to be knowing, voluntary and intelligent on the record.

# (13) KING V. HON. STARR, COURT OF APPEALS, NO. 1, CA-SA 21-0219, FILED ON 11/22/22

---

- This case involves Rule 11 defense redacted reports and can the state see the unredacted version where the defendant is incompetent. “Therefore, to the extent it has not been stated with clarity, we hold that Fifth Amendment protection applies to statements incompetent defendants make during mental health examinations conducted by examiners retained by the defendant pursuant to A.R.S. 13-4505(E) during Rule 11 competency restoration proceedings. By extension, we agree with King that because he cannot waive his Fifth Amendment rights, any of his statements that implicate those Fifth Amendment rights found in Dr. Weller reports cannot be disclosed.”

## (14) STATE V. SANTILLANES, COURT OF APPEALS, NO. I, CA-CR 21-0389, FILED ON 12/15/22.

---

- This case involved the state's appeal of a court order granting the expungement of marijuana conviction where state complains that the amount of marijuana exceeds the amount allowed under expungement. The court of appeals says the state cannot appeal and should special action the order but will treat this as a special action. "We hold that: 1) courts may consider any admissible evidence the parties present regarding a petitioner's eligibility for expungement; 2) the superior court may abuse its discretion if it fails to hold an evidentiary hearing on a contested expungement petition; and 3) orders granting or denying expungement petition must include the facts the court relied on in reaching its decision."

## 15) SHINN V. AZ. BOARD OF EXECUTIVE CLEMENCY, AZ, SUPREME COURT, NO. CV-21-0275-PR, FILED ON 12/21/22.

---

- This is a murder case where after 25 years the court wants to make defendant eligible for parole and issues a nunc pro tunc. The Supreme Court says no because Rule 24.4 Az. R. Crim. Pro. is to correct a clerical error not a judicial error. “Thus, we establish that a nunc pro tunc order may only be used to modify clerical errors and that a court reviewing the propriety of the order may examine the entire record, as we did here, to determine whether the order merely remedied a true clerical error established in the record. Under Back, Judge Bernini’s nunc pro tunc order did not accurately record what actually happened at Freeman’s sentencing it changed what occurred.”

## 16) STATE V. MOORE, COURT OF APPEALS, NI.1 CA-CR 21-0459, FILED ON 12/20/22.

---

- In this case the Judge extends probation with the defendant's agreement for three years so that restitution can be fully paid. Eventually the state files a petition to revoke after three years and the defendant asks the court to reverse the ruling so that probation has already expired. The Judge does this and the state appeals. "Our holding today, therefore, clarifies that the court lacked jurisdiction to vacate a three-year old probation extension order, but does not in any way affect the court's ability to modify Moore's probation going forward. For example, upon hearing Moore's motion to vacate in 2021, the court had jurisdiction and discretion to modify or terminate Moore's probation as of that date."

## 17) STATE V. IBARRA, COURT OF APPEALS, NO. 2, CA-CR 2021-0087, FILED ON 12/21/22.

---

- This case involves the court refusing to grant the defendant a pot expungement where the state did not contest the expungement. The burden is on the state to object to the expungement and to prove by clear and convincing evidence that the defendant is not entitled to expungement. The defendant does not have to show that he/she is entitled to expungement.



## 18) STATE V. SHORTMAN, COURT OF APPEALS, NO. I CA-CR 21-0354, FILED ON 12/29/22.

---

- This case allows the COVID seating of jurors in criminal cases. Because of COVID restrictions the jury sat in the juror box and behind the prosecutor's table. The defendant felt this gave the prosecutor an unfair advantage. The appellate court disagreed.

## 19) STATE V. EWER, ARIZONA SUPREME COURT, NO. CR-21-0059-PR, FILED ON 01/18/23.

---

- This case involves the justification/self-defense statute. Does A.R.S. 13-404(A) apply to only defendants or can it apply to defendants and alleged victims? Even though the statute uses the word person and not defendant the courts rule that "we hold that the justification defense provided by 13-404(A) only applies to a defendant's conduct."

## 20) STATE V. GRIFFIN REAL P. IN INTEREST AHLERSMEYER, CT. OF APP. NO. 2, CA-SA 2023-0006, FILED ON 03/10/23

---

- In this case a defendant was sentenced to prison on one count and life-time probation on another count. While in prison the defendant asked the judge to revoke probation and sentence him. The judge denied the request because the judge felt that the court lacked authority to do that. After release from prison, the defendant renewed the request and it was granted. The state special actioned this result and the judge was overturned. “The state argues the respondent judge lacked discretion to revoke Ahlersmeyer’s probation in the absence of a petition to revoke. We agree that no rule or statute gives a trial judge the authority to do so and that the respondent erred by concluding otherwise.”

## 21) STATE V. HONS. BREARCLIFFE/VASQUEZ, ET.AL., AZ. SP. CT. , NO.VC-21-0174-SA, FILED ON 03/24/23.

---

- This case vacates an earlier court of appeals decision. It has to do with the waiver of direct appeal rights if defendant does not appear for sentencing within 90 days of conviction. “We conclude that before the right to appeal is abrogated: (1) the defendant must receive notice that the right may be waived if his or her absence prevents sentencing from occurring within ninety days after conviction; (2) the waiver must be knowing, intelligent, and voluntary; and (3) the defendant must be provided an opportunity at sentencing to prove by clear and convincing evidence that the absence was involuntary.” “we disavow Raffaele to the extent it may be construed to require trial courts to find that a defendant expressly waived the right to appeal.”

## 22) STATE V. UNDERWOOD, COURT OF APPEALS, NO. 1, CA-CR 21-0439, FILED ON 03/28/23.

---

- This is a case where the defendant wishes to represent himself. The court allows this after questioning the defendant and then revokes that approval 27 minutes later when defendant will not sign a document. “A criminal defendant holds a constitutional right to self-representation, which is not absolute and may be revoked if the defendant deliberately engages in serious and obstructionist misconduct. On appeal here defendant Archie Underwood challenges the superior court’s revocation of his right to self-representation, which occurred just 27 minutes after the court granted that right, when defendant refused to sign a comprehensive pretrial conference statement he did not prepare or understand. We vacate and remand Defendant’s conviction and sentence because his conduct did not rise to the level of serious and obstructionist misconduct and the court neither warned Defendant nor tried less severe methods to gain his compliance.”

## 23) STATE V. RIOS, COURT OF APPEALS, NO. 2, CA-CR 2022-0084, FILED ON 04/10/23.

---

- In this case the defendant is read Miranda rights but not the full rights. For example, you have the right to an attorney prior to questions but nothing is said about during questioning. “The advisory must convey the following essential information: (1) that he has the right to remain silent, (2) that anything he says can be used against him in a court of law, (3) that he has the right to the presence of an attorney, and (4) that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Although every element of the advisory must be conveyed, courts do not dictate the precise language. As long as the sum total of statements in a Miranda advisory reasonably conveys the essential information, the warning is sufficient.”

## 24) STATE V. HAGERTY, COURT OF APPEALS, NO. 2, CA-CR 2022-0155, FILED ON 04/13/23

---

- This case involves a group advisement of rights outside the presence of the Judge. At change of pleas the judge asks did you hear the advisement and do you have any questions. The court of appeals found this to a violation of Az. R. Crim. P. Rule 17.2. The judge must personally advise the defendant of those rights. But found no harm no foul since defendant did not show that he suffered any prejudice from this in this case. In a foot note the court did not comment on the practice of the judge doing a group advisory.

## 26) STATE V. SCOTT, COURT OF APPEALS, NO. 2 CA-CR 2012-0056, FILED ON 06/01/23

---

- This case involves where a defendant shoots and kills someone. Defendant denies involvement until confronted with his DNA on shell casings and then says present but self defense. The DNA was collected through an improper search warrant. Court allows the “confession” and defendant is convicted. Appellate court throws out the “confession” as fruit of the poisonous tree. A dissent is filed



## 27) STATE V. LUVIANO, ARIZONA SUPREME COURT, NO. CR-21-0329-PR, FILED ON 06/06/23

---

- The Supreme Court held “that the felony resisting arrest is a single unified offense.”

## 29) SHIFFLETTE V. HON. MARNER/STATE OF ARIZONA, NO. 2 CA-SA 2023-0009, FILED ON 06/27/23.

---

- Defendant pled to endangerment and DUI second offense. Court sentences defendant to probation with 90 days jail, 30 to be served 60 to be suspended. Defendant special actions claiming credit for 10 days. Appeals court rules defendant cannot be placed on probation until the 30 days are served and defendant does not get credit because the 30 days must by statute be served consecutive. However, if for some reason defendant has to served all or part of the 60 days then defendant can get credit.

## 30) STATE V. JIMENEZ, COURT OF APPEALS, NO. 2 CA-CR 2022-0062, FILED ON 07-13-23.

---

- This a case where the defense wants to strike juror number 8 in a child sex case because the juror is a retired FBI agent who surveilled suspected pedophiles. The court does not strike the juror. “As the party asserting error, Jimenez bears the burden of establishing Juror 8 was incapable of rendering a fair and impartial verdict In assessing a potential juror’s fairness and impartiality, the trial court has the best opportunity to observe prospective jurors and therefore judge the credibility of each. Trial courts thus retain broad discretion to determine whether there are reasonable grounds to doubt that a venireperson will be able to serve as a fair and impartial juror. We will not set aside a trial court’s ruling absent a showing that the court abused that discretion.

## 31) STATE V. MELENDEZ, COURT OF APPEALS, NO. 1 CA-CR 20-0066, FILED ON 07/25/23.

---

- In this case the defendant during interrogation answers some question but not others. This is used by the state during cross and argument. “Applying established principles from Arizona case law and *Doyle v. Ohio*, 426 U.S. 610 (1976), we hold that such error occurred when the State cross-examined Melendez about his selective silence and then asked the jury to hold that silence against him during closing argument. Thus, we reverse and remand for a new trial.”

## 32) STATE V. FOURNIER, COURT OF APPEALS, NO. 2, CA-CR 2022-0108, FILED ON 07/26/23.

---

- This case main issue is refusal of the judge to strike a juror for cause, but also includes voluntariness and jury instructions. “A party challenging a juror for cause must show that the juror cannot render a fair and impartial verdict by a preponderance of the evidence. Ariz. R. Crim. P. 18.5(h). Because a trial judge has the best opportunity to assess whether a juror can be fair and impartial, appellate courts review such decisions only for abuse of discretion.” Defendant lost in this case. But the judge should be careful of using leading questions.

## 33) LANE/DRAPER V. HON. GENTRY/STATE/NEZ, ARIZ. SUP. CT., NO. CR-22-0175-PR, FILED ON 07/31/23.

---

- This case involves four drunk people. One person is charged, one person is murdered and the charged person says the other two might have done it and wants evidence for one of the two. Problem is that person is the brother of the murdered person and is now by law the victim. Defendant wants the GPS data from the victim truck so see if that might provide evidence of the crime. The “victim” objects saying you need probable cause to search his vehicle’ GPS or at least meet the substantial probability standard. Defendant argues he just needs to meet a reasonable standard. The court ruled “That probable cause requirement therefor does not apply to pretrial discovery if there is notice and an opportunity to be heard.” As to which of the other two standards apply it depends. First the defendant needs to show that he is entitled to the information and then one standard applies if done with an in- camera inspection or another standard applies if direct inspection by the defendant or his agent.

## 34) STATE V. HON. CHAMBERS/HENDERSON, ARIZONA SUPREME COURT, NO.CR-21-0388-PR, FILED ON 08/07/23.

---

- This case involved the attempt to disqualify the Gila county attorney's office where the county attorney had represented the defendant 10 years ago in an annulment matter. The Supreme Court did not allow the disqualification under the four factors in the Gomez case. (1) "whether the motion is being made for the purposes of harassing the defendant; (2) whether the party bringing the motion will be damaged in some way if the motion is not granted; (3) whether there are any alternative solutions or is the proposed solution the least damaging possible under the circumstances; and (4) whether the possibility of public suspicion will outweigh any benefits that might accrue due to continued representation." at page 3-4.

QUESTIONS??

---







