



for *The Defense*

▶ ◀ **Dean Trebesch, Maricopa County Public Defender** ▶ ◀

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A.R.S. §13-604.01 and Child Abuse

**By Jerry Hernandez
Defender Attorney – Group A**

Scenario #1. Your client is running a meth lab in her small one bedroom apartment. Government agents arrive armed with a search warrant. They find finished methamphetamine product as well as work in progress representing all phases in the methamphetamine manufacturing process.

Also present in the apartment is your client’s two-year-old daughter. It is uncontroverted that the chemicals involved in the methamphetamine manufacturing process are accessible to the child. The facts clearly establish that the precursor chemicals are highly toxic. Your client is charged with child abuse, as a class two felony and “dangerous

crime against children.”

Scenario #2. Your client is married and she has a one-year-old daughter. The client and her husband are not getting along well and are currently separated. One day your client meets her husband after work at a café on Central Avenue to talk things out. Her husband tells her that he is moving out of state and plans to take their child with him. In fact, he demands custody of their child then and there.

Rather than surrender the child, your client runs across Central Avenue in an attempt to distance herself from her husband. A Phoenix police officer sees your client and feels that the child is jeopardized by traffic as she flees across Central Avenue from her husband. She

A Message from the County Administrator

**By David R. Smith
County Administrative Officer**

I know that all of us congratulate Dean Trebesch on his selection by the Governor as a Superior Court Judge. We wish him well in his new assignment, and know that he will make an excellent judge. Dean Trebesch is leaving after 13 years as director of the Office of Public Defender in Maricopa County.

I want to assure the Department of continued stability. Further, we expect that the high levels of professionalism that Dean believed in

will continue as ever.

A search committee will be formed, with very significant representation of lawyers from the criminal defense profession. We will conduct a statewide search for the very best candidate willing and able to take on this challenging assignment. Candidates from within the department are also encouraged to apply. Please be assured of our desire to provide the very best management and leadership for this department as we head into the future.

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is arrested and ultimately charged with child abuse, a class two felony and “dangerous crime against children.”

In both cases the children were unharmed. Rather than give up the ghost, the state charges your client as indicated under the portion of the child abuse statute that prohibits intentionally placing a child in a situation where death or serious physical injury is likely. Under this subsection of the child abuse statute, actual harm to the child is not required. The plea offer in both cases is to attempted child abuse, a class 3 felony and “dangerous crime against children.” If the judge grants probation, there is a stipulation to one year in county jail.

You point out that your client never specifically intended to harm her child. You, of course, stress that the child is completely unharmed. In these circumstances, it seems to be morally and legally improper to have your client plead to a dangerous crime against children under §13.604.01.

The prosecutor is undaunted by your plea to assess these facts with a sense of proportion, replying that the intent requirement was satisfied when your client engaged in the underlying conduct. In other words, since your client intended to manufacture methamphetamine/cross the street with her child, the intent requirement set forth in the child abuse statute is satisfied.

You are concerned because all child abuse cases that are class two felonies involving children under fifteen, per statute, *must be punished as dangerous crimes against children*. Seen from this perspective, one year county time seems like a pretty safe bet for your client, especially if the judge and jury buy into the state’s interpretation of the statutory intent requirement.

This article will explore why the aforementioned scenarios are not punishable as “dangerous crimes against children.” Specifically, this article addresses how to litigate and avoid the “dangerous crimes against children” allegation in child abuse cases where your client is alleged to have intentionally placed a child in a situation where death or serious physical injury was likely.

Statutes

A.R.S. §13-3623(B)(1) provides:

Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of such child or vulnerable adult, who causes or permits the person or health of such child or vulnerable adult to be injured *or who causes or permits such child or vulnerable adult to be placed in a situation*

where person or health is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to §13-604.01. [Emphasis added.]

A.R.S. §13.604.01(L)(1) provides:

1. “Dangerous crime against children” means any of the following committed against a minor under fifteen years of age:
 - (a) Second degree murder.
 - (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
 - (c) Sexual assault.
 - (d) Molestation of a child.
 - (e) Sexual conduct with a minor.
 - (f) Commercial sexual exploitation of a minor.
 - (g) Sexual exploitation of a minor.
 - (h) *Child abuse as prescribed in §13-3623, subsection B, paragraph 1.*
 - (i) Kidnapping.
 - (j) Sexual abuse.
 - (k) Taking a child for the purpose of prostitution as defined in §13-3206.
 - (l) Child prostitution as defined in §13-3212.
 - (m) Involving or using minors in drug offenses.
 - (n) Continuous sexual abuse of a child.
 - (o) Attempted first degree murder.

A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree. [Emphasis added.]

Arizona Supreme Court Perspective

In *State v. Williams*, 175 Ariz. 98, 854 P.2d 131 (1993), the Arizona Supreme Court addressed the application of §13-604.01 to the crime of aggravated assault. In *Williams*, the defendant, while drunk, rammed his pickup truck into the back of a station wagon, severely injuring a 14-year-old boy. The trial court in *Williams* sentenced the defendant pursuant to §13.604.01. The specific question presented to the *Williams* court was whether §13.604.01 applies to persons whose reckless actions created a risk to everyone around him and were not aimed at the young boy who ultimately became his victim. The state in *Williams* took the position that an enumerated offense under §13.604.01 constitutes a “dangerous crime against children” whenever the victim is

under 15 years old.

In unanimously rejecting the state's interpretation of §13.604.01, the Arizona Supreme Court in *Williams* stated:

“Dangerous crime against children” is defined as committing one of the listed acts against a minor under 15 years of age. Given the list of crimes, and the language “against a minor,” a fair construction of the statute is that it refers to crimes in which a child is the target of the criminal conduct. That is to say, a “dangerous crime against children” is a crime against a child as a child. The word “against” means “directly opposite,” “facing,” “in opposition to,” or “hostility to.” This supports the meaning that a crime against a child is a crime against a child as a child or in the capacity of a child.” *Williams* at 101.

The *Williams* court ultimately held that criminal conduct punishable under §13.604.01 must aim at, target or focus on a victim under 15, “regardless of culpable mental state required by any of the enumerated crimes contained in §13.604.01.” *Williams* at 102.

The court in *Williams* took great pains to emphasize that the legislative intent behind §13.604.01 supported the holding reached. As the court stated: “The spirit and purpose of §13.604.01 are not well served by applying it to people like *Williams* who do not prey upon helpless children but who fortuitously injure children by their unfocused conduct.” *Williams* at 103.

The *Williams* court summarized its analysis by stating:

We cannot conclude that the Legislature intended the consequences of §13.604.01 to flow merely from the victim's age. Applying the statute in that way would trivialize its purpose by treating alike the repetitive child rapist and the reckless, but unfocused driver. *Williams* at 103.

Arizona Court of Appeals Perspective

In *State v. Jansing*, 186 Ariz. 63, 918 P.2d 1081 (App. Div. 1 1996), Division 1 of the Court of Appeals revisited the issue of the application of §13.604.01 in aggravated assault cases. The facts in *Jansing* were essentially those of *Williams*, except that the child victim in *Jansing* was a passenger in the defendant's vehicle. The state argued that, because the defendant knew the child was present in her vehicle when she chose to drink and drive, the rationale and holding of *Williams* did not apply. The Court of Appeals unanimously

rejected this purported distinction. Affirming the Supreme Court interpretation of §13.604.01 in *Williams*, the *Jansing* court stated: “As reprehensible as defendant's conduct may have been, it was not directed against or aimed at her son. He, like the driver of the Chevrolet truck, was simply an unfortunate victim of defendant's reckless and unfocused actions.” *Jansing* at 70.

Williams and *Jansing* explicitly reject the proposition that §13-604.01 is triggered by anything less than a specific intent to make the child a victim of any of the enumerated “dangerous crime against children” offenses. In our scenarios one and two, the defendant cannot be punished under §13.604.01 because intending to manufacture methamphetamine and intending to cross the street do not equal specifically intending to cause harm to a child.

Intentional Crimes and Dangerous Crimes Against Children

In *State v. Samano*¹, 11 P.3d 1045 (Ariz.App.Div. 1, October 17, 2000), the Court of Appeals considered whether one could commit an intentional crime and still not target the child as a victim within the context of *Williams* and §13.604.01. The *Samano* court dramatically expanded the scope of *Williams* by holding that one can commit an intentional crime and not trigger the “dangerous crime against children” sentencing provisions.

In *Samano*, the defendant and an accomplice, each brandishing a weapon, entered into the apartment of a young mother and her two-year-old son. Defendant ordered the mother to hold the young child, who had been wandering about in the apartment. For this act, the defendant was charged with kidnapping, as a “dangerous crime against children.” Defendant went to trial, lost, and was sentenced under §13.604.01.

On appeal, the defendant claimed that the kidnapping was incidental to the burglary and robbery, and was not directed against the child in his capacity as a child. Consequently, the defendant argued that he was not a “predator” of children within the meaning of *Williams*. The *Samano* court agreed with the defendant. Although the defendant intended that the child victim be restrained by his mother, the court did not find that such conduct encompassed the specific intent standard of targeting children required by *Williams*. 11 P.3d at 1048. In so holding, the *Samano* court made it clear that the trial court must set forth factual findings on the record before sentence enhancement under §13.604.01 is permitted. *Id.*

Be aware that in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348 (2000), the United States Supreme Court held that any fact (other than prior felony convictions), which increases the penalty for a crime charged beyond the statutory

maximum, must be submitted to a jury and proven beyond a reasonable doubt.

Apprendi means several things with respect to this subject matter: First, despite the implication in *Samano* that the application of §13.604.01 is purely a sentencing issue, the judge can direct a verdict of acquittal with respect to the §13.604.01 allegation, if the state cannot prove your client specifically intended to harm the child victim within the meaning of *Williams*. Second, the judge must give you a specific intent instruction if the §13.604.01 allegation is not directed out.

Conclusion

Whenever the government charges your client with child abuse because he or she placed a child in a situation where death or serious physical injury was likely, the government must show that your client specifically targeted the child when engaging in his or her conduct.²

Furthermore, if *Samano* becomes law, committing an intentional act may be insufficient to trigger §13.604.01, if the conduct toward the child is incident to another act.

There is no longer any reason to allow the government to use §13.604.01 as a lever in plea negotiations in marginal child abuse cases. There is ample case law in our quiver to challenge these cases. With any luck, we can continue to litigate these cases successfully and stop the government from using the “dangerous crime against children” allegation to compel pleas from our clients.

Endnotes

- 1 A mandate in *Samano* has not issued.
- 2 See *State v. Depiano*, 187 Ariz. 41, 926 P.2d 508 (Ariz. App 1995) for an example of when intentionally placing a child in a situation where death or serious physical injury is likely encompassed by §13.604.01.



Happy Holidays

**The Public
Defender's Office
would like to
wish a safe and
joyous holiday
season to all of
our readers.**

Digital Photographs As Legal Evidence

By Richard Gissel
Investigator – Juvenile SEF

Computer technology allows images to be captured, stored, and displayed as photographs that exist only in cyberspace. Unlike conventional photographs, no film or paper is employed in the capture and storage of these images. Although digital images may ultimately be displayed in a printed form, they can just as easily be displayed on a computer screen. Since our office recently began to use digital photography, it seems only appropriate to ask whether existing safeguards are sufficient to verify the integrity of these images as visual evidence.

Digital Photography

Digital cameras have the capability to take a high quality image, download it to a computer, and then send, store, or print the image as needed. A digital image may be as detailed as a traditional photograph, and, if printed on photographic paper, may be indistinguishable from a typical photograph. Unlike conventional photography, digital information may be reproduced at will without becoming degraded. For example, a photocopy of a document is of noticeably lower quality than the original. The quality of the photocopy continues to worsen from copy to copy. In contrast, if the document exists in digital form, it can be copied freely and each copy will be an exact duplicate of the original in every detail.¹ This presents a problem, since a digital image can be altered more easily than a conventional photograph or negative, in effect raising legal concerns regarding security and integrity of digital images.

Federal Rules of Evidence 1001 through 1006 deal with photographic and computer generated evidence. These rules allow printouts that represent the contents of a computer's memory to be admitted as evidence. How this applies to digital images remains open for debate, although some case law has been established.

Digital Integrity Issues

Currently, three issues dominate the debate regarding digital image integrity as legal evidence:

- The reliability of the storage media.
- Image compression rate efficiency.
- The ease with which this media may be altered.

Each of these issues can affect the others and must be addressed separately in order to secure image integrity.

Storage media reliability and image compression efficiency are technical issues beyond the scope of this article. These issues can be address by implementing strict standard operating procedures and proper training of personnel.

In the past, when doubts about a photographic print existed, a negative was the best original evidence that could always be produced. However, in digital imaging, no permanent negative is produced because images are only files on a data storage device. Since no permanent records exist, the possibility, whether intentional or inadvertent, of image alteration remains a problem affecting image integrity.²

Suggestions

To address issues of image integrity, standard operating procedures (SOP) should be established to ensure that the courts will accept a digital photograph. The procedures need to incorporate five key elements:

- Images, once created, must be recorded in an unalterable, archival form.
- The images should include information regarding their creation.
- Strict “chain of custody” of all images and records must be maintained.
- All personnel preparing images for court should be trained in digital image processing.
- Rigorous procedures for entering work-in-progress into proper file systems must be established.

Summary

If the criminal justice system is to effectively address the foreseeable risks associated with digital photography as evidence, issues of admissibility will have to be developed in response to those risks. Procedures might incorporate some of the suggestions offered here, or they might take some unanticipated shape. However the justice system finally responds, these issues will have to be confronted soon.

Endnotes

- 1 Dockery, M., “Investigations for the Next Century”, *Electronic Evidence Journal-Newsletter*, September 1995.
- 2 Goodin, B., “Pictures Without Photos”, *Digital Forensic Newsletter*, July 1996, London, England: Vogon International Limited.

BULLETIN BOARD

New Attorneys

Taraneh L. Javid has been hired as a Defender Attorney, effective January 22, 2001. Taraneh graduated from the University of Montana School of Law in 1997 and was a Deputy Public Defender for the Yellowstone County Public Defender's Office for several years prior to relocating to Arizona.

Robert J. Kavanagh will join the office as a Defender Attorney, effective January 22, 2001. Robert graduated from Arizona State University School of Law in 1990 and has been a staff attorney with the Phoenix Police Department for almost 10 years. Prior to attending law school, Robert was a police officer for the City of Phoenix for 10 years.

Michael L. Scanlan has accepted a Defender Attorney position with this office, effective January 22, 2001. Michael is a 1982 graduate of Delaware Law School and is currently in private practice in Phoenix.

Attorney Changes

Cynthia Leyh, Deputy Public Defender assigned to Trial Group E, has resigned her position with this office effective December 29, 2000. Cynthia has been with the Office since November 4, 1996. She was a Lead Attorney in Trial Group D, and was recently appointed to Justice Court Lead Attorney for Trial Group E. Cynthia will join private practice.

Emma Lehner, Deputy Public Defender assigned to Trial Group A, has resigned from this office, effective January 12, 2000. Emma has taken a position as Assistant Attorney General for the Republic of Palau. (Arakabesang Island, part of the Western Caroline Island chain in Micronesia.)

Indigent Representation Change

Loretta Barkell has resigned from her position as Indigent Representation Controller, effective December 1, 2000, and transferred to the Maricopa County Sheriff's Office as their Chief Financial Officer.

New Support Staff

Rebecca Schulte has been hired as a Legal Secretary and has been assigned to Group D, effective November 27, 2000.

Sandy Velasquez has been hired as a Legal Secretary for Trial Group C, effective November 27, 2000.

Christopher Jones has been hired as an Office Aide for the Public Defender Administration Division, effective November 28, 2000.

George Jones has been hired as an Office Aide for the Public Defender's Office assigned to Trial Group D, effective December 3, 2000.

Caralee Ruff has been hired as a part-time, teleworking transcriptionist for the Public Defender Office, effective December 14, 2000.

Cindy Myers has accepted a part-time position as a teleworking transcriptionist with the Public Defender Office, effective December 18, 2000.

Sherri S. Stradling has been hired as an Office Aide for Trial Group C in Mesa, effective January 8, 2001.

Support Staff Changes

Roberta Rodriguez, Legal Secretary Floater, has resigned from the Public Defender's Office, effective December 1, 2000.

Ivan Diaz, trainee for Trial Group D, will be transferring to Trial Group A, effective December 4, 2000.

Alejandra Dominquez, Legal Secretary assigned to Trial Group A, resigned from the Public Defender Office effective December 11, 2000.

Joanie Woods, Legal Secretary assigned to Trial Group D, has submitted her resignation from this office, effective December 15, 2000.

Voluntariness of Confessions

**By Christian C. Ackerley
Defender Attorney – Group E**

As late as the mid-1960's, an unfortunate but common practice in many parts of the United States was for police to literally beat a confession out of those poor souls suspected of committing a crime. With the advent of the Warren era in the U.S. Supreme Court, this practice became less and less accepted. The decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), represented a watershed point in relations between police and the accused. *Miranda* focused attention on the tactics used by police to obtain confessions. Even though voluntariness of a confession and the question of whether or not a suspect was given *Miranda* warnings are separate issues, voluntariness also came under scrutiny. *State v. Pettit*, 194 Ariz. 192, 195 (1999), citing *State v. Montes*, 136 Ariz. 491, 494 (1983).

In the modern era, it is no longer acceptable for police to use physical force to help obtain a confession from a suspect. Instead, police today are trained to utilize what Professor Richard Ofshe of the University of California at Berkeley calls "a process of psychological manipulation" to extract a confession. This process is divided up into three phases.

Phase I

During the first phase of the interrogation, the suspect being interrogated is led to believe that his situation is hopeless, that the evidence against him is overwhelming, and that it matters little whether or not he confesses. The goal of the police during this phase of the interrogation is to weaken the will of the suspect to resist. Interestingly, courts will tolerate a certain amount of "police gamesmanship" during this phase of the interrogation. *State v. Tapia*, 159 Ariz. 284, 289 (1988). An example of "police gamesmanship" found by a court to be "tolerable" is the police telling the suspect in an armed robbery case that his fingerprints were found in the vehicle used in the robbery, when in fact the police had no such evidence. *State v. Strayhand*, 184 Ariz. 571, 579 (App. 1984). Essentially, the courts have held that it is permissible for the police to lie to the suspect. Professor Ofshe refers to this particular type of gamesmanship on the part of police as an "evidence ploy."

At this point, it is worth remembering that, to be voluntary, a confession still must be the "product of rational intellect and free will." *Mincey v. Arizona*, 437 U.S. 385 (1978). The voluntariness of a confession is judged by the totality of the circumstances under which it is given. *Id.* Included within the totality of the circumstances are "both the characteristics of the accused and the details of the interrogation." *State v. Drury*, 110 Ariz. 447, 454

(App. 1974), quoting *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). The characteristics of the accused which a court must consider are only those characteristics which the police knew, or should have known, about the ability of the accused to comprehend surrounding events and circumstances. *State v. Carillo*, 156 Ariz. 125, 137 (1988), distinguishing *Colorado v. Connelly*, 479 U.S. 157 (1986) (state of mind of criminal defendant not relevant to issue of coercion). Examples of characteristics that the police should be aware of include the low intelligence of the accused, *Drury*, 110 Ariz. at 454, citing *Fikes v. Alabama*, 352 U.S. 191 (1957), the lack of education of the accused, citing *Payne v. Arkansas*, 356 U.S. 560 (1958), and the youth of the accused, citing *Haley v. Ohio*, 332 U.S. 596 (1948). With regard to the details of the interrogation itself, the environment of the police station has been held to be a "coercive environment." *State v. Cruz-Mata*, 138 Ariz. 370, 373 (1983), citing *Oregon v. Mathiason*, 429 U.S. 492 (1977). Thus, a defense attorney contemplating a voluntariness hearing should become familiar with the physical layout of the room in which the "confession" occurred. The attorney should also be familiar with the area where the defendant was held just prior to the statement being given, whether or not the defendant was restrained, how he was restrained and for how long.

Phase II

During the second phase of the interrogation, police are taught to introduce what Professor Ofshe calls "coercive motivators," which are tactics aimed at convincing the suspect to confess. Coercive motivators are often statements suggesting to the suspect that he will feel better if he admits he was the one who committed the crime, or that he will have the respect of the interrogators if he admits he did it. Generally speaking, almost any tactic is usable as a coercive motivator so long as its use does not overcome the will of the suspect. See *Carillo*, 156 Ariz. at 136.

Phase III

If, at this point in the interrogation, the suspect still has not confessed, police will often proceed with the third phase of the interrogation, in which they subtly seek to make the suspect feel that he will be better off if he confesses, and worse off if he does not. The great danger for the interrogator, at this point, is crossing the line by offering a promise in return for a confession, or by coercing a confession through the use of a threat. A confession given in return for a promise is involuntary where three elements exist: First, the confession must have been obtained by direct or implied promises, however slight. *Strayhand*, 184 Ariz. 571, 579, quoting *Hutto v. Ross*, 429 U.S. 28 (1976). Second, the accused must have relied on the promise. *State v. Ross*, 180 Ariz. 598, 603, (1994), citing *State v. Anaya-Ruiz*, 166 Ariz. 152, 165

(1990). Third, the confession must be given immediately following the giving of the promise. *Pettit*, 194 Ariz. at 195 (confession involuntary when given immediately after promise); *State v. Walton*, 159 Ariz. 571, 579-580 (1989) (no reliance where forty-five minutes elapsed between promise and confession); *State v. Lacy*, 187 Ariz. 340, 348 (1996) (no reliance where several months passed). But where the threat is to inform the prosecutor of the accused's refusal to cooperate, it is never permissible. *Strayhand*, 184 Ariz. at 579-580 (App. 1995). Such threats violate the accused's Fifth Amendment privilege against self-incrimination. *Id.*

Conclusion

Finally, as a practical matter, a confession is presumed to be involuntary. *Amaya-Ruiz*, 166 Ariz. at 164 (1990). Voluntariness is first an issue for the court to decide pre-trial, and second, an issue for the jury to consider in determining the weight to be given the confession. Ariz. Rev. Stat. § 13-3988 (West 1989). For the trial court to find a confession admissible, the state must first prove it was voluntarily given. *State v. Trostle*, 191 Ariz. 4, 14 (1997). The burden by which the state must prove a confession voluntary is "by a preponderance of the evidence." *Amaya-Ruiz*, 166 Ariz. at 164. But even if the judge decides that the statement is "technically" voluntary, this does not prevent the jurors from deciding to the contrary. Time spent showing the layout of a jail cell, the closeness of an interrogation room, and the physical and psychological ploys of the interrogators will not be wasted on a jury. Jurors will often disregard statements made by defendants if they feel that the police did not play fair. Anytime you have a situation where the police lied to a defendant (gamesmanship) in order to obtain a confession, you have an excellent opportunity to discredit the statement as well as the police officers' testimony. Re-litigating the voluntariness issue to the jury may win your case.



What is the Public Defender Community Relations Project?

The main objectives of the Public Defender's Community Relations Project (CRP) are to improve relations with the community and the image of the PD's Office through community service, education and recruiting. Among other projects to further this goal, attorneys go out to speak at local schools and colleges. The CRP staff is working on the development of a college internship program for our Investigation, Legal Assistant and Client Services departments, as well as encouraging attorneys to participate in the Superior Court's Courthouse Experience program.

Margarita Silva is the Community Relations Coordinator. The coordinator position is half-time, while the other half of Margarita's time is applied to her regular trial group duties. In addition to coordinating the above activities, she also serves on various office committees and workgroups. She also represents the office at various external functions, including the Attorney General's Capital Case Commission and the Supreme Court's "Perception of Fairness" focus group. She has actively participated as Group D's liaison to Arizona Attorneys for Criminal Justice. She also serves as a liaison to the community at large.

One of the biggest projects in which the CRP is currently involved is a program being produced by ABC News. Set to start filming early next year, ABC News will follow 3-5 trial bound cases in depth, through pre-trial, trial and post trial proceedings. ABC hopes to tape some of the trial preparation on both sides, as well as jury deliberations.

The CRP started last year with a one-day training session on communication skills for participating attorneys. The CRP hopes to achieve these objectives while involving as many attorneys and staff as possible. If you would like to be involved in the CRP, or have a project in which you would like the CRP to assist, please contact Margarita Silva or Russ Born.

ARIZONA ADVANCE REPORTS

Summaries of recent Arizona Supreme Court and Court of Appeals decisions will be reported in our next issue. Thank you for your patience



Just the Facts

By Paulette Kasieta
Lead Investigator – Group B

With the constant changes that come with any large organization, our office has seen an influx of new faces. With those new faces come a lot of questions about the role of investigators in our office. This is a very brief overview of what that role encompasses.

Most clients that we deal with start their journey through the legal maze by protesting their innocence. The investigators can assist the attorney with reviewing the police reports to make sure the police have made their case. While the attorneys scrutinize the reports from their perspective, the majority of our investigators have prior law enforcement backgrounds and can look at these reports from the law enforcement perspective.

The investigators have an open door policy and are available to brainstorm and chat about cases, whenever the question “Where in the heck do I go with this one?” comes up. From there, investigators can reach an understanding with the attorney on the direction of the investigation. This may mean a visit to the scene (with or without the attorney), photos and measurements, viewing of evidence, locating witnesses, helping locate experts, client relations and a myriad of other things.

Once the initial investigation has been completed, we’ll

report back to the attorney with what Joe Friday used to call “just the facts.” Along with those facts, we may have found other information that might help the case, such as witness demeanor, other people that might be of benefit to contact, and other areas that might need follow-up.

The best case scenario for any investigation is that we prove the client is, in fact, innocent. While that doesn’t happen often, it is a great feeling when it does. On the rest of the cases, the investigative results can help an attorney show a client why a plea offer is in their best interest, help get a better plea offer, or help the attorney to prepare their case for trial.

Just as our clients deserve competent and professional attorneys, they also deserve competent and professional investigators working on the team to make sure their issues have been researched and addressed. Luckily, we have a great group of investigators and we all look forward to working with you on our client’s behalf.

NOVEMBER 2000 JURY AND BENCH TRIALS

GROUP A

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/31 – 11/6	Howe	McVey	Sorrentino	CR2000-00230 & CR2000-08235 Burglary First Degree/F2D Kidnapping/F2D; Agg Assault/F2D; 2 cts. Sexual Assault/F2D; Assault/M3; Criminal Damage/F6; 5 cts. Tampering with a Witness/F6	Burglary-Hung Jury; Kidnapping- Guilty; Agg. Assault-Guilty; Sexual Assault-Guilty; Sexual Assault-Not Guilty; Assault-Guilty; Criminal Damage-Guilty; 1 ct. Tampering- Guilty; 1 ct. Tampering-Not Guilty; 3 cts. Tampering-Acquitted	Jury
11/7 – 11/15	Green	Barker	Bailey	CR2000-05442 Public Sexual Indecency/F5 Providing Obscene Materials Minor/F4	Guilty	Jury
11/13 – 11/14	Knowles	Schwartz	Toftoy/ Aubushon	CR2000-08855 Theft/F5	Not Guilty	Jury
11/13 – 11/14	Hernandez	McVey	Parsons	CR2000-02513 Failure to Register as a Sex Offender/ F4 with one prior	Guilty	Jury
11/14 – 11/15	Rock Molina	Akers	Hunt	CR2000-11313 Criminal Damage/F6; Resisting Arrest/ F6	Pled to Misdemeanor Criminal Damage; Resist Arrest dismissed	Jury
11/14 – 11/16	Cotto / Valverde	Hotham	Gialketsis	CR2000-10427 Theft/F3 Theft Means Transportation/F3 MIW/F4; Burglary/F3	Guilty	Jury
11/14 – 11/16	Rempe	Sheldon	Spaw	CR99-15309 POND For Sale/F2	Hung Jury-2 nd Trial	Jury
11/20 – 11/20	Noland / Davis Clersceri	Reinstein	Fish	CR2000-09706 Resisting Arrest/F6	Pled day of trial	Jury
11/20 – 11/20	Reece	Gottsfeld	Brinker	CR2000-09932 Theft of Means of Transportation/F3 with 2 priors	Guilty of lesser included	Jury
11/28 – 11/28	Farney	Schwartz	Parsons	CR2000-12127 4 cts. Sexual Conduct with a Minor/F2	Dismissed without prejudice	Jury

OFFICE OF THE LEGAL DEFENDER

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
9/26 – 10/3	Shaler	Martin	Naber	CR2000-06252 Theft of Means of Transportation, F3	Plead Lesser/Fewer Counts After Jury Selection	Jury
10/24 – 11/6	Shaler Horrall	Hilliard	Baldwin	CR99-18084 1° Burglary, F2 Dangerous Armed Robbery, F2 Dangerous 3 Cts. Kidnapping, F2 Dangerous	Guilty Lesser included Misdemeanor Theft Hung Jury other four counts	Jury
11/6 – 11/8	Curry Reger	Wilson	Hall	CR2000-09473 Armed Robbery, F2	Not Guilty	Jury
11/6 – 11/14	Steinle	Gottsfeld	Myer	CR99-11565 Burglary, F2D; Agg Assault, F3D	Mistrial	Jury
11/8 – 11/14	Allen	Keppel	Gingold	CR2000-92402 Agg Assault, F3 Dangerous Resisting Arrest, F6	Not Guilty, Agg Assault, F3 Guilty, Resisting Arrest, F6	Jury
11/9 – 11/17	Parzych Apple / Horrall Rubio / Williams	Galati	Imbordino	CR2000-05898 1° Murder, F1 Dangerous	Guilty	Jury
11/13 – 11/15	Shaler	Cole	Kalish	CR2000-08669 POND, F2	Guilty Lesser, PODD, F4	Jury
11/27 – 11/29	Shaler	Griblon	Barker	CR2000-90318 PODD, F4; POM, F6	Guilty	Jury
11/28 – 11/28	Patton Horrall	Cole	Ronald	CR99-14233 PODD, F4; PODP, F6	Not Guilty, PODD, F4 Guilty, PODP, F6	Jury
11/29 – 11/30	Canby	Burke	Simpson	CR2000-05356 2 Cts. POND, F4; PODP, F6	Guilty	Jury

NOVEMBER 2000 JURY AND BENCH TRIALS

GROUP B

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
11/1	Navazo Casanova	McMurry	Kelly	TR00-01203 IJP (interfering with Judicial Proceedings)	Dismissed day of Trial	Bench
11/1 – 11/2	Peterson	McClennen	Baca	CR2000-01065 PODD & PODP	Not Guilty	Jury
11/6	Peterson	Martin	Baca	CR2000-001242 Agg Assault M1	Guilty	Bench
11/6	Peterson	Martin	Jennings	CR2000-006635 PODD, POM. PODP w/2 prior felony convictions	Not Guilty	Bench
11/7	Bublik	Martin	Musto	CR2000-012019 Fraudulent use of Cr Card	Dismissed	Jury
11/7	Gray Kasieta	McClennen	Shreve	CR99-12409 Forgery, F4	Dismissed w/o Prejudice day of trial	Jury
11/9 – 11/11	Aslamy	McClennen	Fuller	CR2000-011468 Burglary F3 with two allegable priors	Guilty	Jury
11/13	Noble Munoz	Yarnell	Robinson	CR2000-010400 Disorderly Conduct, F6D 6cts Endangerment, F6D	Guilty on 1 ct guilty on Disorderly conduct/ Other allegations dismissed	Bench
11/15 – 11/16	Grant	Hilliard	Parsons	CR2000-006286 2 Cts Obscene material to minor Drug Paraphernalia Violation, F6N	Guilty on Cts 1 & 3 Not Guilty on Ct 2	Jury
11/14 – 11/17	Aslamy	Gottsfeld	Gallagher	CR2000-011037 Agg Harassment	Guilty	Jury
11/15 – 11/20	Tardash Erb Wells	McClennen	Duax	CR2000-002964 5 cts Child Molest, F4N 3 cts Sexual Conduct w/minor, F2N	Child Molest: Guilty Sex Cond w/minor Not Guilty	Jury
11/21	Whelihan Munoz	Hilliard	Reid-Moore	CR2000-012503 2 cts. Dang. Agg. Assault	Dismissed day of trial	Jury
11/27 – 12/1	Whelihan Erb	Hilliard	Davidon	CR2000-011095 POM for Sale, F2	Guilty	Jury

GRUPE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
11/6	Evans Souther	Reinstein	Pierce	CR99-16442 Traff. Stn. Prop./F4 (retrial)	Dismissed w/o prej. day trial was to begin	Jury
11/06 – 11/7	Roskosz	Jones	Hanlon	CR2000-12144 2 Cts. Agg. Aslt./F6	Not Guilty both counts	Jury
11/08 – 11/9	Roskosz	Jones	Hanlon	CR2000-02651 Forgery/F4	Guilty	Jury
11/09	Flynn / Palmisano	Araneta	Jorgensen	CR99-11081 5 Cts. Agg Aslt/F3 4 Cts. Agg Aslt/F2	Pled day of trial in Judge Jones' court	Jury
11/15	Flynn	Araneta	Simpson	CR2000-12244 Marij. - Poss., Grow, Proc./ F6	Pled day of trial in Judge Ballinger's court	Jury
11/20 – 11/21	Squires	Mangum	Mayer	CR2000-12012 Crim. Damage/F6	Not Guilty	Jury
11/20	Hanson	Schneider	L. Workman	CR2000-10270 Agg. Aslt./ F6	Pled day of trial	Jury
11/27	Rock	Reinstein	Petrowski	CR2000-11117 Rape/F6D, Kidnapping/F2D, Agg. Aslt./F3D	Dismissed day of trial	Jury

NOVEMBER 2000 JURY AND BENCH TRIALS

GROUP C

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/24 – 10/26	Little	Willrich	Gonzales	CR2000-90205 DUI F4N DUI F4N	Guilty	Jury
11/1 – 11/7	Gaziano	Keppel	Goldstein	CR2000-90652 Agg Assault F3D 2 cts. Agg Assault F3D Burglary, 1 st Degree F2D Kidnapping F2N Stalking F5N	Not Guilty Agg. Assault, Stalking Guilty Agg. Assault, Burglary, Kidnapping	Jury
11/3 – 11/3	Carey / Ramos	Pearce	Johannes	TR2000-01976CR DUI	Directed Verdict	Jury
11/6 – 11/6	Antonson	Willrich	Goldstein	CR2000-92574 Agg Harrassment F6N 2 cts Harrassment F5N Access Interference M2N	Dismissed w/o Prejudice Day of Trial	Jury
11/6 – 11-9	Sheperd Klosinski	Fenzel	Burns	CR99-92767 Sexual Assault F2N Kidnapping F2N Att. Agg Assault F4N Sexual Assault F5N	Not Guilty Sexual Assault Hung on Kidnapping Guilty Att. Agg. Assault	Jury
11/7 – 11/7	Davis	Jarrett	Giaquinto	CR2000-93895 Poss. Of Equipment/Chemical Manu- facturing Dangerous Drugs F3N	Dismissed w/o Prejudice Day of Trial	Jury
11/7 – 11/7	Shoemaker / Felmy	Jarrett	Anderson	CR2000-93516 Theft F3N	Dismissed	Jury
11/9 – 11/13	Whitfield Moller	Fenzel	Hudson	CR2000-93109 Theft Means of Transportation F3N	Hung Jury (4 Guilty/4 Not Guilty) New TD 1/10/01	Jury
11/9 – 11/16	Gooday / Logsdon Klosinski McMullen	Oberbillig	Arnwine	CR99-95289 PODD, F2N PODP, F2N POM, F4N	Guilty	Jury
11/13 – 11/20	Rossi / Fox Klosinski	Willrich	Griblin	CR2000-93091 Burglary, 3 rd Degree F4N	Guilty	Jury
11/20 – 11/20	Antonson	Oberbillig	Rosales	CR2000-91641 Agg Battery W/Deadly Weapon F3D	Dismissed w/o Prejudice	Jury
11/20	Shell Arvanitas / Casanova	Willrich	Gingold	CR99-92743 3 cts. Manslaughter F2D 3 cts. Enganderment F6D	Retrial Ongoing	Jury
11/21 – 11/21	Dunlap-Green	Dobronsky	Zia	CR2000-1352 13 cts. Cruelty to Animals M1N	Guilty	Bench
11/27 – 11/27	Ozer Thomas	Hoag	Goldstein	CR2000-93132 2 cts. Agg Assault F3D Assault M1N	Dismissed w/Prejudice	Jury
11/27 – 11/28	Bond	Fenzel	McCoy	CR2000-94345 2 cts. Agg DUI F4N	Guilty	Jury
11/29 – 11/30	Lee / Ramos	Fenzel	Arnwine	CR2000-92397 POM, F6N	Guilty	Jury
11/30 –11/30	Hamilton Beatty Moncada	Jarrett	Udall	CR2000-94644 Resisting Officer Arrest F6N	Dismissed w/o Prejudice	Jury

NOVEMBER 2000 JURY AND BENCH TRIALS

GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
11/1	Schreck Salvato Nurmi	Dougherty	Amiri	CR2000-09320 PODD for Sale, a Class 2 Felony with Allegation of Over the Thresh- old	Plead to PODD, Class 2 and drop allegation of Over the Threshold	Jury
10/31-11/1	Stazzone	Mangum	Clarke	CR2000-07635 Agg. Assault, F3D	Mistrial	Jury
11/1	Wallace	Cole	Jennings	CR2000-008195 Kidnap, F2 Sex Abuse Under 15, F3	Plead day of trial to a non-sex disposition	Jury
11/2	Clemency	Ballinger	Naber	CR2000-011435 Agg Assault, F3 Dangerous	Plead day of trial----probation eligible	Jury
11/6	Billar	Schwartz	Kever	CR2000-09264 Misconduct Weapon, F4	Plead	Jury
11/6	Schreck O'Farrell / Barwick Rivera	Hall	Mayer	CR2000-09786 3 Cts Agg. Assault on Police Off; Dangerous w/prior on prob.	Plead on day of trial	Jury
11/1-11/7	Ferragut	Sheldon	Pittman	CR1999-17628 Agg Assault, F3D	Guilty	Jury
11/13-11/14	Clemency	Ballinger	Amiri	CR2000-010384 POND, F4	Guilty	Jury
11/14	Radovanov / Falduto	Gerst	Naber	TR2000-13394 Theft Mns. Trans.	Dismissed w/prejudice	Jury
11/14	Enos	Budoff	Amiri	CR2000-010643 Agg. Aslt No Fam D/Wpn, F2 Flt Frm Purs Law Veh, F5 Resist Ofcr/Arrest, F6	Guilty	Jury
11/14	Radovanov / Falduto	Gerst	Naber	CR2000-012751 Theft Means Transport., F3	Dismissed w/ Prejudice	Jury
11/15	Billar	Gerst	Adleman	CR2000-08207 Armed Robbery, F2; Kidnap, F2	Guilty	Jury
11/14-11/15	Eskander / Berko	Heilman	Anagpolou	CR2000-010608 Disorderly Conduct, F6D	Mistrial	Jury
11/15	Radovanov O'Farrell	Gerst	Larish	CR2000-010197 Burglary, F2	Pled Guilty Cl.6 Open Theft	Jury
11/16-11/24	Martin / Grant Bradley	Sheldon	Charnell	CR96-11216 Murder 2	Guilty of Negligent 2 Homi- cide	Jury
11/27	Clemency	Cole	Kozinets	CR2000-009532 POM, F6	Dismissed before trial	Jury
11/27	Harris	Carpenter	Jann	TR1999-15048 DWI LQR/DRG/TOX SUB	Pled to Reckless day of Trial	Jury
11/27-11/29	Clemency O'Farrell	Buddoff	Amiri	CR2000-10384 Impt/Trsp Narcotic Drug, F2	Guilty	Jury
11/29	Radovanov / Parker Salvato	Goodman	Jann	TR00-13394 Speeding Driving w/Suspend or Revoked License	Guilty	Bench
11/29	Elm / Ferragut	Budoff	Anagnopoulos	CR2000-013236 Agg Asslt w/ deadly weapon, F3 Resist Ofcr Arrest, F6	Dismissed day of trial w/o prejudice	Jury
11/30	Clemency	Gerst	Ronald	CR2000-014403 Unlawful Use Means Transport, F5	Dismissed the day of trial	Jury

NOVEMBER 2000 JURY AND BENCH TRIALS

OFFICE OF THE LEGAL ADVOCATE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/11 – 7/13	Schaffer	Dougherty	Reddy	CR2000-004204 POND for sale, F2	Guilty of lesser Pond, F-4	Jury
9/5 – 9/14	Everett	Padish	Godbehere	CR2000-002022 Armed Robbery w/ priors F2	Guilty	Jury
9/7 – 9/12	Mackey	Jarrett	Aubochon	CR99-92678 14 cts sex abuse/molestation, all F2	Guilty	Jury
9/18 – 10/20	Mackey	Gerst	M. Berry	CR98-25260 First Degree murder (capital), F1 Kidnapping, F2	Guilty of lesser Manslaughter Kidnapping	Jury
10/2	Schaffer	Dougherty	Anagopoulos	CR2000-010243 Robbery, F4	Dismissed day of trial	Jury
10/9 – 10/21	Logan	Wilkinson	Armijo	CR98-03983 Murder First, F1 2 cts attempted murder, F2 Crim. Syndicate, F3 4 cts Endang., F6	Hung	Jury
10/17 – 10/19	Everett Cano	P. Reinstein	T. Duffy	CR2000-010439 Trans/poss for sale of marijuana w/ priors, F2	Guilty	Jury
10/17 – 10/24	Eaton	Schwartz	S. Wilson	CR2000-010753 Agg Asslt, F3 with 2 priors	Guilty	Jury
10/18	Schaffer	Jones	Pierce	CR2000-001053 Agg Asslt, F3 Burglary, F2	Pled day of trial	Jury
10/26	Schaffer	Dougherty	Amiri	CR2000-003471 POND for sale, F2	Dismissed	Jury
10/30	Everett Gilbertsen	Dougherty	Amiri	CR2000-008546 Agg Asslt, F3D	Dismissed w/o prejudice on day of trial	Jury
11/9	Schaffer	Akers	Jennings	CR2000-012502 Motor Vehicle theft, F3	Dismissed	Jury
11/15 – 11/21	Storrs	Wotruba	Eaves	CR2000-009696 Sale of Narcotic drug, F2	Guilty	Jury
11/20	Everett Gilbertsen	McVey	Beresky	CR2000-009267 Theft of Use of Means of Transporta- tion, F3 w/ priors	Dismissed w/o prejudice on day of trial	Jury
11/21 – 11/23	Schaffer	Budoff	Amiri	CR2000-007536(B) POND for sale, F2	Guilty	Jury
11/27 – 12/04	Storrs	Dougherty	Anagnopoulos	CR2000-000959 Theft Means of Transp, F3	Not Guilty	Jury

for The Defense

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