Note: These cases are taken from the Arizona Appellate Courts' May 2020 till the present and only concern criminal cases that have an application in ***Limited Jurisdiction Courts****. Attached are James Blake's interpretations of the cases and as with all cases should be read by the judge prior to any citing of the cases.*

1. **State of Arizona v. Francisco,** 249 Ariz. 101, 466 P.3d 878, (App. Div. 1, 05/05/20). This case involved the use of a miniature souvenir baseball bat as a dangerous instrument. This court rule that the A.R.S. 13-105(12) was not impermissibly vague as to the definition of dangerous instrument.

2. **State of Arizona v. Soza,** 249 Ariz. 13, 464 P.3d 696, (App. Div. 1, 05/14/20). "We conclude that the act of possessing drug paraphernalia best reflects the unit of prosecution under A.R.S. 13-3415(A) because it best fits with the language of the statute while addressing its policy objectives within the statutory scheme as a whole. Because the record shows that Soza simultaneously possessed the baggies and scale found to be drug paraphernalia in this case, he committed only one violation of A.R.S. 13-3415(A) (citations omitted) for the rule that a second conviction for the same offense must be vacated even if a concurrent sentence is imposed." This may be different if the time or locations are different.

3. **State v. Lietzau,** 248 Ariz. 576, 463 P.3d 200, (Az. S. Ct., 05/22/20, amended 06/12/2020). Probation Officers search of a probationary person's cell phone did not require a search warrant. In this case it was reasonable under the circumstances. "Cell phones provide access to an immense array of private information, much of which is stored in the Cloud or on sites controlled by third parties. As such, the United States Supreme Court concluded in *Riley v. California* that people have uniquely broad expectations of privacy in cell phones and, therefore, a warrant is generally required to search them. In the wake of *Riley*, we are asked to decide whether Arizona's standard conditions of probation, which permit warrantless searches of a probationer's "property", apply to cell phones. We hold they do. We further hold that the search here was reasonable under the totality of the circumstances and therefore compliant with the Fourth Amendment."

4. **Fox-Embrey v. Neal In and for the Cty. of Pinal,** 249 Ariz. 162, 467 P.3d 1102, 06/04/20). This is another case on whether a victims' medical records should be viewed by the court in an in-camera inspection to see if any disclosable information is contained. This case held that it should be done based on the facts and that the case involved the death penalty possibility.

5. **Devlin v. Browning in and for the Cty. of Pima,** 249 Ariz.143, 467 P.3d 268, (App. Div. 2, 06/05/20). This case involves a person pulled over for speeding. It is near 2:00AM in a bar area, there are bloodshot and watery eyes, smell of alcohol from the car, admission to drinking, and a one pass of HGN. The lower court rules no evidence of impairment only of consumption and suppresses the evidence from the dui investigation. Superior court reverses and defendant files this special action. The court of appeals upholds the superior court ruling and not the lower court ruling. A strong dissent.

6. **State v. Mendoza,** 249 Ariz. 180, 467 P.3d 1120, (App. Div. 2, 06/09/20). In this case defendant after taking a plea files a Rule 33 against the old attorney. Defendant is appointed a new attorney who finds no issues. Defendant then files his own petition listing reasons and saying new attorney is also bad. Judge denies all reasons. Then defendant files a second Rule 33 petition again alleging second attorney was bad and wishes new counsel appointed. Judge denies this as already ruled upon at first Rule 33. Court upholds first denial; except for ruling on second attorney. "A pleading defendant is entitled to effective assistance of counsel in his first proceeding for post-conviction relief. To effectuate that right, a pleading, indigent defendant is also entitled to counsel—a different attorney than the one who represented him in the first proceeding—in a timely filed second proceeding. Otherwise, the right would be meaningless because a defendant without legal training or expertise cannot be expected to properly raise and argue claims of ineffective assistance of counsel." ... "Accordingly, we conclude that claims of ineffective assistance of Rule 33 counsel in a defendant's first proceeding for post-conviction relief must be asserted in a timely, successive proceeding… Indeed, a defendant could not establish prejudice from Rule 33 counsel's purported ineffectiveness without the trial court's ruling in his first proceeding." Citations omitted.

7. **Prosise v. Kottke,** 249 Ariz. 75, 466 P.3d 386, (App. Div. 1, 06/09/20). In this case a lower court finds defendant guilty of threats and disorderly conduct. The case is appealed and the superior court reverses on the threats charge but uphold the disorderly conduct charge. Defendant special actions and the court of appeals reverses the disorderly conduct charge because the alleged victim peace was not disturbed. Forest agent is used to being yelled at and no evidence he was disturbed. State argues that Supreme court had overrule itself about victim peace needing to be disturbed, court of appeals did not agree. "In **In re Julio L.,** Arizona Supreme Court held a defendant may not be convicted of disorderly conduct under A.R.S. 13-2904(A)(1) absent proof the alleged victim's peace was disturbed."

8. **State of Arizona v. Macias,** 249 Ariz. 335, 469 P.3d 472, (App. Div. 1, 06/25/20). "We hold: (1) the superior court did not abuse its discretion by denying an evidentiary hearing on Macias' claim of juror misconduct after interviews with juror revealed that jurors prematurely deliberated; (2) appellate counsel did not render ineffective assistance by failing to anticipate future developments in the law; (3) the doctrine of spoliation does not relieve a defendant of the obligation to allege a colorable claim of ineffective assistance of counsel; and (4) appellate counsel did not render ineffective assistance by failing to raise a technical violation in the charging document or a vagueness challenge to the crime of providing harmful items to minor." ... "However, courts considering premature deliberations distinguish between improper intra-jury communications and extra-jury communications, finding the latter far more likely to undermine due process because extraneous information provided to jurors or influences imposed on them completely evade the safeguards of the judicial process. When premature intra-jury communications occur, although the proper process for jury decision-making may have been violated, there is no reason to doubt that the jury based its ultimate decision only on evidence formally presented at trial."

9. **State of Arizona v. Hamilton,** 249 Ariz. 303, 468 P.3d 1264, (App. Div. 1, 06/25/20). The court after a hearing, decides that it will allow three former victims to testify at defendant's trial as to bad acts. Of the three victims, defendant pled on one case and the other two were dismissed as part of a plea agreement. Defendant has completed his sentence except is still

required to register as a sex offender. Defense wants to interview the three witnesses and invoke the exclusion of witnesses from trial. They invoke their victim rights. Court upholds their right to refuse interviews and does not excluded them from the trial during testimony. "We hold that the court properly declined to allow pretrial interviews of the three witnesses but erred in allowing them to hear other witnesses testify at trial. The error, however, was harmless, did not cause prejudice."

10. **State of Arizona v. Abdul-Haqq Zaid**, Court of Appeals, No. 2, CA-CR 2018-0159, filed on 06/29/20. After on, off and on-again problems at a bar defendant leaves. He comes back and then goes outside with some of the people he had problems with earlier. After that defendant produces a gun and victim is killed. Victim had a reputation for violence and defendant wants to introduce it for various reason including self-defense and that victim was the aggressor even though defendant did not know this at the time of the killing. The judge precludes this, and defendant is convicted of manslaughter. Defendant appeals and the conviction is overturned. "When a criminal defendant raises a justification defense, he is entitled to offer at least some proof of the victim's reputation for violence. A defendant may offer reputation or opinion evidence of the victim's violent or aggressive character to show the victim's propensity for violence, even if the defendant did not know about that character." At page 7.

11. **State of Arizona v. Stuebe,** 249 Ariz. 127, 467 P.3d 252, (App. Div. 1, 06/30/20). In this case the defendant is taking part in a burglary. This is all captured on a motion camera and the machine forwards this to the security company by email. At trial the defendant tries to preclude the admission as hearsay. The court denies the preclusion under a wrong exception. After conviction, the defendant appeals and loses with the appeals court coming up with the right reason for admission. "In this opinion, we hold that an automated email and a machine-produced video recording attached to the email are not hearsay because they were not made by a person."

12. **State of Arizona v. Vargas,** 249 Ariz. 186, 468 P.3d 739, (Arizona Supreme Court, 07/31/20). "A defendant presenting an appellate claim of fundamental error due to prosecutorial misconduct may base his claim on a single alleged instance of misconduct or he may allege that multiple instances occurred, which cumulatively amount to fundamental error. In either case, the defendant must establish that misconduct occurred. We hold today that a defendant claiming fundamental error due to cumulative prosecutorial misconduct does not have to assert fundamental error for every allegation in order to preserve for review the argument that misconduct occurred. In doing so, we disapprove of ***State v. Moreno-Medrano***, 218 Ariz. 349 (App. 2008), as authority to the contrary."

13. **E. H. v. Slayton In and for Cty. Of Coconino,** 249 Ariz. 248, 468 P.3d 1209, (Arizona Supreme Court, 08/04/20). You no longer have to put a cap on restitution. "Victims have a statutory right to receive full restitution for economic loss caused by a defendant. A.R.S. 13-603(C); see also Ariz. Const. art. 2, 2.1(A)(8) (providing that victims have a right to receive prompt restitution). Here, we hold that the practice of placing a cap on the amount of restitution a defendant may be liable for in a plea agreement, without the victim's consent, violates the right to restitution. There is no constitutional requirement to inform a defendant of a specific amount of restitution or to cap the amount of restitution that a court may order,

and thus we overrule ***State v. Lukens, 151 Ariz. 502 (1986), State v. Phillips, 152 Ariz. 533 (1987) and State v. Crowder, 155 Ariz. 477 (1987)*** for that proposition. Additionally, we hold that a lawyer representing a victim has a presumptive right to sit in front of the bar in the courtroom during a proceeding where a victim's constitutional or statutory rights are at issue."

14. **State of Arizona v. Robertson**, 249 Ariz. 256, 468 P.3d 1217, (Arizona Supreme Court, 08/12/20). "We consider whether an appellate court may apply the invited error doctrine to preclude review of an illegal, stipulated sentence in a plea agreement. We hold that it may not."

15. **State of Arizona v. Carter Jr.,** 249 Ariz. 312, 469 P.3d 449, (Arizona Supreme Court, 08/13/20). "We hold theft is a lesser-included offense of both vehicle theft and robbery, but vehicle theft is not a lessor-included offense of robbery." ... "Initially, we clarify double jeopardy terminology. Although many cases have used the terms "lesser-included" and "necessarily included" interchangeably, we reiterate our explanation in *State v. Wall*, 212 Ariz. 1 (2006), defining these terms. An offense is lesser included when the greater offense cannot be committed without necessarily committing the lesser offense. But an offense is necessarily included, and so requires that a jury instruction be given, only when it is lesser-included and the evidence is sufficient to support giving the instruction. *Wall*, 212 Ariz. A necessarily included offense for jury instruction purpose must be a lesser-included offense under *Blockburger's* same-elements test; however, satisfying *Blockburger's* same-elements test does not always mean that the offense is a necessarily included offense under Arizona Rule of Criminal Procedure 21.4." Citation omitted.

16. **State of Arizona v. Raffaele,** 249 Ariz. 474, 471 P.3d 685, (App. Div. 1,8/06/20). In this case defendant is stopped for a traffic violation. The officer is going to give defendant a warning and continues to talk to defendant and after a while 10 pounds of pot is found. Defendant losses the suppression hearing and is warned that he would lose his direct appeal rights if absent from sentencing. Defendant wants to continue the trial to hire different counsel, the court denies the continuance and defendant flees. Defendant is tried without being present and convicted. He is caught two years later and sentenced. First question did defendant waive the right to a direct appeal under 13-4033(C)? "To invoke 13-4033(C) requires a finding by the superior court that a defendant knowingly, intelligently, and voluntarily waived his or her right to an appeal by delaying sentencing by more than 90 days. The most logical time for the State to request such a finding to allow it to meet its burden for purposes of 13-4033(C) would be at sentencing." That was not done in this case and therefore the court could hear the appeal. Next issue was the traffic stop to long. "a traffic stop cannot last longer than is necessary to effectuate the purpose of the stop. Once an officer has accomplished the purpose of the stop, the officer cannot continue to hold the driver unless (1) the encounter between the driver and the officer becomes consensual or (2) during the encounter, the officer develops a reasonable and articulable suspicion that criminal activity is afoot." Here there was reason to delay the defendant. Next defendant was not allowed to hire new counsel. This court found that the trial judge was correct in not granting a motion to continue the trial to hire different counsel. Finally, the court imposed a two dollar fee which had not been in effect at the time. That order was vacated. So, defendant did not totally lose the case.

17. **State of Arizona v. LaPan Jr.,** 249 Ariz. 540, 472 P.3d 1103, (App. Div. 2, 08/11/20. This is a murder case involving suppression of evidence and restitution as to victim brother accrued leave. The suppress issue involved a ***Franks*** and ***Frimmel*** hearing. "A defendant is entitled to a hearing to challenge a search warrant affidavit when he makes a substantial preliminary showing (1) that the affiant knowingly, intentionally, or with reckless disregard for the truth included a false statement in the supporting affidavit, and (2) the false statement was necessary to the finding of probable cause. (where affidavit contains falsehoods or omission of material facts, trial court must redraft affidavit, deleting falsehoods and adding material omitted facts, then determine if remaining affidavit supports probable cause). The defendant must establish the first prong of the test by a preponderance of the evidence before the court may set the false material aside and view the affidavit's remaining content to see whether it is sufficient to establish probable cause. A defendant must make specific allegations of deliberate falsehoods or reckless disregard for the truth with reference to the relevant portion of the warrant, and support the allegations with a detailed offer of proof and statement of supporting reasons." Citations omitted.

18. **State of Arizona v. Furlong,** 249 Ariz. 578, 473 P.3d 707, (App. Div. 1, 08/20/20. This case involved a juvenile charged as an adult where he tries to have his conviction set aside pursuant to A.R.S. 13-921(B)(1). The superior court says no because it is a sex offense with a very young victim pursuant to A.R.S. 13-905. Division one disagrees with a dissent. "We conclude 13-905 and 13-921 operate independently of one another, so that Furlong is eligible to have his judgment of guilt set aside or expunged under 13-921(B)(1). Accordingly, we vacate the superior court's order and remand for further proceedings consistent with this opinion."

19. **State of Arizona v. Arevalo,** 249 Ariz. 370, 470 P.3d 644, (Arizona Supreme Court, 09/01/20. "We consider whether A.R.S. 13-1202(B)(2), which enhances the sentence for threatening or intimidating if the defendant is a criminal street gang member is constitutional. We hold that it is not because it increases a criminal sentence based solely upon gang status in violation of substantive due process." Increases the offense from a class one misdemeanor to a class 6 felony.

20. **State of Arizona v. Fontes**, Court of Appeals, No.2 CA-Sa 2020-0031, filed on 08/14/20. "We accept special-action jurisdiction and grant relief. We vacate the respondent judge's order concluding that Fontes is entitled to a superseding cause instruction based on Shelby's possible impairment, failure to yield, or failure to properly use restraints. We additionally reverse the trial court's ruling denying the state's request to preclude evidence that Shelby and his son had been unrestrained." At page 6.

21. **Clements v. Bernini,** 249 Ariz. 434, 471 P.3d 645, (Arizona Supreme Court, 09/09/20). This case involved recorded jail calls to an attorney who was not on the case yet. The state wanted to hear them, and the defendant objected even to having a special master hearing them first. This is a special action. "A party claiming the attorney-client privilege must make a prima facie showing supporting that claim. Upon such a showing, the court may hold a hearing to determine whether the privilege applies. But the court may not invade the privilege to determine its existence, even in camera using a special master. Once the privilege has been established, a party attempting to set it aside under the crime-fraud exception must

demonstrate a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies. Only then may a special master review the privileged communications." Citations omitted.

22. **State of Arizona v. Hernandez,** 250 Ariz. 28, 474 P.3d 1191, (Arizona Supreme Court, filed on 10/27/20). **This case overturns an earlier case.** This case involves where the police failed to try to take fingerprints and DNA evidence in a stolen car case where the driver ran away from the police and a *Willits* instruction. " In sum, a defendant is entitled to a *Willits* instruction when the state fails to preserve evidence that is obviously material and reasonable accessible that could have had a tendency to exonerate the accused and the defendant is prejudiced thereby. The obvious materiality of the evidence must be apparent at the time the state encounters the evidence during its investigation. The state's failure to gather every conceivable piece of physical evidence does not require a *Willits* instruction. However, if the state fails to collect evidence that, though not obviously material, turns out to be material, it is up to the trial judge to determine if the state's failure to recognize its materiality was reasonable or not and to give a *Willits* instruction only where it finds the failure to have been unreasonable. This allows a defendant the opportunity to challenge the reasonableness of the state's failure to preserve evidence during its investigation. If the trial court determines that the state's failure to collect evidence during its investigation was unreasonable, a *Willits* instruction is appropriate." Citations omitted.

23. **State of Arizona v. Reed,** 250 Ariz. 599, 483 P.3d 221, (App. Div. 1, filed on 10/20/20). This is the case involving restitution and the defendant who died pending appeal. Sent back to appellate court to rule on restitution issues. What makes the case interesting is the restitution is for attorney fees for the victim's attorney, which is upheld. "Although Reed's counsel challenges the restitution awarded, no contention is made that attorneys' fees cannot be the subject of a restitution award. Indeed, the Arizona Supreme Court has affirmed such an award, ruling the superior court did not abuse its discretion in awarding attorneys' fees as restitution. The defendant in *Leteve* did not challenge the award on appeal, and the court assumed, without deciding, that attorney fees incurred to enforce victims' rights may be compensable in restitution. This court has affirmed restitution awards of attorneys' fees incurred in probate proceedings of victims who were killed. … finding attorneys' fees incurred to close victim's estate are proper restitutionary items where no evidence indicates the fees incurred were unreasonable or contrary to custom. We believe that customary and reasonable attorneys' fees incurred to close the victim's estate should be allowed as restitution." Citation omitted.

24. **State of Arizona v. Bolivar**, 250 Ariz. 213, 477 P.3d 672, (App. Div. 2, filed on 10/27/20). There are several issues but the one I think may be of issues for us is the judge allowed the state to refer to the victim as the victim. This was found to be not a violation.

25. **State of Arizona v. Wilson,** 250 Ariz. 197, 477 P.3d 121, (App. Div. 2, filed on 10/29/20). In this case the court found that the term public defender for purposes of Aggravated Assault under A.R.S. 13-1204(A)(8)(i) includes contact attorneys for criminal defendants.

26. **State of Arizona v. Smith,** 250 Ariz. 69, 475 P.3d 558, (Arizona Supreme Court, filed on 11/04/20). This is a death penalty case that has a lot of issues. The ones that are of interest to us is a good discussion on *Batson* and a one photo line-up.

27. **State of Arizona v. Johnson,** 250 Ariz. 230, 477 P.3d 6889, (App. Div. 2, filed on 11/02/20). Just prior to jury selection the defendant who had been in Rule 11 asks for a new attorney. Judge refuses and during a discussion defendant says he wishes to represent himself. Court may or may not have addressed that but does deny the request for a new attorney. Defendant is convicted and on appeal is awarded a new trial. "The right to counsel included the right to proceed without counsel. An erroneous denial of the right to proceed pro se by refusing to permit a defendant to waive counsel violates a defendant's constitutional rights and is reversible and structural error. A defendant must timely and unequivocally invoke the right and, unless the request was made for the purpose of delay, a trial court must grant a timely request if the defendant's invocation is knowing, voluntary, and intelligent. A request made before the jury is empaneled is timely. And a defendant's request to proceed pro se triggers a court's protective duty to ascertain whether the waiver of counsel is intelligent, knowing and voluntary. A court may not refuse to consider the defendant's request altogether. Otherwise the constitutional right to defend one-self if he intelligently and competently chooses would be illusory." Citations omitted.

28. **State of Arizona v. Nunn,** 250 Ariz. 366, 480 P.3d 109, (App. Div. 2, filed on 11/09/20). This case also addresses the same issue as a division one case ***State v. Raffaele***. In order for defendant to loss his direct appeal rights he must be told that specifically using the 90 days language and not a vague "you could lose your appeal rights if you fail to appear for sentencing after conviction". Also, the court must make a finding about that appeal loss at the time of sentencing. "We conclude Nunn was not adequately warned of the consequences of delaying sentencing by absconding. For 13-4033(C) to bar a defendant's appeal, ***Bolding*** requires that he had been informed he could forfeit the right to appeal if he voluntarily delays his sentencing for more than ninety days." At page 3. … "Further, even Nunn was adequately warned of the consequences of delaying his sentencing, the trial court nonetheless did not make a finding at sentencing that he had knowingly, voluntarily, and intelligently waived his right to appeal as required by ***State v. Raffaele***. In that case, we held that at sentencing, the state is required to present evidence that the defendant knowingly, voluntarily, and intelligently waived his right to appeal by delaying sentencing by more than 90 days. We further explained that based on such a showing, as well as any evidence presented by the defendant indicating his failure to appear was involuntary, the court must then weigh both parties' position and make adequate findings of fact as to whether the defendant waived his right to appeal."

29. **State of Arizona v. Mixton,** 250 Ariz. 282, 478 P.3d 1227, (Arizona Supreme Court, filed on 01/11/21). This case overruled an earlier Division two case. This case decided that at least on this issue Arizona's constitution is not more expansive on 4th amendment rights and that we would follow the third-party doctrine. This case had to do with getting IP addresses with a federal administrative subpoena and not a warrant in a child porn case. "We hold that neither the Fourth Amendment to the United State Constitution nor article 2, section 8 of the Arizona Constitution requires law enforcement officials to secure a search warrant or court order to obtain IP addresses or subscriber information voluntarily provided to ISPs as a condition or attribute of service. The Fourth Amendment does not apply to IP addresses or

subscriber information under the third-party doctrine, and this information is not a private affair under the Private Affairs Clause. Thus, the state lawfully obtained this information with a valid federal administrative subpoena."

30. **State of Arizona v. Ainsworth,** 250 Ariz. 457, 480 P.3d 1274, (App. Div. 2, filed on 01/07/21). This case has to do with a judge dismissing a Rule 32 now Rule 33 petition without appointing counsel to an indigent defendant. "As we have previously stated, nothing in Rule 32.2(b) suggests that counsel must be appointed for an indigent defendant before a trial court conducts the preliminary review mandated by that rule…. *State v Harden*, 228 Ariz. 131, (App. 2011). We therefore must decide whether the trial court properly dismissed Ainsworth's notice as inexcusably untimely and non-meritorious under former Rule 32.2(b). On review, Ainsworth argues the trial court abused its discretion because it ignored his argument that his trial counsel had a duty of continuing representation under Rule 6.3(b), Ariz. R. Crim. P. He contends that the court should not have denied him relief under Rule 32.1(f) and, therefore, that the remainder of its ruling was also incorrect. We disagree."

31. **State of Arizona v. Ewer,** 250 Ariz. 561, 482 P.3d 1056, (App. Div. 2, filed on 01/26/21). In justification cases do not substitute the word defendant with person. The State could argue that the victim was justified thus shifting the burden to the defense.

32. **State of Arizona v. Muhammad,** 250 Ariz. 460, 480 P.3d 1277, (App. Div. 2, filed on 01/28/21). This case involves a person who has been through Rule 11 prescreen and full Rule 11. He does have mental issues and waives a jury trial. This is in writing and the court goes over this waiver orally with defendant prior to granting his request. Of course, after conviction defendant objects to his request having been granted. "Here, by contrast, all the experts agreed that Muhammad suffers from mental illness manifesting with hallucinations and delusions, even if he consciously exaggerated his lack of legal knowledge. He and his attorney repeatedly advised the trial court that he was still hearing voices at the time of trial. These are other facts that were absent in *Decello*, 111 Ariz. at 49, the presence of which required the court make a specific on-the-record finding of Muhammad's competence to waive his right to a jury trial. See *State v. Berger*, 171 Ariz. 117, 121 (App. 1992) (other facts including defendant's twenty-year history of schizophrenia and hospitalizations and his sometimes non-responsive answers to the court's questions, justified remand for determination of defendant's competency to waive the right to jury trial)." At page 8. Here the defendant wanted a new trial, but the case was remanded for a judicial determination in compliance with this opinion. With the facts of this case, the court needed to make a specific on-the-record finding of Muhammad competency to waive the jury trial.

33. **State of Arizona v. Tyau**, 250 Ariz. 659, 483 P.3d 281, (App. Div. 2, filed on 03/03/21). This case addresses whether A.R.S. 13-905, the set aside statute is constitutional, it is.

34. **State of Arizona v. Ross,** 250 Ariz. 629, 483 P.3d 251, (App. Div. 1, filed on 03/09/21. This case involved the state's strike of the juror 15, the only African American on the jury panel. The defense raises a ***Batson*** challenge. The prosecutor says the strike was because the juror was extremely inarticulate and gave the defendant a blessing. Problem with this is that neither was caught on the record and the state did not raise the blessing incident with the juror during

jury selection. The judge upheld the second reason but not the first. The appellate court reversed. Strong dissent.

35. **State of Arizona v. Murray and Murray,** 250 Ariz. 543, 482 P. 3d 1038, (Arizona Supreme Court, filed on 03/18/21). This case involved the state rebuttal argument on what is reasonable doubt. This was not objected to at the time of trial. "The prosecutor's misstatement of the reasonable-doubt standard (1) constitutes error, (2) is fundamental both because it went to the foundation of the case and deprived Defendants of an essential right, and (3) is prejudicial because a reasonable jury could have plausibly and intelligently returned a different verdict, and on the record, is not amenable to cure by the court's jury instructions or the presumption that the jury followed their instructions. Accordingly, we reverse the trial court's judgments of convictions and sentences, vacate the court of appeals' opinions, and remand these cases for new trials."

36. **State of Arizona v. Emedi,** Court of Appeals, No.1 CA-CR 19-0650, filed on 03/25/21. In this case the "parties" agree to have the trial judge do the settlement conference, but the defendant does not specifically waive that. After the settlement conference and the conviction, the defendant complains that he had to waive that himself. The defendant loses this is a tactical decision that can be waived by counsel. "We hold that a defendant's right under Arizona Rules of Criminal Procedure 17.4 to a settlement conference before a judicial officer other than the assigned trial judge is not personal to the defendant and therefore may be waived by his or her counsel." At page 2. The case remand for a sentencing error.

37. **E. H. v. Hon. Slayton,** Court of Appeals, No. 1 CA-SA 20-0268, filed on 04/20/21. This case involved a restitution claim that the trial court deemed too late and a restitution cap. The restitution cap has already been addressed by an earlier case. This court reversed and sent the case back for an evidentiary hearing as to whether there is any restitution. "No rule or statute imposes a deadline for claiming restitution. See, e.g., *State v. Holguin*, 177 Ariz. 589, 591 (App. 1993) (Although subsection 13-603.C is silent as to when restitution must be assessed, generally it is at the time of sentencing.) The superior court, however, may set a reasonable deadline for filing a restitution claim. See *State v. Nuckols*, 229 Ariz. 266, 268, (App. 2012) (superior court may require the timely assertion of the right to avoid waiver) But our record does not show the superior court entered any such order here." At page 4.

38. **R.S./S.E. v. Hon. Thompson/Teddy Vanders,** Arizona Supreme Court, No. CR-19-0395-PR, filed on 04/29/21. This case vacates 247 Ariz. 575 (App. 2019). In this case defendant kills his girlfriend claiming self-defense. He wants to court to review in-camera the medical/mental health records of girlfriend where she attacked him six years ago and was put into a hospital. This can help his defense. Trial court agrees, Appeals court disagreed, and the supreme court agrees with the trial court. "We hold that the reasonable possibility standard applies to determine a defendant's right to in-camera review of a victim's privileged mental health records. A defendant must demonstrate a constitutional entitlement to such information in order to present a complete defense by first showing a reasonable possibility that the information sought included evidence that would be material to the defense or necessary to cross examine a witness. The defendant's request must be based on more than mere speculation and must include a sufficiently specific basis to deter fishing expeditions, prevent

a wholesale production of the victim's medical records, and adequately protect the parties' competing interests." At page 11.

39. **State of Arizona v. Miller,** Arizona Supreme Court, No. CR-19-0061 PC, filed on 05/04/21. This is a murder case where a defense attorney does not challenge a jury instruction that was later determine not to be correct but was used by attorneys at the time. Trial court grants a PCR. This court decided that it was not a PCR ineffective counsel performance by failing to challenge an incorrect jury instruction widely used by the legal community at the time of trial and there was no prejudice.

40. **State of Arizona v. Patel,** Arizona Supreme Court, No. CR-19-0366 PR, filed on 05/04/21. This case affirmed an appellate court case cited as 247 Ariz. 482 (2019). "We hold today that the constitutional right to receive restitution guaranteed by the VBR is a right to receive the full amount of economic loss or injury caused by a defendant's criminal conduct. Accordingly, 28-672(G) limitation on a restitution award in unconstitutional and void." At page 2-3.

41. **State v. Turner**, Court of Appeals, No. 2 CA-CR 2019-0276, filed on 05/05/21. This case had several issues but the one I found interesting is police turning off body cameras at a crime scene and is that a due process issue. The police while investigating a killing turn off body camera or mute them at different points. Defendant wants his case dismissed saying this is a due process violation. Defendant loses because no bad faith and then he cannot show that this would have led to clearly exculpatory information that cannot be gotten any other way.

42. **State v. Barnes,** Court of Appeals, No. 2 CA-CR 2019-0295 filed on 05/04/21. This case involved endangerment and in a felony case the instruction was for both the felony and the misdemeanor. Reversed on that count only.

43. **State v. Duffy,** Arizona Supreme Court, No. CR-19-0386 PR, filed on 05/17/21. This case involved two people in a car filled with pot. The lady first says it is hers and the male driver had no idea. Then it changes to both have been set up. Prosecutor raises concerns since both defendants are represented by the same counsel. Court asks defense counsel and receives assurances that there is no conflict and the parties have waived. The defendants are not addressed. After conviction, the male defendant complains and is granted a new trial. That decision is affirmed by the supreme court. "In this case we hold that when a trial court is advised of a potential conflict arising from an attorney's representation of a co-defendant, it must conduct an independent inquiry to confirm that the defendant's Sixth Amendment right to conflict-free counsel was waived knowingly and voluntarily. Critically, to satisfy its duty, the court must do more that simply credit the attorney's assurances that the defendants had common defenses and waived any conflict." At page 2. "In the colloquy, the court should advise defendants of the right to conflict-free counsel, make defendants aware of the identified conflict, explain possible ramifications of the conflict, advise defendants of the right to confer about the conflict with different counsel and ask if defendants understand the risk and wish to proceed with counsel regardless." At page 8. This specific colloquy is not required but a good example.

44. **State v. Fristoe,** Court of Appeals, No. 2 CA-CR 2019-0064, filed on 05/20/21. This case involved Google's search of a customer's photo finding child pornography and reporting it to NCMEC who then reported the images to the police. Defendant moved to suppress the images saying Google was acting as a police agent and NCMEC is a government agent and therefore needed a warrant. There was no warrant sought. Defendant losses. "To determine whether a private party acted as a government agent in an illegal search, courts consider (1) whether the government knew of and acquiesced in the intrusive conduct, and (2) whether the party performing the search intended to assist law enforcement efforts or to further his own ends. The defendant bears the burden of proving a private party acted as a government agent, and if either element of this test is not met, then the private citizen was not acting as a government agent." At page 6, citations omitted. NCMEC did open one picture that Google did not open but was part of the initial Google search. Defendant still lost because even though NCMEC is a government agent the opening of the picture did not constitute a new search. Finally, "As a result, we conclude that the private search doctrine applies under Arizona's Private Affairs Clause." At page 9.

45. **State of Arizona v. Hon. Marner/Goldin,** Arizona Supreme Court, No. CR-19-0315-PR, filed on 06/01/21. This case involved misconduct by a prosecutor in the Attorney General Office in Tucson. The defendant moved to disqualify the entire Tucson office. The trial court agreed, the appellate court disagreed, and the Supreme Court agreed with the trial court using the ***Gomez*** case. "When considering a motion for disqualification based upon the appearance of impropriety, the trial court should consider the following: (1) whether the motion is being made for the purpose of harassing the defendant (party), (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 and benefits that might accrue due to continued representation." At pages 4 and 5.

46. **State of Arizona v. Cruz,** Arizona Supreme Court, No. CR-17-0567-PC, filed on 06/04/21. "A defendant is generally precluded from seeking collateral review of a matter he could have raised during his direct appeal. Ariz. R. Crim. P. 32.2. One exception is when there is a significant change in the law which, if applicable to his case, would probably overturn his judgment or sentence. Ariz. R. Crim. P. 32.1(g). In this matter, we determine whether ***Lynch v. Arizona (Lynch II),*** 136 S. Ct. 1818 (2016), which held that this Court misapplied ***Simmons v. South Carolina***, 512 U.S. 154 (1994), was such a significant change in the law. We holds that, because Lynch II was based on precedent well established at the time the defendant was convicted and sentenced, it was not a significant change in the law for purposes of permitting relief to Rule 32.1(g)." At page 2.

47. **Bridgeman v. Hon. Certa,** Court of Appeals, No. 1 CA-CV 19-0083, filed on 06/15/21. A new jury trial eligible offense for city court. "Accordingly, we hold that the elements of the 28-672 offense as charged against Bridgeman (causing death by failing to exercise due care to avoid a pedestrian in a roadway) are substantially similar to those of common-law involuntary manslaughter. See ***Crowell***, 215 Ariz. at 539-40. Because the charged offense has a jury-eligible common-law antecedent, Bridgeman is entitled to a jury trial. See ***Derendal***, 209 Ariz. at 425." At page 10.

48. **State of Arizona v. Nelson,** Court of Appeals, No. 1 CA-CR 19-0604, filed on 06/17/21. "Scott Nelson appeals his conviction for Aggravated driving under the influence while required to have an ignition-interlock device in the vehicle. Nelson argues the superior court erred by failing to instruction the jury the State needed to prove he knew he was subject to an ignition-interlock restriction. We agree and hold when a defendant is charged with Aggravated DUI under A.R.S. 28-1383(A)(4), the jury must be instructed, and the State is required to prove, that defendant knew or should have known an ignition-interlock restriction was in effect at the time of the offense." At page 2.

49. **State of Arizona v. Digeno,** Court of Appeals, No. 2 CA-CR 2020-0192-PR., filed on 06/29/21. This case involves a Rule 32 denial involving a court ordinance prosecution fee out of Gila County. The judge denied the petition and that denial was upheld by this court. "In sum, based on the interplay of various statutes in chapters six, eight, and nine of the criminal code. In particular section 13-804(A) and 13-806(I), as interpreted in ***Maupin***, we agree with the state that the legislature has granted trial courts authority to impose costs of prosecution on convicted defendants." At page 8.

50. **State of Arizona v. Porter,** Arizona Supreme Court, No. CR-20-0147 PR, filed on 07/22/21. This case vacates an earlier court of appeals division 1 opinion. "We consider whether, when a ***Batson*** challenge is raised, a trial court must make express findings on the credibility of a demeanor based justification for a peremptory strike when a non-demeanor based justification is also offered and there is no evidence that either justification is pretextual. We hold that no such express finding requirement exists under federal or Arizona law." At page 2.

51. **Wilson v. Hon. Higgins/State,** Arizona Supreme Court, No. CR-20-0254 PR, filed on 07/23/21. This case also vacates a court of appeals division 1 opinion. "Arizona Rule of Criminal Procedure 27.2(c) directs trial courts to make a release determination when a probationer is arrested on a warrant pursuant to a petition to revoke probation. In this case, we consider whether Arizona Rule of criminal Procedure 7.2(c), which addresses a defendant's right to release after a conviction but before sentencing, is applicable to the required release determination. For the following reasons, we hold that Rule 7.2(c) applies." At page 2. This is a felony case in superior court, but a subsection of Rule 7.2(c) applies in misdemeanor.

52. **State of Arizona v. Bigger**, Arizona Supreme Court, No. CR 20-0383-PR, filed on 08/16/21. "We consider whether (1) a defendant must present a standard of care expert affidavit to support his ineffective assistance of counsel (IAC) claim; (2) ***Perry v. New Hampshire***, 565 U.S. 228 (2012), caused a significant change in Arizona law; and (3) A.R.S. 13-4234(G) supplements rather than conflicts with Arizona Rule of Criminal Procedure 32.4. We answer each inquiry in the negative." At page 2. This case vacates a court of appeals decision. An expert affidavit is great but not required in a PCR case. ***Perry*** did not change the law in Arizona regarding possibly tainted eye-witness jury instructions where law enforcement was not involved contrary to what an Arizona case suggests. Finally, if a statue changes a Rule substantially not just procedurally then the Rule prevails.

53. **State of Arizona v. Aldana**, Court of Appeals, No. 1 CA-CR 20-0134, No. 1 CA-CR 20-0365, consolidated, filed on 08/12/21. This case involved an issue of ***Miranda*** warnings and

a what could have been a "two-stage" interrogation. The defendant talked to the police at the hospital on his own and in-custody without **Miranda** warnings. After release from the hospital he was then read **Miranda** and made the same incriminating statements to a different officer. First statements were suppressed second statements were not suppressed. This case also had a felony sentencing issue. "Thus, statements an in-custody suspect makes before a ***Miranda*** advisement are generally inadmissible, and post-advisement statements are generally admissible. When an in-custody suspect who has given voluntary but unwarned statements makes additional statements after a subsequent-Miranda warning, the additional statements ordinarily are admissible while the unwarned statements are not. A court nevertheless may suppress statements made after a ***Miranda*** warning if it finds the police engaged in a "two-stage" interrogation process with the intent to deliberately obtain statements in violation of ***Miranda***." At page 5 citations omitted. Neither court found a two-stage interrogation.

54. **Fay v. Hon. Fox,** Arizona Supreme Court, No. CR 20-0306 PR, filed on 09/20/21. This case involved the defendant filing a delayed appeal and the victim wishing to be heard by filing an objection. The trial court strikes the victim response and is upheld by the court of appeals. The supreme court disagrees. "Whether the right to be heard applies is context specific. It depends upon whether a victim's express rights are directly implicated by the matter at issue. See section 13-4437(A). Here, we hold only that a victim has a right to be heard on the merits of a Rule 32.1(f) motion for a delayed appeal to contest a restitution award. We leave to the courts below to decide in the first instance the appropriate scope of participation in this and any subsequent proceedings." At page 10. The dissent argues that this case nudges the victim into party status.

55. **E. L., Minor Crime Victim v. Hon. Carman,** Court of Appeals, No. 1 CA-SA 21-0046, filed on 10/05/21. This case involved a minor sex crime alleged victim who did not wish to testify without transactional immunity. The state was offering use immunity and wanted a deposition in case victim did not appear at trail. Ruling state does not have to ask for transactional immunity and can apply only for use immunity. Case sent back to court for a revisiting on the issue of the deposition.