Note: These cases are taken from the Arizona Appellate Court decisions from June 15, 2021, till the present and generally concern criminal cases that have an application in Limited *Jurisdiction Courts. Attached are my interpretations of the cases and as with all cases should be read by the judge prior to any citing of the cases*

1) **Bridgeman v. Certa,** 251 Ariz. 471, 493 P.3d 898, (App. Div. 1, 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."

2) **State v. Nelson,** 251 Ariz. 420, 492 P.3d 1038, (App. Div. 1, 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."

3) **State v. Digeno,** 251 Ariz. 549, 494 P.3d 1117, (App. Div. 2, 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."

4) **State v. Porter,** 251 Ariz. 293, 491 P.3d 1100, (Arizona Supreme Court, 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."

5) **Wilson v. Higgins in and for Navajo,** 251 Ariz. 282, 491 P.3d 389, (Arizona Supreme Court, 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." This is a felony case in superior court, but a subsection of Rule 7.2(c) applies in misdemeanor.

6) **State v. Bigger**, 251 Ariz. 402, 492 P.3d 1020, (Arizona Supreme Court, 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." 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.

7) **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.

8) **Fay v. Fox In and for county of Maricopa,** 251 Ariz. 537, 494 P.3d 1105, (Arizona Supreme Court, 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." The dissent argues that this case nudges the victim into party status.

9) **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.

10) **State of Arizona v. Reed**, Court of Appeals, No. 1 CA-CR 21-0065 PRPC, filed on 11/02/21. In this case defendant pled to Attempt to commit child abuse, a class six felony which has a reckless state of mind, and which cannot be a crime. Defendant files a late PCR petition and it is denied for being untimely. Defendant appeals and wins. "We, therefore, hold that when a defendant pleads guilty to an offense not cognizable under Arizona law, an illegal-sentence claim under Rule 33.1(c) or actual-innocence claim under Rule 33.1(h) is not time-barred if there is no evidence presented beyond the mere passage of time to suggest unreasonable delay." At page 5.

11) **State of Arizona v. Rios,** Court of Appeals, No. 2 CA-CR 2020-0106, filed on 11/10/21. This case involves acts of harassment where defendant tends to remove his counsel during the trial. The first time the case ends in a hung jury and in the second trial defendant wishes to get rid of his third attorney so that he can recall the victim and re cross her on undisclosed evidence. The court refuses and after conviction defendant appeals and loses. "For an accused to exercise his constitutional right to proceed without counsel and represent himself, he must voluntarily and knowingly waive his right to counsel and make an unequivocal and timely request to proceed pro se. A request is generally considered timely if it is made before the jury is empaneled. If such a request is untimely, it falls within the discretion of the trial court to grant or deny the request. In exercising that discretion, the court should consider the reasons for the defendant's request, the quality of counsel, the defendant's proclivity to substitute counsel, and the disruption and delay expected in the proceedings if the request were to be granted." Citations omitted at pages 4 and 5.

12) ***State of Arizona v. Hon. Butler/Valenzuela***, Court of Appeals, No. 2 CA-SA 2021-0043, filed on 12/30/21. This case involved a special action where father is charged with and convicted of assault on his daughter in North Dakota. He is then charged with assault on another daughter in Arizona. The state wants to use the first daughter as a 404 victim-witness and the defense wants to interview her. She refuses and the Judge orders a deposition. The Arizona Court of Appeals overrules and allows the invocation of victim's rights. "…we conclude that Arizona's VBR provision allowing a victim-witness to decline a defense interview applies to victims called to testify pursuant to Rule 404(b) and 404(c), even if the crime against them took place outside of Arizona." At page 8.

13) ***State of Arizona v. Cruz,*** Court of Appeals, No. 2 CA-CR 2021-0035, filed on 01/26/22. In this case defendant pled to a crime with an admission to sexual motivation as part of the plea. Later, the defendant moved to set aside the conviction because no allegation of sexual motivation was filed. The set aside was granted over the state objection. This court reversed and stated: "Because Cruz's conviction included a finding of sexual motivation pursuant to 13-118, it is ineligible for a set aside under 13-905(N)." At page 5.

14) ***State of Arizona v. Reed,*** Arizona Supreme Court, No. CR-20-0385-PR, filed on 02/01/22. This case keeps coming up to the Supreme court so that they can keep overruling the court of appeals. This issue involves can a victim recovery for private attorney fees under victim bill of rights. Generally, not. "Richard Allen Reed used a mirror to look beneath the door of a bathroom being

used by C.C. A jury convicted Reed on one count of voyeurism, a class 5 felony, in violation of A.R.S. 13-1424. The trial court awarded restitution to C.C., including attorney fees she had incurred in retaining an attorney to represent her in the criminal proceedings. This case requires us to decide whether a victim's attorney fees are recoverable as criminal restitution and, if so, to what extent. We conclude such fees are recoverable but only when an attorney is reasonably necessary to remedy the harm caused by the criminal conduct. Here, most or possibly all of C.C.'s fees do not fall within this category and therefore are not recoverable as criminal restitution." At page 2. …" In sum, per Wilkinson, the trial court must order restitution for economic losses directly caused by the criminal conduct but cannot order restitution for consequential damages. Victims' economic losses incurred because they exercised, enforced, or defended their rights in a criminal case are allowed as restitution. But when those losses are private attorney fees, they are allowable as restitution only when an attorney is reasonably necessary to assist victims in enforcing those rights. Such fees directly flow from the criminal conduct. If that showing is lacking, the fees are the consequence of something other than the criminal conduct-for example, the victim's discomfort with the criminal process, mistrust of the prosecutor, or a strategy that the attorney monitor the criminal proceedings to assist efforts in a related civil case. Such fees are consequential damages, which are not allowable as restitution." At page 12.

15) ***Sills v. Hon. Coates,*** Court of Appeals, No. 1 CA-SA 21-0217, filed on 02/02/22. Can the court conduct a bail hearing when the defendant is undergoing a competency restoration, yes. "The issue before us is whether due process prohibits a trial court from conducting a bail hearing when the defendant is undergoing competency restoration treatment. We accept jurisdiction because Sills has no adequate remedy by appeal, and this is an issue of first impression and statewide importance. We deny relief, however, because a trial court does not violate a defendant's due process by conducting a bail eligibility hearing while the defendant is undergoing competency restoration treatment." At page 2. Citations omitted.

16) ***State of Arizona Ex Rel., Allister Adel v. Hon. Adleman,*** Arizona Supreme Court, No. CR 21-0157-PR, filed on 02/09/22. This case involved alleged attorney-client communications in the jail during the pandemic where iPad were used, and text message were excluded. The state seized the messages by subpoena and then disclosed them. "In a dispute over the existence or scope of the attorney-client privilege, the party claiming the privilege must make a prima facie showing that it applies to each contested communication. ***Clements.*** The proponent of the privilege must show that: 1) there is an attorney-client relationship, 2) the communication was made to secure or provide legal advice, 3) the communication was made in confidence, and 4) the communication was treated as confidential." Citations omitted. "In Clements, we held that the inmate-proponent must asset the privilege for each individual call, not merely one blanket privilege assertion for all calls with his attorney…. Although the proponent must establish a prima facie case for each communication, privilege may be established by grouping communications if circumstances demonstrate they share a common nature and purpose. For example, a defendant may use a privilege log to identify each communication by date, time, and participants, and then introduce evidence that all the communications occurred in the course of an attorney-client relationship, were made for the purpose of seeking legal advice in confidence and were treated as confidential. Thus, we decline to articulate a rule requiring courts to scrutinize each communication, line-by-line, where the privilege may be established for a class of communications based on appropriate circumstances. Upon a prima facie showing of privilege, the party contesting the privilege must demonstrate a good faith basis that an in-camera review of the communications would reveal waiver of the privilege or establish an applicable exception." At page 5 and 6. Citations omitted.

17) ***State of Arizona v. Reaves 111,*** Court of Appeals, No. 2 CA-CR 2019-0253, filed on 02/16/22. This is a Batson case which was remanded for the trial court to have a hearing. We no longer have Batson issue since we got rid of preemptory strikes.

18) ***State of Arizona v. Evans,*** Court of Appeals, No.1 CA-CR 21-0411, PRPC, filed on 03/01/2022. "Wayne Evans petitions this court to review the dismissal of his post-conviction relief ("PCR") petition filed under Arizona Rule of Criminal Procedure 32.1. We hold that under Rule 32.1(g), a new rule may be retroactively applied only if it is substantive. We also hold that a sentence is not unauthorized under Rule 32.1(c) unless substantively defective. Because the superior court correctly applied the law, we grant review but deny relief." At page 2.

19) ***State of Arizona v. Hon. Aragon/Fontes,*** Arizona Supreme Court, No. CR-20-0304-PR, filed on 03/21/22. This case vacates an earlier case. This case involved a speeding driver who hit another car and wanted to use the fact that the father and his young son were not restrained, and that the dad had THC in his system for a superseding instruction. The trial court said yes, and the appellate court said no. The supreme court said no to the instruction but vacate the opinion and the ruling that the defense could not use the no seat belts in the defense of the case. "In this review of a special action opinion of the court of appeals, we consider what constitutes an intervening event in determining whether a defendant is entitled to a jury instruction on superseding cause. Because the alleged conduct of a victim of the collision in this case occurred simultaneously with the defendant's alleged criminal conduct, we hold as a matter of law that the defendant is not entitled to a superseding cause jury instruction." At page 2.

20) ***State v. Copeland,*** Court of Appeals, No.2 CA-CR 2019-0229, filed on 04/01/22. This case involved a child molest victim report over a long period of time. The defendant was convicted on 50 counts and appealed based upon lack of detail in the indictment and improper admission of hearsay statements. The lack of detail was found not to be a due process issue nor a double jeopardy issue in this case. But the conviction was overturned, and a new trial ordered on the hearsay statements of the victim to a teacher and school counselor.

21) ***LaCount v. Hon. Mroz, State of Arizona,*** Court of Appeals, No. 1, CA-SA 22-0010, filed on 04/05/22. This case is a capital case where after being denied a change of counsel defendant wants to represent herself at trial. The court orders a Rule 11 to protect the record and because defendant will be taking her life into her own hands. The court, the state and defense believe defendant will be found competent. The defense special actions and the court order is overturned. There must be some reason to believe defendant may be incompetent.

22) ***Romero-Millan v. Barr,*** Arizona Supreme Court, No. Cv-20-0128-CQ, filed on 04/19/22.) This is a case sent from the 9th circuit to our Supreme Court. The questions are do drug statutes for possession of drug paraphernalia and sale/ possession for sale of drugs require that unanimity as to the drug found? Unanswered as to question one and yes as to question two. "Although we decline to answer that question in relation to 13-3415. We conclude that the identity of an alleged narcotic drug is an element of 13-3408, and therefore jury unanimity is required." At page 9.

23) ***State v. Hon. Mandell/Matthews,*** Court of Appeals, No. 1 CA-SA 21-0211, filed on 04/19/22. This is a case where the state special actioned a court order which ordered the state to submit victim medical record, 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 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." At page 2.

24) ***State v. Teran,*** Court of Appeals, No. 1 CA-Cr 21-0148, filed on 04/19/22. This case involved manslaughter with a person hit by a car and killed in the street. It is a contested issue, was the person in a cross walk. The court holds an off the record discussion about jury instructions and then in an on the record ruling refuses to give an instruction about who has the right of way when crossing the street. The manslaughter convictions are overturned but the other convictions are upheld. Be very careful about off the record discussions especially those that concern important matters.

25) ***State of Arizona v. Wilson,*** Court of Appeals, No. 2 CA-CR 2021-0003, filed on 05/18/22. This is a murder case where the defendant is given a self-defense instruction but not a crime prevention nor a defense of residual structure. After conviction defendant appeals and gets a new trial. "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, but if the instruction does not fit the facts of a particular case, the trial court does not err by refusing to give it. Slightest evidence is a low standard, but speculation or mere inference cannot substitute for evidence. In determining slightest evidence, we view the facts in the light most favorable to the party requesting the instruction and do not weigh the evidence nor resolve evidentiary conflicts." At page 4, citations omitted.

26) ***City of Scottsdale v. Hon. Mikitish/Mason,*** Court of Appeals, No. 1 CA-SA 22-0031, filed on 05/31/22. "In this special action, the City of Scottsdale (the city) petitions to reverse the superior court's denial of summary judgement on Jeffery Mason's (Mason) defamation claim. For the reasons set forth below, we conclude that absolute immunity protects statements in a police report made by a police officer who is a victim of the reported crime." At page 2.

27) ***Morgan/Neff v. Hon. Dickerson/ Hon. Cardinal/ State of Arizona***, Arizona Supreme Court, No. CV-21-0198-PR, filed on 06/14/22. The court uses numbers not names for jury selection. Neither side objects but a reporter does object. "The issue here is whether the Frist Amendment to the United States Constitution prohibits the court's routine use of innominate juries. Specifically, we are asked to decide whether the Frist Amendment provides the public a qualified right of access to jurors' names during voir dire, thereby creating presumptive access to those names that can be overcome only on a case-by-case basis by showing both a compelling state interest and that denying access is a remedy narrowly tailored to serve that interest. We hold the Frist Amendment does not prohibit the court's practice." At page 3.

28) ***State v. Young, jr.,*** Court of Appeals, No.1 CA-CR 21-0413 PRTC, filed on 07/05/22. In this case defendant who is in prison has been granted several continuances to file a pro se PCR and now has been given a deadline date to file the PRC. Defendant gives the PRC to prison authorities on the deadline date, but it does not arrive at clerk's office until three days after the deadline. Court determines it to be untimely and the PCR is denied and will not allow the mailbox rule. The trial court is overruled. "Under the prisoner mailbox rule pro se prisoners are deemed to have filed legal documents if the filing is properly addressed and has been delivered to the proper prison authorities to be forwarded to the clerk of the court. We have applied the mailbox rule to the filing of notices of appeal and petitions for review. We see no reason to treat PCR petitions differently." At page 3-4, citations omitted.

29) ***State v. Muhammad,*** Arizona Supreme Court, No. CR-21-0073 PR, 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."