for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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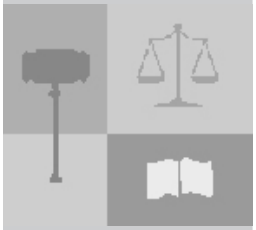

Rule 11 for Juveniles in Adult Court

Are You Competent to Argue Juvenile Competency?

By Karla Momberger, Defender Attorney

My client, Joe (not his real name), is fifteen years old. Born February 28, 1989, he is a juvenile. He is charged as an adult in at least one of his cases because he committed the serious crime of toy burglary -- he broke into a neighbor's apartment and stole toys. That *is* the allegation. I know you're breathing a sigh of relief just knowing he is off the streets.

The trouble is, Joe is mentally retarded and mentally ill. He is on several different medications and his IQ is estimated to be around 57. He is brain-damaged from head injuries, "huffing," or both. Consequently, he is in the Rule 11 process.

As is usual in adult court, Joe was ordered into the Restoration to Competency (RTC) program. The Court presumed that he would be restorable within the usual adult time frame. Without any showing from the State, however, he continued to be held at Madison jail, and I tried to figure out what to do with him. I knew from reviewing his files that he was previously found incompetent and not restorable in juvenile court - but I didn't know what effect that would have on his current cases.

Mercifully, some folks in the juvenile division took pity upon me and gave me some arguments to make. (Thanks so much to Helene Abrams, Art Merchant, Bud Duncan, David Katz, and Ellen Katz.) I'm writing this now because if you're like me, you wouldn't have known about this issue and it may come in handy for you in the future.

In Arizona, competency relies upon the accused's capacity to understand the nature of the criminal trial and to assist in his or her own defense. However, while this guiding principle frames all competency determinations in Arizona, there are major differences between the standards that apply to juveniles and those that apply to adults. Juvenile standards, set forth in A.R.S. § 8-291 et seq., do not require a finding of a mental disease or defect. For juveniles, there is no presumption of restorability, and the absolute time limit for restoration—and the clock is set in motion only after a showing of restorability has been made by the state—is 240 days or eight months.

At the first status conference, the RTC program asked for more time

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for The Defense

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to "restore" Joe. I objected to the continued restoration treatment based on the fact that Joe is a juvenile. I argued that juvenile standards must apply, that the State never made a showing that Joe would be restorable, that Joe previously had been found incompetent and not restorable as a juvenile, and that the experts assigned to work with Joe were not certified by the superior court to work with juveniles. I urged that, at a minimum, Joe should be evaluated by an expert certified to treat juveniles, that a guardian *ad litem* should be appointed to aid Joe, and that his restoration should continue with him out of custody instead of in custody.

My objections were overruled, and the RTC process continued. However, I was directed to file a written motion by the Court. I filed the motion and am waiting for the State to respond.

I asked that the court order experts, approved by the court and certified to deal with issues of juvenile competency, to provide a report making a showing of restorability within 240 days; that the report be issued by the next court date, and that if the experts cannot make that showing, that the court dismiss Joe's cases with prejudice. I also requested that an evidentiary hearing be set and that the court appoint a guardian ad litem to represent Joe's interests, and that restoration be continued out of custody until these legal issues are resolved by a special action.

The legal confusion on this issue starts with *State ex rel. Dandoy v. Superior Court In and For Pima County*. *Dandoy* has been cited to support the proposition that Rule 11 adult standards apply to juveniles. 619 P.2d 12 (Ariz. 1980.) However, *Dandoy* really holds that juveniles have a right to raise competency as a matter of due process, just like adults.

If Joe cannot defend himself because the standards that the court is applying to him are not fair, it is a due process violation. Obviously, the idea is that the adult legal standard for competency overlooks differences in the juvenile mindset, and consequently impacts the ability of an incompetent juvenile to defend himself. This is supported by the existence of the juvenile competency standards.

Rule 11 no longer applies to juveniles. When the adult competency statutes were changed, Rule 11 was changed to match them. At the time *Dandoy* was decided, Rule 11 was all there was. Juvenile competency is codified at A.R.S. § 8-291 et seq. A.R.S. § 8-291.01 (A) specifically refers to juveniles in criminal proceedings. Arizona has separate statutes for juveniles, and they address a juvenile's competency no matter which court they are in. *See* definition of juvenile in A.R.S. § 8-291(3). This statute does not refer to a particular court.

The juvenile statutes were drafted with juveniles in mind; that is why the definition of competency doesn't require a mental illness or defect. Basic research on psychological and cognitive development suggests that many youths will manifest deficits in abilities that are legally relevant, which are similar to deficits seen in adults with mental disabilities. (*See generally* Grisso, T. and Schwartz, R., eds., *Youth on Trial: A Developmental Perspective on Juvenile Justice*, Chicago: University of Illinois Press (2000).) This is not always because the juvenile displays mental disabilities. Sometimes, the cause of the deficit is immaturity rather than mental disorder. *Id.* A very important example of a difference between juveniles and adults in this area is the marked disparity in aspects of psychosocial maturation including progress toward greater future orientation, less susceptibility to peer pressure, and adept risk perception. Steinberg et. al, "Juveniles'

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Tips Regarding Tips

May a Survelliance Tip Be Challenged?

By Valerie Llewellyn, Defender Law Clerk

Imagine a pick-up truck containing three men pulling up to the front of a house. It's a non-descript neighborhood during the middle of the day. But not just any house— this is a location that is under police surveillance because it is suspected of being a drug location. Nonetheless, the driver and one of the passengers remain in the truck, while the individual next to the passenger door gets out of the truck, walks up to the house, knocks, and enters the home. A few moments later, the man emerges from the house, gets back in the truck, and the fellows drive off down the road.

The truck travels down the road and the driver observes all the traffic laws. Also, the truck makes no visible vehicular infractions. Yet, a little while later, a police officer, who has been given the truck's description and license plate number by undercover police officers staking out the house, pulls the truck over to conduct a traffic stop. After a cursory round of questioning, the officer releases the passengers, searches the truck cab, recovers contraband and arrests the driver.

Practitioners reading this probably are feeling little hairs standing up on the back of their necks because of the dubious issues that are raised in this hypothetical, but this note will focus on only one discrete point— the stop being based on a surveillance tip.

It is conceivable that a surveillance tip from one law enforcement agency to another agency might be considered to be more reliable because it is unlike an anonymous tip. With an anonymous tip, there is no way to evaluate a nameless informant's basis of knowledge or veracity.[1] However, this note will illustrate how a traffic stop based on a surveillance tip may be challenged.

To justify an investigatory stop of an automobile, police officers need only possess a reasonable suspicion that the driver has committed an offense, which means that the officer must possess a "particularized and objective basis" for suspecting a "particular person" has been stopped for criminal activity.[2] But in the case of a traffic stop that is the outgrowth of a surveillance tip, the basis of the reasonable suspicion is attackable.

In a case originating in Arizona, *U.S. v. Thomas*, 211 F.3d 1186, 1190 (9th Cir. 2000) the U.S. Court of Appeals held that "a tip from federal agents did not support a finding of reasonable suspicion to stop a motor vehicle driven by a defendant to and from a house that was under surveillance." Therefore, an officer cannot just rely upon another officer's suspicion without establishing the distinct facts on which the suspicion is based.[3] Instead, "the officer must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity."[4]

In *Thomas,* FBI agents were conducting surveillance of a house rumored to be the center of drug activity. The Defendant Thomas was seen going into the house and stayed for a fleeting visit and then departed. After he departed, agents contacted other officers who then stopped his car.

One of the key flaws in the *Thomas* case was that the FBI's information was devoid of specific details regarding the occupants of the house and the type of narcotics involved.[5] Also, it was important to the court that the fact that the departing car merely *might have* contained narcotics. For that reason, the surveillance agent's suspicion was found to be little more

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Practice Pointer

Only RELIABLE Hearsay is Permitted!

By Mike Scanlan, Defender Attorney

Recently, I represented a client in a probation violation hearing in which the State sought to introduce TASC laboratory reports showing "POSITIVE" for THC and amphetamine. This evidence was especially significant because it was the basis for the State's attempt to *require* the court to revoke probation pursuant to A.R.S. §13-917(B). See *State v. Taylor*, 187 Ariz. 567, 931 P.2d 1077 (App. Div. 1, 1996). My 22 year old client was on intensive probation for theft of means of transportation, a class 3 felony, and facing a presumptive sentence of 3.5 years in prison – a long time for a young man with emotional problems and diminished cognitive abilities.

The State attempted to admit the reports through the testimony of the client's adult probation officer (APO). The court took my objections under advisement. Later, I thought about the issue, read up on it, and supported my objections with additional argument. I succeeded in excluding the exhibits on the basis of insufficient foundation.

In a probation violation hearing, any *reliable* evidence is admissible, including hearsay. Rule 27.7[b](3), Rules of Criminal Procedure. So hearsay must be reliable.

However, the reliability requirement applies to other proceedings as well, such as preliminary hearings ("… substantial evidence, which may be hearsay …," Rule 5.4(c)) and sentencing hearings ("… any reliable, relevant evidence, including hearsay, …," Rule 26.7(b)). See also *State v. Moreno*, 26 Ariz. App. 178, 547 P.2d 30 (App. Div.1, 1976) (preliminary hearings) and *State v. Green*, 117 Ariz. 92, 570 P.2d 1265 (App. Div. 2, 1977) (sentencing). See also Rules of Evidence, Rules 803(24) & 804(b)(5) ("… having equivalent circumstantial guarantees of trustworthiness …"). So the purpose of this practice pointer is to promote awareness of the State's burden of persuasion in admitting documents in these settings where you may run into the argument that the Rules of Evidence do not apply.

The reliability of a document, such as a lab report, or any hearsay statement, must be demonstrated prior to its admission. The court has the discretion to determine whether the circumstances are sufficient to afford reasonable assurances of truthfulness.

Begin your challenge based on the Rules of Evidence. The law of evidence relating to civil actions applies to criminal proceedings except as otherwise provided. Rule 19.3, Rules of Criminal Procedure.

Practitioners should object and require that the State's witness demonstrate personal knowledge of the matter before testifying about it. A witness may not testify to a matter unless the witness has personal knowledge of it. Rule 602, Rules of Evidence. The Arizona Supreme Court has held that nothing in the Rules of Criminal Procedure indicates that documentary evidence presented at probation violation hearings should not be authenticated. *State v. Stotts*, 144 Ariz. 72, 695 P.2d 1110 (1985). The same may be said of preliminary and sentencing hearings when hearsay is allowed.

Furthermore, to prove the content of a document, the original is generally required. Rule 1002, Rules of Evidence. *See, e.g., Stotts, Id.* Copies of certified copies are not self-authenticating.

All of these factors go to the reliability of the exhibit. Remember that a hearsay objection goes to the reliability of the evidence itself. An authenticity objection goes to the form in which the evidence is presented. *Stotts., Id.*

A list of factors that you may use as a basis for *voir dire* of a witness when challenging the foundation for an exhibit or statement sought to be admitted by the State is presented in the sidebar on this page. If the witness is unprepared, you may convince the court to sustain your objection to the exhibit's admission.

In my case, the State relied on a line of cases that held it was not an abuse of discretion to admit a hospital lab report where some of the above factors were missing. *State v. Tulipane,* 122 Ariz. 557, 596 P.2d 695 (1979); *State v. Rivera*, 116 Ariz. 449, 569 P.2d 1347 (1977); *State v. Snider*, 172 Ariz. 163, 835 P.2d 495 (App. Div.1, 1992); *State v. Flores*, 26 Ariz. App. 400, 549 P.2d 180 (App. Div.1, 1976); *State v. Brown*, 23 Ariz. App. 225, 532 P.2d 167 (App. Div.1, 1975).

However, in all of these cases, the APO testified that he took the sample personally, ensured its integrity and identity, and had a hospital test the sample. The court held only that, under these circumstances, the trial court did not abuse its discretion in allowing the exhibit lab report into evidence. These cases are distinguishable on the basis of the facts where the sample was collected and tested by an outside agency such as TASC. It can be argued that a police lab report must show more of these reliability indicators as the document was obviously prepared for litigation.

In any event, the court has discretion to admit or preclude hearsay based on the proponent's ability to provide reasonable assurances of trustworthiness. Where it is vital to keep out some hearsay testimony or statements, a challenge can still be made based on a lack of reliability. Good luck!

Hearsay/Authenticity Objections Checklist

Whether the exhibit was disclosed well in advance of the hearing

Whether the original document is in court and available for examination and comparison

Who created the exhibit, how, when, and under what circumstances, e.g., in prep. for litigation

Whether the witness has personal knowledge of the matters stated in the exhibit

Whether the document shows some human involvement in its creation if it was produced by computer and the State is relying on a statutory certification for foundation

Whether the exhibit is properly authenticated

Whether the witness has spoken to the author or creator of the document (the out-of-court declarant)

Whether the declarant is available or will be available to testify

Whether the accuracy and reliability of the documented results were personally confirmed by the declarant to the witness

Whether the document was "certified" in some manner or even signed by the declarant

Whether the circumstances, such as the face of the exhibit or supporting testimony, demonstrates reliability with regard to:

- **the integrity of any sample tested**
- **the chain of custody or identity of the sample**
- **the qualification of the analyst**
- **the proper operating condition of any testing equipment used**
- **the accuracy of the measurements**
- **the opinions, conclusions, and/or results are certified as accurate and reliable by the analyst**

Whether the results are corroborated by admissions

Whether the identity of the declarant and the level of that speaker on the "hearsay ladder" give reason to question the truthfulness of the out-of-court

Practice Pointer: Let's Play, "Spin the Doors!"

How Do You Ensure That Your Client is Released as Quickly as Possible When Presentence Incarceration Credit Exceeds the Sentence Imposed?

By Mike Scanlan, Defender Attorney

Sometimes you can get your client out of custody THE SAME DAY that he or she is sentenced to the Department of Corrections (DOC). This applies where the amount of presentence incarceration credit exceeds the sentence imposed. This can happen when the client has spent a long time in custody awaiting sentencing, been incarcerated as a term of probation, a combination of those, or, especially, where the client has been through Rule 11 proceedings. The client may be rejecting probation, being sentenced to DOC in conjunction with other cases, or the court may just want to close the file on a case, also known as a terminal disposition.

I'll use the facts of a recent case as an example illustrating how you can proceed at sentencing. I met my client at a probation violation disposition hearing, which is, essentially, a sentencing hearing. He was on probation for Aggravated Assault, a class 6 designated felony. He had a total of 479 days presentence incarceration credit. The client rejected probation at the revocation arraignment but the court declined to proceed to disposition at that time reasoning that it lacked the information necessary to properly sentence him without a probation violation report.

I recommended that the client serve the presumptive term of one year in the DOC and receive the full 479 days presentence credit thinking that the 114 days exceeding the 365 day sentence would *automatically* apply to the consecutive term of community supervision which was one month. (I calculated the community supervision as one seventh of 365 days equaling 52 days rounded down to one month per A.R.S. § 13-603(J).) I asked the court to order that the client be released.

The court denied my request for immediate release, reasoning that my client still had to be processed by DOC, i.e., assigned a number, fingerprinted, photographed, etc.

So, that day, I called DOC to expedite the processing of my client's release. I was directed to their "Time Computation" unit (602-542-5586.) By speaking to Ms. Janna Yaw, a supervisor, I was able to bring this "time critical" inmate to their attention. However, I was informed that she would need a copy of the minute entry as soon as it was available. I was instructed to call again so that she could take it off the clerk's website or to fax a copy to her (602-542-3254).

When she reviewed the minute entry, she discovered the lack of express orders regarding community supervision. This would complicate and delay processing. DOC would need clarification from the court regarding community supervision by way of a *nunc pro tunc* minute entry.

Usually, when Time Computation requires clarification from the court, the inmate is serving a sentence that affords plenty of time for processing the paperwork, but this case was time critical. I wanted my client out of custody immediately.

Time Computation advised me that my client could be released direct from county jail *if the minute entry specified that the court waived community supervision*, as the client's term of incarceration was then served. However, if community supervision was not waived, my client would still have to serve the one month of community supervision. Release could be delayed until a program was in place for him.

Even then, the client would still be under the jurisdiction of DOC and subject to be returned to custody if the conditions of community supervision were violated. I wanted the client out of the jurisdiction of DOC immediately.

The excess credit would not be *automatically* applied to community supervision even if my client refused community supervision. To accomplish this efficiently, the minute entry should expressly specify that the excess presentence incarceration credit must be applied to the community supervision. The client can refuse to agree to abide by the conditions of supervision established by DOC and then apply his remaining "back time" toward his remaining sentence.

The upshot of this is that at the time of sentencing/disposition, ask the court to order the clerk to expressly state in the minute entry the court's orders regarding community supervision and the remaining presentence credit. The minute entry should at least specifically order that the amount of credit in excess of the sentence shall be applied to community supervision.

Finally, ask the clerk to prepare a certified copy of the court's minute entry and call when it is ready. You can call Time Computation to alert them to the client's situation, but they will not act without the certified copy of the minute entry. Get that to Time Computation at 1601 West Jefferson and your client will be released from the county jail.

Got the Writer's Bug?

Then, consider submitting an article for publication in

for The Defense.

Articles, practice pointers and other training related

information are welcome at anytime...So, submit your

next article to one of our editors soon!

Continued from Rule 11 for Juveniles, p. 2

Competence to Stand Trial as Adults," *Social Policy Report*, vol. XVII, no. IV, Society for Research in Child Development (2003). These kinds of differences, which may be explored by the Court in an evidentiary hearing, were the impetus for Arizona's separate juvenile competency standards.

A.R.S. § 8-291.01(A) states: "A juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed." The plain language of the statute includes all juveniles in all criminal proceedings. There is no exception for juveniles charged as adults, and no exception for courts other than juvenile court. A.R.S. § 8-291.08(D) states that, if a juvenile is deemed to be incompetent and there is no substantial probability of restorability within 240 days, the court shall dismiss the matter with prejudice and initiate civil commitment proceedings, if appropriate.

Arizona case law supports the idea that the juvenile statues mean just what they say: that they apply to all juveniles in all criminal proceedings. The Arizona Court of Appeals, Division One, provided this overview in 1998:

> Broadly stated, the point of the statutory scheme is to ensure that no incompetent juvenile is prosecuted, but to allow a finite time for attempts at restoration to competency. If it appears that restoration may not occur within a relatively short time—six months with an additional two months if the juvenile is making progress towards competency—the judge can dismiss with or without prejudice. If it appears to the judge that restoration may not occur within eight months, the matter must be dismissed with prejudice. 194 Ariz. 174, 175, 978 P.2d 659, 660 (1998), review denied 1999.

There is no reference in either the plain language of the statute or the case law to suggest that any other standard applies to juveniles, regardless of whether they are charged as juveniles or adults.

The juvenile mind does work differently, and there are numerous studies to show it. This is, in part, why special certification is required to work with juveniles in the restoration process. In my case, we have procured the services of experts to deal with this case, should it continue. These experts will not only assess Joe for his competency from a juvenile standpoint, but will also assess his needs based on his mental health problems and the brain damage that he has sustained. These doctors have a different and more relevant view than doctors who solely examine adults as part of Rule 11 proceedings.

There are lots of good arguments to make to the Court regarding your in-custody juvenile client. Joe, for example, has been in the custody of the MCSO for almost one year. During that time, he has deteriorated considerably. More than once I visited him and found him with black eyes and other injuries. Once I saw him casually chatting with two adult inmates. Recently, he was taken to the hospital for slitting his wrists, which he did at the urging of a cellmate who found a razor.

Joe is apathetic and extremely depressed. This is consistent with findings that are already known to experts in Arizona:

> [P]lacing youths in adult criminal institutions exposes them to harm. Results from a series of reports indicate that young people placed in adult correctional institutions, compared to those placed in institutions designed for youths, are eight times more likely to commit suicide, five times as likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent as likely to be attacked with a weapon. *Prosecuting Juveniles in the Adult Criminal Justice System: Key Issues and Recommendations for Arizona*, Children's Action Alliance, page 13, June 2003.

Also, the MCSO facility which has become Joe's new home is woefully inadequate to provide for his serious mental health and other needs:

> With very few exceptions, adult jails in Arizona are not equipped to respond to the special needs of juveniles. There are many reasons for this including the extra costs associated with providing age-appropriate or developmentally-appropriate services and the belief of some key law enforcement leaders that jails should not accommodate the unique needs of juveniles lest they detract from the presumed deterrent value of harsher conditions. *Id.*

The length of incarceration is increased by the improper standards governing his competency process; it is our position that, particularly given the previous finding of incompetency without possibility of timely restoration, no showing could have been made that he would be restorable within the allotted time period. Had the proper standards been used, Joe would very likely no longer be incarcerated.

Cases like *Dandoy* not only predate the juvenile competency code, they also predate any current, applicable research on neurology and juveniles.

PD Shampoo Drive a Success!

By Terry Bublik, Trial Group Supervisor and Dan Carrion, ERU Chief Deputy

Once again, the Public Defender's Office wanted to make sure that the children of the Thomas J. Pappas Elementary School were well-provided for during the holidays. We were able to assist them by holding a shampoo and hygiene drive. Last year, the Public Defender's Office held a clothing drive collecting lots of warm clothing, as well as donations, for the children. The money donations enabled us to purchase and donate 15 brand new jackets to the school. This year, a local radio station was already sponsoring a clothing drive for the school, so we decided to help out by holding a shampoo and hygiene product drive.

As you may already know, the Thomas J. Pappas School not only provides quality education for our homeless children, but also provides many other resources. The school also provides clothing, shoes, school supplies and hygiene products to the children. Twice a month, the children are allowed to visit the on-campus Clothing Room where they receive an outfit, as well as any hygiene products that they may need. Phoebe Thomas (pictured below), who manages the campus Clothing Room, greets the children each day with a warm smile and friendly conversation. She is responsible for organizing and distributing the numerous clothing items and hygiene products that are donated to the school. Needless to say, the children adore her.

Our contributions helped to keep the Clothing Room adequately stocked with the much needed hygiene products. Through the generosity of those who contributed, the Public Defender's Office was able to donate the following items to the school:

141 bottles of shampoo & conditioner

51 bottles of deodorant

38 toothbrushes

17 tubes of toothpaste

36 bottles of lotion

33 tubes of chapstick

21 bars of soap

15 packages of hair ties

11 bottles of shower gel

-assorted bottles of hair product, notebook paper and crayons

Pictured from left to right: Terry Bublik, Dan Carrion and Phoebe Thomas

On behalf of the children and staff of the Thomas J. Pappas Elementary School, we would like to thank you all for your generous contributions and support. Your thoughtfulness helped bring smiles to the faces of many children and their families during the holiday season. Thanks again and best wishes for the new year!

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than a guess that drugs might be found and therefore the reasonable suspicion was not "particularized" enough.[6]

In the case of the hypothetical truck-driving trio, it is also conjecture that their arrival and departure from the house under surveillance was consistent with drug purchasing behavior. A high volume of visitors to that house might indicate drug activity. But this argument could fail under *Thomas* because the court also discussed such "comings and goings" and said that this behavior is consistent with drug activity. The people coming and going also could have been residents, family members, frequent visitors, or strangers.[7]

"An individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."[8] Furthermore, while police officers are not required to ignore the environment or location in which they investigate to determine whether or not a particular circumstance warrants further investigation,[9] there must be quantifiable indicators that drugs were going to and from the house and to and from the truck. Consequently, the activity at the house "did not support a finding of reasonable suspicion" to stop the truck-driving trio.[10]

(Footnotes)

[1] *Florida v. J.L.*, 529 U.S. 266, 120 S. Ct. 1375 (2000)("Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity; however, there are situations in which an anonymous tip, suitably corroborated, exhibits sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop").

[2] *State v. Livingston*, 206 Ariz. 145,147, 75 P.3d 1103, 1105 (Ariz. App. Div. 2, 2003).

[3] *U.S. v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000).

[4] *Illinois v. Wardlow* , 528 U.S. 119, 123-24, 120 S.Ct. 673, 676 (2000) (citation omitted).

[5] *U.S. v. Thomas*, at 1189.

[6] *See also Florida v. J.L.,* 529 U.S. 266, ——, 120 S. Ct. 1375, 1378 (2000) where the Court held that "such a tip is insufficient to provide reasonable suspicion for an investigatory stop."

[7] *Thomas* at 1190; *See also Brown v. Texas,* 443 U.S. 47, 99 S. Ct. 2637 (1979)("officers had detained two men walking away from each other in an alley in an area with a high incidence of drug traffic. The officers believed the men had just met or were about to meet for a drug transaction when their patrol car appeared but, as "the appellant's activity was no different from the activity of other pedestrians in that neighborhood," the investigatory stop was not justified").

[8] *Id.*

[9] *Id.*; *Cf. People v. Butler*, 111 Cal.App.4th 150, 4 Cal.Rptr.3d 1 (Cal. App. 2 Dist. 2003)("Information provided by anonymous telephone tip that drugs were being sold from specific vehicle at specific location was sufficiently corroborated by officer's observation of conduct he believed was a drug transaction, justifying temporary detention of defendant; upon arriving at place described by caller, officer saw that defendant's vehicle matched description and was at place described in telephone call, and officer subsequently saw conduct he believed, based on his training and experience, was a drug transaction, which was the criminal conduct explicitly alleged in telephone call").

[10] *U.S. v. Thomas*, 211 F.3d 1186, 1191 (9th Cir. 2000); *See also State v. Altieri,* 191 Ariz. 1, 951 P.2d 866 (Ariz. 1997)(an anonymous tip describing driver, driver's first name, vehicle, and vehicle's location and direction and stating that vehicle contained certain amount of drugs and cash, was insufficient to provide reasonable suspicion for stop of defendant's vehicle).

Jury and Bench Trial Results December 2004

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
11/09 - 12/02	**Farney** Brazinskas *Cowart*	Hauser	Murphy	CR04-008969-005DT Engaging in Riot, F2 2 cts. Aggravated Assault, F5	Not Guilty 1 ct. Aggravated Assault; Guilty of Engaging in Riot and 1 ct. Aggravated Assault	Jury
11/18 - 11/22	**Stewart / Schreck**	Keppel	Wade	CR03-020379-001DT PODD, F4	Not Guilty	Jury
11/23 - 12/2	**Cutrer**	Stephens	Cook	CR04-040142-001SE Burglary 2nd Degree, F3 CR04-039979-001SE Theft of Credit Cards, F5	Guilty	Jury
11/30 - 12/1	**Jones**		Adams	CR04-0039109-001SE Agg. Assault, F6	Not Guilty	Jury
11/30 - 12/2	**Hamilton**	Arellano	Trudgian	CR04-039984-001SE Indecent Exposure, F6 Indecent Exposure, M1	Guilty - F6 Not Guilty - M1	Jury
11/30 - 12/6	**Hamilton**	Stephens	Allegre	CR03-039792-001SE Theft by Extortion, F4 Unlawful View/Tape/Record Person, F5	Guilty	Bench

Jury and Bench Trial Results December 2004

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
12/6	**Reasons / Schreck** Seaberry	Hauser	Beaver	CR04-015008-001DT Agg. Assault, F6	Not Guilty	Bench
12/6 - 12/8	**Iniguez**	Nothwehr	Kellerman	CR03-019909-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
12/7 - 12/14	**Corbitt**	McClennen	Cohen	CR04-041574-001SE Sexual Abuse, F3D 6 cts. Sexual Explotation of a Minor, F2D CR03-038294-001SE Sexual Abuse, F3D	Guilty	Jury
12/8 - 12/13	**Keller / Rosell**	Hicks	Doering	CR04-018888-001DT Misconduct Inv. Wpns, F4 Disorderly Conduct, F6 Endangerment, F6	MIW and Endangerment-Hung 6-Guilty, 2-Not Guilty; Disorderly Conduct-Dismissed day of trial	Jury
12/9 - 12/13	**Little**	Stephens	Long	CR04-036332-001SE Disorderly Conduct, F6	Guilty (in absentia)	Jury
12/9 - 12/14	**Sheperd** Beatty	Keppel	Levinson	CR04-038615-001SE POND, F4 PODP, F6 PODD, F4	Guilty	Jury
12/9 - 12/14	**Houck**	Cunanan	Kiser	CR04-038083-001SE 2 cts. Agg. DUI, F6	Guilty	Jury

Jury and Bench Trial Results December 2004

Legal Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
12/16	**Sinclair**	Gerst	Voyles	CR2004-006753-001 DT PODD, F4	Guilty	Jury
12/6 - 12/20	**Dupont** DeSantiago	Rayes	Hughes	CR2003-019514-001 DT Murder 1st Degree	Guilty/Lesser Included Second Degree Murder	Jury

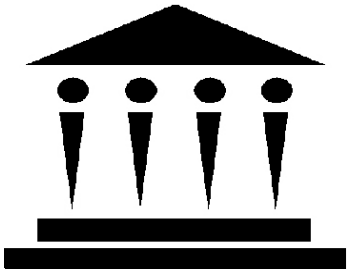
Jury and Bench Trial Results December 2004

Legal Advocate's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
10/6-1/3	**Garcia / Crosby**	Reinstein	CR2002-002674(A) 2nd Deg. Murder F1; 8 cts. Child Abuse F3/4; Agg. Assault F3	Guilty of Lesser-Manslaughter; Deadlocked on Child Abuse; Guilty on Agg. Assault	Jury
12/13-12/15	**Reinhardt**	Schneider	CR2004-015712-001-DT; Agg. Assault F6; Resisting Arrest F6	Not Guilty	Jury

Get Out Your Calendar! Mark the Dates!

The 3rd Annual



APDA

Conference

June 22-24, 2005

More information will be made available soon.

Again at the Tempe Mission Palms this year...

Hotel reservations are already being taken!

M C P D

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for The Defense

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