# LIMITED JURISDICTION CASE LAW AND DUI ISSUES JUDICIAL 2022CONFERENCE

JUDGE JAMES BLAKE, ASSOCIATE JUDGE
SCOTTSDALE CITY COURT

1

## 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. Because the charged offense has a jury-eligible common-law antecedent, Bridgeman is entitled to a jury trial."

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## 4) STATE V. PORTER, 251 ARIZ. 293, 491 P.3D 1100, (ARIZ. SP. CT., FILED ON 07/22/21.)

- This case vacates a 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."

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## 6) STATE V. BIGGER, 251 ARIZ. 402, 492 P.3D 1020, (ARIZ. SP. CT., FILED ON 08/16/21.)

- This case vacates a court of appeals decision. An attorney expert affidavit is great in but not required in a PCR case. "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 Rules of Criminal Procedure 32.4. We answer each inquiry in the negative." Also from this case remember if a statue changes a Rule substantially not just procedurally then the Rule prevails.

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## 7) STATE V. ALDANA, COURT OF APPEALS, NO. 1, CA-CR 20-0143, NO.1 CA-CR 20-0365, CONSOLIDATED, 08/12/21.

- This case involved an issue of Miranda warnings and what could have been a "two-stage" interrogation. "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 statement after a subsequent-Miranda warning, the additional statement ordinarily are admissible while the unwarned statement 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." That was not found here.

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## 8) FAY V. FOX IN AND FOR THE COUNTY OF MARICOPA, 251 ARIZ. 537, 494 P.3D 1105. (ARIZ. SP. CT. FILED 09/20/21)

- This case had to do with when victim can be heard in Rule 32 proceedings. This case overturns an appellate court decision. "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) 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." Dissent objects that this nudges the victim into party status.

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## 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 the victim did not appear at trial. Ruling the 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.

7

## 10) STATE V. REED, COURT OF APPEALS, NO. 1, CA-CR 21-0065 PRPC, FILED ON 11/02/21.

- The case involved where defendant pled to attempted child abuse with a reckless state of mind and then later sought to reverse that because you cannot commit that crime with a reckless state of mind. "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 beyond the mere passage of time to suggest unreasonable delay."

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## 11) STATE V. RIOS, COURT OF APPEALS, NO. 2, CA-CR 2020-0106, FILED ON 11/10/21.

- This harassment case involves defendant who is removing counsel and then representing himself repeatedly. Court finally refuses to allow this and after conviction defendant appeals. "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."

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## 12) STATE V. HON. BUTLER/VALENZUELA, COURT OF APPEALS, NO.2, CA-SA 2021-0034, FILED ON 12/30/21.

- This case involved a special action where the 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 trial judge orders a deposition. The appellate court 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."

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## 13) STATE 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 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 motion to set aside was granted over the state objection. The appellate 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)."

11

## 14) STATE V. REED, ARIZ. SP. CT., NO. CR-20-0385-PR, FILED ON 02/01/22.

- This case keeps coming to the Supreme Court repeatedly on can dead people still appeal and what it the correct restitution amount. Can a victim recover attorney fees in a criminal case? Generally not. "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 that 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."

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## 15) SILLS V. HON. COATES, COURT OF APPEALS, NO. 1, CA-SA 21-0217, FILED ON 02/02/22.

- This case asks can the court conduct a bail hearing when the defendant is undergoing a competency restoration, yes. "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."

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## 16) STATE EX. REL., ALLISTER ADEL V. HON. ADLEMAN, (ARIZ. SP. CT., NO. CR 21-0157-PR, FILED 02/09/2022)

- The state wishes to use what the defense says is attorney client communications, which were seized by subpoena. "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. 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." If that is done then "the party contesting the privilege must demonstrate a good faith basis that an in-camera review of the communication would reveal waiver of the privilege or establish an applicable exception."

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## 17) STATE 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 issues since we did away with preemptory strikes.

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## 18) STATE V. EVANS, COURT OF APPEALS, NO. 1 CA-CR21-0411, PRPC, FILED ON 03/01/22

- "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 granted review but deny relief."

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## 19) STATE V. HON. ARAGON/FONTES, AZ. SP. CT., NO. CR-20-0304-PR, FILED ON 03/212/22.

- 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. "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."

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## 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 fifty 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 violation 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.

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## 21) LACOURT V. HON. MROZ/STATE OF ARIZONA, COURT OF APPEALS, NO. 1, CA-SA 22-0010, FILED 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 counsel 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.

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## 22) ROMERO-MILLAN V. BARR, AZ. SP. CT., NO. CV-20-0128CQ, FILED ON 04/19/22.

- This is a case sent from the 9th Cir. to our supreme court. The questions are do drug statutes of 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 the jury unanimity is required.

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## 23) STATE V. HON. MANDELL/MATTHEWS, COURT OF APPEALS NO. 1,CA-SA21-0211, 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 exits 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."

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## 24) STATE V. TERAN, COURT OF APPEALS NO.1 CSA-CR 21-0148, 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.

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## 25) STATE V. WILSON, COURT OF APPEALS, NO. 2 CA-CR 2021-0003, 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…"

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## 27) MORGAN/NEFF V. HON. DICKERSON, AZ. SUP. CT CV-21-0198-PR, 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.

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## 29) STATE V. MUHAMMAD, AZ. SUP. CT., NO. CR-21-0073PR, 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 las does not require such a specific finding of heightened competency with respect to a jury-trial waiver."

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## QUESTIONS??

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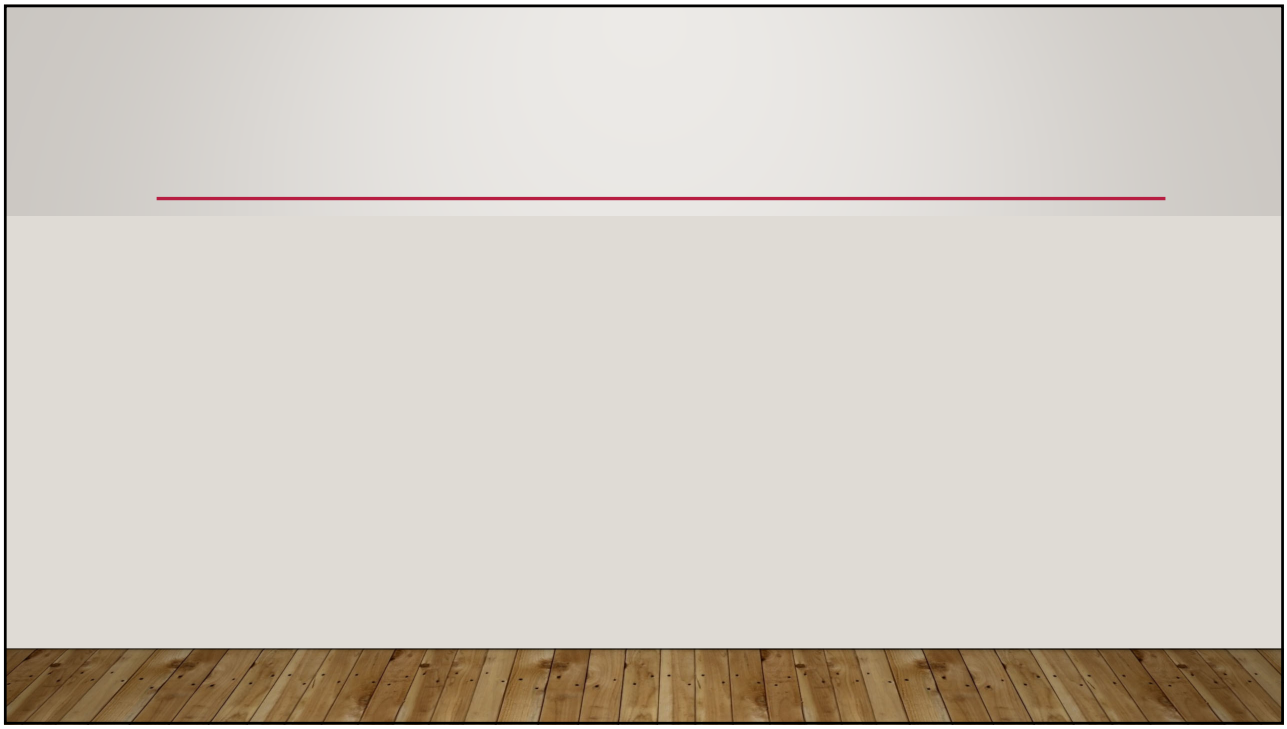

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