

No. 18-391

IN THE
Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

GUY JAMES GOODMAN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

BRIEF IN OPPOSITION

NICHOLAUS PODSIADLIK
Counsel of Record
Deputy Public Defender
JAMIE JACKSON
Deputy Public Defender
MARICOPA COUNTY PUBLIC DEFENDER
620 W. Jackson, Suite 4015
Phoenix, Arizona 85003
(602) 506-7711
Nick.Podsiadlik@maricopa.gov
Attorneys for Respondent

QUESTIONS PRESENTED

1. Did the Arizona Supreme Court err in holding that federal due process prevents the State from detaining a presumptively innocent person without bail based on a presumption that all people charged under Arizona's sexual assault statute are, upon a minimal showing that they violated the statute, an unmanageable threat to community safety?
2. Should this Court review the Arizona Supreme Court's decision to invalidate a state law on its face rather than as applied, particularly when this Court recently clarified that standard?

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INTRODUCTION

Bodily liberty is the most irreducible right of a citizen. Our Constitution assumes that the government cannot remove a person from the streets to a cage without extraordinary justification. The Constitution tolerates state detention of an individual only under exigent circumstances or when that person has forfeited their rights by committing crimes against others or society itself. Our criminal law guards against abuse of the criminal process by presuming that any person accused of committing a crime is innocent until the state proves that individual person guilty beyond a reasonable doubt by a jury of peers. This presumption of innocence is “axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895). When a state ignores that presumption, the state erases individual dignity and cuts out the heart of our tradition of freedom.

Incarceration is punishment. But as state agents have expanded their power against the bodies of individual citizens, they have claimed, and this Court has allowed, the power to incarcerate people without all the protections of the criminal process in a few narrowly defined circumstances. Historically, this Court has limited those circumstances to two situations. First, the state may ensure that the criminal process can run its course, and so it may detain an individual who threatens to flee the jurisdiction of the state and courts. And second, the state may protect its citizens by limiting a person’s freedom where that person has already come into the ambit of the state’s paternal responsibility and is so dangerous that releasing that person would threaten other persons in the community. Courts describe these powers as a “regulatory” function of the state.

In every case where this Court has considered an attempt by the state or federal government to detain a person prior to trial or after a sentence has been served, this Court has recognized that the state’s interest in maintaining civil order, when set against a person’s interest in bodily liberty,

presents a conflict between two of the highest imperatives of the law. Accordingly, when the state has sought to impose a deprivation that is the most severe punishment available within its power, even if labeled a “regulatory” action, this Court has steadfastly required at least some of the protections found in the criminal process. The state cannot detain a person without showing that *that* person individually poses such a threat to the function of the courts or to other people that no measure short of detention can protect those state interests. This Court has required the state to show this need in every context. If the state has accused a person and so gained some authority over that person’s body, then the state must still respect that person’s freedom unless it can show that *that* person poses an articulable threat of flight or continuing danger. If the state claims that a person under its authority is too mentally incompetent to be safely released to the streets, this Court has said that the state must guard against unnecessary detention by showing that *that* person really is both dangerous and mentally incompetent, with regular individualized review. Even in extreme cases involving criminally convicted non-citizens, wartime, and insurrections, this Court has upheld state attempts to detain people only after the state has shown that the specific persons posed an articulable risk to community safety.

When Arizona amended its constitution with Proposition 103, it allowed an unprecedented encroachment of state power over the bodies of its citizens. Prop 103 allowed the state to jail a person upon a prosecutor’s accusation that the person had committed Arizona’s sexual assault statute—a broadly defined statute that includes a range of sexual conduct—supported by minimal evidence that the person committed the offense. Prop 103 contradicted this Court’s precedent and was a national aberration. The State’s justifications for its overreach do not withstand scrutiny, and the lower court correctly applied this Court’s precedents in holding that Prop 103 was unconstitutional.

The State has invoked its interest in community safety, yet it retains the power to deny bail altogether to individuals where there *is* evidence that the person is dangerous or a flight risk. Pet. App. 16-17. But the trial court found that the State failed to adduce *any* evidence that Mr. Goodman posed a threat to the community, and the State has never since questioned that finding.

The State and its *amici* contend that the people who would categorically lose the right to bail are as good as guilty because the State must show “proof evident or presumption great” that each person committed the crime. But, in Arizona, that showing of proof is functionally the same as for probable cause. The bail hearing occurs just seven days after the initial appearance, giving the defense no time to marshal exculpatory evidence or hire an expert, and the State typically carries its burden as it did here, with the testimony of a single police officer relaying second- and third-hand hearsay from a police report. Further, it says nothing about that person’s risk to community safety.

The State and its *amici* also say that “sexual assault” may categorically substitute for a finding that an accused person is too dangerous to allow on the streets, but this also has no evidence. The State points to inapt recidivism statistics related to convicted felons, rapists, and “sex offenders” including all sex offenses. Even these statistics, however, show that convicted sex offenders have lower rates of recidivism than any other category except homicide offenders, and persons accused of rape have a lower risk of committing a felony while on pretrial release than any other category except murderers.

The State and its *amici* further urge that the crime of rape is so heinous as to stand in for a finding of future dangerousness. But Arizona’s sexual assault statute includes much conduct that is not rape. In the course of the bail litigation, the State, in a similar case, charged and held non-bailable a 72-year-old man with invasive colon cancer on the theory that he received an enema

under false pretenses. That man never reached the trial stage. He died in custody of the sheriff because of the legal presumption that he was too dangerous to allow into the community. Not only is the State's theory shown false when applied to factual statistics or individual cases, but it rests on an untenable theory that persons accused of sexual assault, for whom the state has shown upon a minimal proof that they committed the crime, will automatically—always and forever—be too dangerous to allow on the streets. The State seeks to open the door to indefinite mass detention.

This Court has never, in any case that is still good law, upheld a scheme allowing detention of a person based on that person's alleged dangerousness without an individualized showing that the person is, in fact, dangerous. This Court's precedent and the laws of the states clearly and consistently hold that states cannot deny bail to categories of defendants based merely on the elements of a criminal offense. On this, the only issue raised, there is no split or confusion, and this Court's intervention is not needed.

STATEMENT OF THE CASE

In 2010, the police received a complaint against Mr. Goodman alleging that he had committed sexual assault. Pet. App. 86. Seven years later, in 2017, the State of Arizona brought charges against Mr. Goodman. Pet. App. 5. During these seven years, Mr. Goodman committed no crime and was not accused of any other wrongdoing. Pet. App. 6. Nonetheless, the State sought to detain Mr. Goodman without bail on the theory that he was too dangerous to allow on the streets. Pet. App. 84. The trial court refused to deny bail to Mr. Goodman without cause:

There was no evidence introduced that [Mr. Goodman] poses an ongoing danger to the Victim or the community. There was no evidence of any recent felony criminal history or prior similar offenses or arrests nor any evidence of criminal offenses between the time of this alleged offense in 2010 and today. There was no evidence of prior history between the Victim and [Mr. Goodman]. Likewise, there was no evidence introduced of any contact between [Mr. Goodman] and the Victim following the night in question and

no evidence of any threats or efforts at intimidation by [Mr. Goodman] towards the Victim or any witnesses.

Ibid.

The Arizona Court of Appeals reversed the trial court. It held that, despite the absence of proof that Mr. Goodman posed any threat of future dangerousness, the fact that the State had shown by proof evident or presumption great that Mr. Goodman had committed the crime in 2010 stood in as a constitutionally adequate presumption of, in its novel phrasing, “inherent dangerousness,” and therefore Mr. Goodman should be held without bail or opportunity to rebut that presumption. Pet. App. 76-81. The Arizona Supreme Court, applying this Court’s precedent, reversed, holding that the federal right to due process prevents the State from substituting an individualized finding of dangerousness with an accusation and minimal proof of a single offense. Pet. App. 1-31. The State then filed a petition for certiorari in this Court.

REASONS TO DENY THE PETITION

I. The Decision Below is the Only Reasonable Application of this Court’s Precedent, which Has Consistently Required an Individualized Hearing to Show Why a Person Needs To Be Detained

A. The presumption of innocence and right to bodily liberty preclude the states from detaining a person prior to trial except in the most exceptional circumstances

When a state accuses a person of a crime, that person is presumed innocent until found guilty beyond a reasonable doubt by a jury of peers. Courts differentiate between an accused person and other citizens only grudgingly, to the extent necessary to allow the criminal process to function. “[A] society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt.” *Estelle v. Williams*, 425 U.S. 501, 518 (1976). If a state incarcerates a person who has not been found

guilty, it undermines the presumption of innocence. Bodily liberty marks the primary difference between one who is innocent and one who is guilty—the former stands outside the cage, the latter inside it. Thus, the right to bodily liberty for accused persons can be expressed in no way other than by granting bail. “Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Accordingly, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 754 (1987).

While the right to bail is not absolute, it may be denied in only the most extraordinary circumstances based on that individual’s conduct rather than the acts of others. This Court has steadfastly required states to prove that a person they intend to jail really needs to be jailed because they threaten community safety or they will likely flee. Although the parties agree that bail may be denied to individuals faced with a death sentence or life imprisonment because they have an extraordinary incentive to *flee*, the State does not argue that persons accused of sexual assault categorically present a flight risk, nor do they. *See infra* § I.D.6. Instead, the State argues that these people categorically threaten the safety of the community, but the State provides no legal or factual support for such a categorical presumption. The lower court’s decision was the only reasonable application of this Court’s precedent, and it was in line with the law of the other states.

B. This Court has consistently required an individualized showing that a person is dangerous before detaining that person as a threat to the community

The State relies on the ten cases cited in *Salerno* for its proposition that the state may detain a presumptively innocent individual without proof that the individual poses a threat to the community or flight risk. Pet. 12-14 (citing *Salerno*, 481 U.S. at 748-49). But *all* of these cases

recognize the individual's fundamental right to bodily liberty and the government's burden to make an individualized showing that a particular person needs to be caged. The State seeks to make an issue from the different phrases used by this Court for states' evidentiary burdens or federal courts' standards of review, but this emphasis on different phrasing in different contexts misses the point. There is no inconsistency in the precedent: a presumptively innocent person may not be detained without individualized proof that the person threatens the integrity of the court process or the safety of the community.

1. This Court's bail-specific cases have held that a person may not be detained without an accurate, individualized showing that the person needs to be detained

Salerno is the case most closely on point. *Salerno* concerned the constitutionality of the federal bail statute, the Bail Reform Act. The Act provided that a federal court could deny bail to a defendant if it found, after an adversary hearing, that "no release conditions will reasonably assure . . . the safety of any other person and the community." *Id.* at 741 (internal quotation marks omitted). The defendant challenged the Act, arguing that a person must always be granted some kind of bail. After close scrutiny, this Court upheld the Act. First, this Court emphasized that the Act allowed a court to deny all bail only after "a full-blown adversary hearing," *id.* at 750, which included "a number of procedural safeguards" allowing the defendant to be represented by counsel, to testify, to present witnesses, to proffer evidence, and to cross-examine other witnesses, *id.* at 742. This Court also emphasized that no person could be denied bail without an individualized consideration because courts were required to consider, among other things, "the arrestee's background and characteristics, and the nature and seriousness of the danger posed by the suspect's release." *Id.* This Court listed the historical precedents for denying bail, each of which involved

one of two things: (1) the individual defendant posed a threat of future dangerousness, or (2) the individual posed an unmanageable risk of flight because he or she faced the death penalty or a life sentence. *See id.* (in times of war, “dangerous” individuals; “dangerous” aliens awaiting deportation; “mentally unstable individuals who present a danger to the public”; “dangerous defendants who become incompetent”; juveniles who “present a continuing danger to the community”; and persons who pose “a danger to witnesses”). *Id.* at 748. Accordingly, this Court held that there was precedent for holding a person without bail upon an individualized showing of otherwise unmanageable dangerousness, and it upheld the Act only because the Act held the government to a high proof:

When the government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, we believe that, consistent with the Due Process Clause, a court may disable the arrestee from executing that threat.

Id. at 751 (emphasis added). This Court left no doubt that the procedural protections saved the Act, and it cabined its holding within those safeguards:

Under these circumstances, we cannot categorically state that pretrial detention offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Ibid. (emphasis added). And then it *re*-reviewed all the protections of the “full-blown hearing” that were “designed to further the accuracy of that determination” that the individual defendant posed an unmanageable risk of future dangerousness. *Id.* at 751-52. It concluded that, although “detention prior to trial or without trial is the carefully limited exception,” the Act withstood challenge because “[t]he numerous procedural safeguards detailed above *must* attend this adversary hearing.” *Id.* at 754 (emphasis added).

Salerno extended *Schall v. Martin*, 467 U.S. 253 (1984), the only other case to directly address the standard for denying bail to United States citizens who are not mentally incompetent. *Schall* described the necessary process for detaining juveniles prior to the adjudication of their offenses. Recognizing the juveniles’ “substantial” interest in “freedom from institutional restraints,” *id.* at 264, this Court applied the same analysis that it later adopted in *Salerno*. It asked whether the process gave “sufficient protection against erroneous and unnecessary deprivations of liberty.” *Id.* at 274. It upheld the process used by the state only because it thoroughly ensured that each individual juvenile posed a danger to the community. “Detention under [the challenged statute] is based on a finding that there is a ‘serious risk’ that the juvenile, if released, would commit a crime prior to his next court appearance,” *id.* at 278, detention was permitted only after “a formal, adversarial probable-cause hearing within three days of his initial appearance, with one 3-day extension possible for good cause shown,” and if the court decided that “continued detention is necessary under [the statute],” then “the facts and reasons for the detention must be stated on the record,” *id.* at 277. *See also Gerstein v. Pugh*, 420 U.S. 103, 124, 125 n.27 (1975) (allowing “brief” post-arrest detention to allow state to combine a neutral probable-cause finding with, among other things, a bail hearing); *Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) (extending *Gerstein*, limiting pretrial detention without a release hearing to 48 hours because “the police should make every attempt to minimize the time a presumptively innocent individual spends in jail”). The State of Arizona, by contrast, asks to be relieved of such a process.

2. This Court's precedent regarding the detention of mentally ill or incompetent persons has invariably required the state to give individualized proof that the detained person will threaten the community

This Court's cases regarding the detention of mentally ill persons also unanimously require states to give each person an individualized process for determining the necessity of detaining that person. *See Addington v. Texas*, 441 U.S. 418 (1979); *Jackson v. Indiana*, 406 U.S. 715 (1972); *Greenwood v. United States*, 350 U.S. 366 (1956); *Foucha v. Louisiana*, 504 U.S. 71 (1992); *Kansas v. Hendricks*, 521 U.S. 346 (1997).

Addington concerned the state's burden for civil detention of a mentally ill person and upheld a process that required showing that the individual was dangerous to himself or others. This Court grounded its holding fully in respect for the individual versus the state: "Loss of liberty calls for a showing that *the individual* suffers from something more serious than is demonstrated by idiosyncratic behavior. . . . The *individual* should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state." 441 U.S. at 427 (emphasis added).

Jackson limited the state's ability to detain persons prior to trial on the basis of incompetency. This Court condemned Indiana's scheme for detaining incompetent individuals prior to trial without showing that they posed a danger to the community. 406 U.S. at 736. Indiana's law violated due process because it simply warehoused incompetent defendants without a showing either that detention was bringing them back to competency or that the detention was justified by their dangerousness. *See id.* at 736-38. This Court distinguished the federal process upheld in *Greenwood* because, to justify the involuntary commitment of an arrested person unlikely to regain competency, the government in *Greenwood* had to prove that the individual

person, who had been arrested for robbery and assault, would probably require indefinite hospitalization to ensure his own safety and that of society. “Thus, a person committed under [the federal law] must be released when he no longer is ‘dangerous.’” *Jackson*, 406 U.S. at 732. The same principle applied in *Foucha*, where this Court applied *Salerno* to hold that individuals who have been found not guilty by reason of insanity cannot be detained unless the state proves that the person is both mentally ill *and* dangerous. 504 U.S. at 78-79.

Finally, although the State seeks to treat every person whom it accuses of violating Arizona’s sexual assault statute as a predator presumptively too violent to be free prior to trial, it does not cite this Court’s decision regarding “sexually violent predators,” *Hendricks*. In *Hendricks*, this Court reaffirmed the principle that detention even of “sexually violent predators” is permitted only “in certain narrow circumstances” where the state shows that the “predators” are “unable to control their behavior and who thereby pose a danger to the public health and safety.” 521 U.S. at 357. *Hendricks* upheld a state scheme to detain such persons because it “unambiguously require[d] a finding of dangerousness either to one’s self or to others as a prerequisite to involuntary confinement.” *Ibid*. This finding included an individualized showing that the person both suffered from a mental abnormality and posed an “inability to control his dangerousness,” with annual opportunities for the person to show that he or she was either not dangerous or no longer suffering from a mental abnormality. *Id.* at 360-63. And this Court stated as an accepted rule that “[l]egal definitions [of mental illness] must take into account such issues as individual responsibility.” *Id.* at 359.

3. Even the inapposite Supreme Court cases cited by the State consistently assume or concern situations where the detained people have had an individualized finding of future dangerousness

The State also relies on six cases that are wholly inapposite yet still unhelpful to its position: *Bell v. Wolfish*, 441 U.S. 520, 531 (1979), *Carlson v. Landon*, 342 U.S. 524 (1952), *Demore v. Kim*, 538 U.S. 510 (2003), *Wong-Wing v. United States*, 163 U.S. 228 (1896), *Ludecke v. Watkins*, 335 U.S. 160 (1948), and *Moyer v. Peabody*, 212 U.S. 78 (1909). *Bell* is a conditions-of-confinement case. *See* 441 U.S. at 533-34 (“It is important to focus on what is at issue here. We are not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails.”). And it is unhelpful to the State because *Bell* assumed for purposes of its holding that any detained person would have received a bail hearing. *See id.* at 536 (noting that, since *Bell* arose from a federal prosecution, “[a] person lawfully committed to pretrial detention . . . has had a bail hearing” and “[u]nder such circumstances, the Government concededly may detain him . . .”) (emphasis added). *Carlson* and *Demore* are non-citizen cases that expressly disavowed their application to criminal proceedings or the detention of citizens. Even those cases reflect greater respect for the right to bodily liberty than the State proposes. In *Carlson*, although this Court upheld the broad discretion of the Government to detain deportees without bail, it did so only in light of the facts that (1) the Government was required to prove “*personal* activity in supporting and extending [Communism’s] philosophy concerning violence” and (2) “[t]here [was] no evidence or contention that all persons arrested as deportable under [the anti-communist law] are denied bail . . . a report . . . shows allowance of bail in the large majority of cases.” 342 U.S. at 541-42 (emphasis added). In *Demore*, this Court allowed the categorical “brief” detention of non-citizens *post-conviction* who awaited deportation, and it emphasized that

its rule could not be applied to citizens. 538 U.S. at 521-22. *Wong-Wing* held that an alien illegally present in the United States could be detained pending deportation only after an individualized finding of illegal presence and could not be punished by imprisonment or hard labor without a jury trial. 163 U.S. at 236-37. *Ludecke* also concerned non-citizens, but in war-time. Even in that extreme situation, however, the “German alien enemy” received an individualized hearing where the Government proved that he was “dangerous to the public peace and safety of the United States” based on “substantial” evidence. 335 U.S. at 162-63. *Moyer*, another extreme case, dealt with the power of a state to put down an armed insurrection. The state in *Moyer* had arrested “a leader of the outbreak” and determined that he “should be detained *until he could be discharged with safety.*” 212 U.S. at 83 (emphasis added). Although this Court acknowledged the broad power of the state to kill and arrest people to avoid the government’s overthrow, it still described outer limits on even that power. Arrests could only be “made in good faith and in the honest belief that they are needed in order to head the insurrection off” and would not be tolerated “after fears of the insurrection were at an end.” *Id.* at 85. The State’s very reliance on these non-citizen, wartime, and post-conviction cases, applied to presumptively innocent citizens in the ordinary course of the pretrial criminal process, should be a warning.

4. Conclusion: This Court’s precedent has clearly and repeatedly recognized that the state cannot detain a person without individualized proof

In sum, this Court’s jurisprudence has been consistent. The State asks for certiorari based on the variety of phrases this Court has used in its cases to describe states’ evidentiary burden for detaining people or courts’ standard for reviewing detention statutes. This Court should reject that approach. This Court’s tests have been materially identical and have varied only as necessary to each context. *Salerno* and *Schall* each upheld a bail process where the state advanced a

“compelling” interest in keeping the community safe. *Salerno*, 481 U.S. at 749; *Schall*, 467 U.S. at 264. And each process also protected the adults’ and juveniles’ “fundamental” (for adults) and “substantial” (for juveniles) interest in liberty by requiring an accurate, individualized finding that the person would endanger the community if released. *Salerno*, 481 U.S. at 750 (“We do not minimize the importance and fundamental nature of this right [to ‘liberty’].”); *Schall*, 467 U.S. at 265. These two tests are materially identical and materially identical tests were reiterated, with slightly different phrasing, in subsequent detention cases. *See Foucha*, 504 U.S. at 86 (“Freedom from physical restraint being a fundamental right, the State must have a particularly convincing reason [to detain] insanity acquittees who are no longer mentally ill.”); *Kansas v. Hendricks*, 521 U.S. at 356 (reaffirming this test); *Zadvydas v. Davis*, 533 U.S. 678, 692 (2001) (same); *Kansas v. Crane*, 534 U.S. 407, 414 (2002) (citing *Foucha* and *Hendricks*, stating “[W]e have sought to provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require.”); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529-30 (2004).

The State cannot point to any substantive inconsistency in this Court’s decisions. A state cannot jail a person without showing why *that* person needs to be jailed. It cannot jail one individual for what another has done. Arizona proposes to trailblaze a categorical deprivation of liberty far, far off the path of what the Constitution has ever tolerated.

C. There Is No Split in State Authority on This Issue

The states are in agreement. First, the issue before this Court must be clarified, because the State has sought to show “confusion” by pointing to cases in different contexts, with different historical rationales and related bodies of law. Mr. Goodman does not challenge, and this case does not raise, a statute that disallows bail to persons charged with crimes that carry the death

penalty or a life sentence based on a presumption of flight risk. Many states have such statutes. They are based on the nature of the sentence, not the nature of the offense. Mr. Goodman does not challenge, nor this case concern, statutes disallowing bail for repetitive offenders or individuals who are charged with committing a new crime while on bail. Instead, the only relevant question is whether other states categorically prohibit bail for all persons accused of a single offense. None do, with three exceptions that, upon scrutiny, prove not to be exceptions: (1) for treason in Indiana, Michigan, and Oregon;¹ (2) for certain serious drug crimes in Rhode Island;² and (3) Nebraska's constitutional provision for forcible sexual assault.³ There are no reported (or available unreported) cases from Indiana, Michigan, or Oregon showing that anyone has ever been charged with treason. The Supreme Court of Rhode Island has interpreted its provision to mean that the trial judge must make an individualized determination as to whether to grant bail and defendants must be able to show that they are not dangerous, because "[a]lthough the defendants do not have a constitutional right to bail, they do have a constitutional right to have their bail determined in accordance with the due process clause." *Witt v. Moran*, 572 A.2d 261, 264 (R.I. 1990).⁴ And Nebraska's provision was held unconstitutional by the Eighth Circuit in *Hunt v. Roth*, 648 F.2d 1148 (8th Cir. 1981), a decision that this Court vacated because bail issues are moot upon conviction in *Murphy v. Hunt*, 455 U.S. 478 (1971).⁵ There does not appear to be any reported decision from Nebraska discussing its provision in relation to sexual assault in the ensuing 37 years since the Eighth Circuit held it unconstitutional. Thus, Arizona's Prop 103 is an aberration.

¹ Mich. Const. art. 1, § 15; In. Const. art. 1, § 17; Or. Const. art. 1, § 14.

² R.I. Const. art. 1, § 9.

³ Neb. Const. art. 1, § 9.

⁴ The leading criminal-law treatise describes Rhode Island's provision as "suspect" in light of *Salerno* and *Hunt*. Wayne LaFare *et al.*, 4 Crim. Proc. § 12.3(e) n.124 (4th ed.).

⁵ This Court's holding in *Murphy* that bail issues become moot under Article III upon a person's conviction also militates against finding and accepting jurisdiction in this case, given that Mr. Goodman was convicted even before the Arizona Supreme Court took review. Pet. App. 6.

The State has also not demonstrated a split in the standards of review for bail cases. Although the State cites *State v. Boppre*, 453 N.W.2d 406, 418 (Neb. 1990), a murder case, the court in that case does not apply any standard of review. The other Nebraska case relied upon by the State, *Parker v. Roth*, 278 N.W.2d 106, 144 (Neb. 1979) was considered by the Eighth Circuit in *Hunt*, which held Nebraska’s law unconstitutional, and it predates this Court’s decision in *Salerno*. The State also cites *New Hampshire v. Furgal*, 13 A.3d 272 (N.H. 2010), but that case concerned a crime with a life sentence and did not specify its standard of review; as noted, the categorical disallowance of bail for capital and life-sentence crimes has a long historical basis and is not relevant in the context of this case. The State cites the Eleventh Circuit case, *Walker v. City of Calhoun*, but the Eleventh Circuit held that *Salerno* did not apply to the situation before the court, which was a challenge to the initial 48-hour period of post-arrest detention addressed in *Gerstein* rather than the preventative detention addressed in *Salerno*. 901 F.3d 1245, 1263, 1263 n.11 (11th Cir. 2018). The Ninth Circuit and Arizona are essentially in agreement. Pet. App. 19. And the only other case cited by the State, *Huihui v. Shimoda*, predates *Salerno* and concerns the situation where a person commits a crime while already on bail, which, again, is not the issue here. See 644 P.2d 968, 970 (Haw. 1982). Thus, the jurisdictions are not divided, and this Court’s guidance is unnecessary.

D. The Lower Court Correctly Applied This Court’s Precedent and Held That the State Must Make an Individualized Showing That a Person Poses a Threat to Society or a Flight Risk

The Arizona Supreme Court applied this Court’s *Salerno* analysis and reached the correct conclusion under this Court’s precedent. The court first asked whether the State, under Prop 103, sought to deny bail as a permissible regulatory measure or as impermissible punishment prior to

trial. Pet. App. 9-10; *see Salerno*, 481 U.S. at 747. Concluding that the purposes of Prop 103 were regulatory, the court next asked whether Prop 103’s purposes were sufficiently weighty to justify caging a presumptively innocent person. Pet. App. 9-10; *see Salerno*, 481 U.S. at 747. The court determined that Prop 103’s stated goals of protecting the community and ensuring defendants’ presence at trial were sufficient to justify pretrial detention without bail. Pet. App. 9-10. Next, the court asked whether the State’s process for realizing these goals provided a sufficiently accurate determination of which persons might threaten the community or flee. Pet. App. 11-19; *see Salerno*, 481 U.S. at 750. It concluded that Prop 103 did not provide an accurate determination because it simply assumed that every person accused of the crime, for whom the state had shown proof evident or presumption great that the person had committed the crime, was therefore unmanageably dangerous. Pet. App. 19; *see Salerno*, 481 U.S. at 750 (upholding the federal statute because it “narrowly focuses on a particularly acute problem”); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 784-89 (9th Cir. 2014) (invalidating Arizona’s constitutional amendment categorically disallowing bail for illegal immigrants because it was a “scattershot” measure). Thus, Prop 103 insufficiently protected citizens’ interest in liberty and violated defendants’ right to due process. Pet. App. 19. Although Mr. Goodman does not agree with every step of the court’s analysis,⁶ it reached the correct result.

1. Prop 103 did not serve a legitimate governmental purpose

Prop 103 did not serve a legitimate purpose. The ballot for Proposition 103 provided five arguments “for” Proposition 103 and none “against.”⁷ The first argument, by the senator who

⁶ Rule 15.2 of the Rules of the Supreme Court of the United States admonishes counsel that “they have an obligation to point out in the brief in opposition, and not later, any perceived misstatement made in the petition” as well as “[a]ny objection to consideration of a question presented based on what occurred in the proceedings below,” or risk waiving those objections.

⁷ Available at <http://apps.azsos.gov/election/2002/Info/pubpamphlet/english/prop103.pdf>.

sponsored the measure, described “[s]lick defense lawyers” who hoodwinked judges into “allowing predators back on the street for just a few hundred dollars.” This senator, along with each of the other writers (excepting one, purportedly a 13-year-old boy, but including a gubernatorial candidate using the ballot as an political advertisement) misled voters into believing that, under the law prior to Prop 103, judges could not hold defendants non-bailable. Two arguments cited unspecified, false statistics. The ballot deceived the voters, most egregiously by telling them that courts could not deny bail upon a showing that the defendant is dangerous. Arizona courts could (and can) deny bail if a person poses a threat to any person or the community as a whole. *See* A.R.S. § 13-3961(D). “At most, the vote shows that voters *perceived* a problem, not that one actually existed.” *Lopez-Valenzuela*, 770 F.3d at 783 n.6.⁸ Because Prop 103 did not address a legitimate state interest, it fails the first step of this Court’s analysis in *Salerno*. *See* 481 U.S. at 747.

2. Prop 103 was punitive, not regulatory

Detention in the Maricopa County jail is punitive. Pretrial detention is non-punitive only if the conditions of confinement are constitutional. *See Bell*, 441 U.S. at 535-36. The Maricopa County jail has been under supervision of the federal courts since 1981 pursuant to a consent decree, and its conditions continue to be out of compliance with the Constitution even now, 37 years later. *See Graves v. Penzone*, No. CV-77-00479-PHX-NVW, 2018 WL 4006748 (Aug. 22, 2018). Further, a person cannot be detained prior to trial indefinitely or subjected to brutality without purpose. *See Jackson*, 406 U.S. at 738. But Arizona courts have functionally erased the speedy trial right, allowing unreasonable lengths of detention in inhumane conditions. *See State*

⁸ The State’s “victims” *amici* are incorrect that “80 percent of Arizona voters approved Proposition 103,” stated at page three of their brief. Of 2,229,180 active registered voters, 907,410 voted “yes” on Prop 103, which is 40 percent of Arizona voters. *See* <https://apps.azsos.gov/election/2002/General/Canvass2002GE.pdf> (last visited Dec. 9, 2018).

v. Tepper, No. 1 CA-CR 16-0294, 2017 WL 2590649 (Ariz. June 15, 2017) (mem.) (finding no error where mentally ill old man with no prior felonies was detained prior to trial in solitary confinement for over two years for the crime of throwing a rock through a window);⁹ *State v. Mosley*, No. 1 CA-CR 15-0588, 2017 WL 2686459 (Ariz. June 22, 2017) (mem.) (state exceeded speedy trial limits, Court of Appeals rejected two interlocutory appeals for relief, and, on direct appeal, declined to find error); *Mesa v. Granville*, 386 P.3d 387, 388 (Ariz. 2016) (state may extend time for filing a notice of intent of death indefinitely by dismissing and simultaneous re-filing the case); *State v. Rose*, 121 Ariz. 131, 137 (Ariz. 1978) (speedy trial deadlines may generally be reset indefinitely through the state’s dismissal and re-filing of a case).¹⁰

3. The “proof evident, presumption great” standard is no more exacting than the burden to show probable cause

The “proof evident presumption great” (“PEPG”) standard, as applied in Arizona, does not protect defendants. The State and its *amici* urge that a person found to have committed a crime by PEPG is as good as guilty. But, in Arizona, the PEPG hearing is an empty ritual. A hearing to reinstate bail occurs within seven days of the initial appearance, meaning that the defense has no opportunity to conduct an investigation, marshal exculpatory evidence, or hire an expert to challenge evidence like DNA. *See* Ariz. R. Crim. P. 7.2(b)(4)(B), 7.4(c)(3). At the hearing, the State is allowed to meet its burden by entering hearsay statements through any police officer. *See*

⁹ *See also* Michael Kiefer, *This Program for Mentally Ill Defendants Mostly Focuses on Declaring Them Fit for Trial*, Arizona Republic, 2018, available at <https://www.azcentral.com/in-depth/news/local/arizona-investigations/2018/12/11/restoration-competency-jail-program-defendants-mental-illness-maricopa-county-superior-court/712133002/> (last visited Dec. 12, 2018).

¹⁰ One study has shown that jail causes innocent people to plead guilty, allowing prosecutors to present—as here—only their version of the facts as “admitted truth” without adversarial testing. *See* Will Dobbie *et al.*, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, National Bureau of Economic Research 3 (Aug. 2016) (“Pre-trial release decreases the probability of being found guilty by 15.6 percentage points . . .”) available at <https://www.nber.org/papers/w22511.pdf> (last visited Dec. 13, 2018).

Segura v. Cunanan, 196 P.3d 831, 838 (Ariz. 2008). Mr. Goodman’s hearing provides a typical example. A single witness testified, a police officer who had been assigned to the case five years after the original complaint. App. 9-10. That officer relayed double- and triple-hearsay, such as the victim’s statement to another officer back in 2010. The officer also said that another person *not* at the incident told an unnamed police officer that the victim said that she had acted consistently with her statements to other officers. App. 9-15. The State and its *amici* are wrong to equate this to clear evidence of guilt. Given the shortness of time and removal of the evidentiary rules, there is no functional difference in the State’s burden between the probable cause finding at day two following arrest and the PEPG finding at day ten; therefore, basing a complete denial of bail on the PEPG hearing is improper. *See Gerstein*, 420 U.S. at 124; *Riverside*, 500 U.S. at 57. Further, the process says nothing about the person’s flight risk or danger to the community, providing no protection for defendants who may be unnecessarily detained. *Salerno*, 481 U.S. at 750 (upholding a bail statute with procedures “designed to further the accuracy” of finding “the likelihood of future dangerousness”).

**4. No crime, by its bare elements, can show that every person accused of it is
a continuing danger to the community**

The State urges that a criminal offense may, by its bare elements, show that every person accused of the crime is a continuing danger to the community. This is wrong because criminal statutes are not written to predict the future dangerousness of a group of persons. They are written to inform citizens of what conduct will not be tolerated and the punishment for that conduct. *See, e.g.*, A.R.S. § 13-101 (purpose of Arizona criminal statutes is “[t]o define the act or omission and the accompanying mental state which constitute each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth”). Not only are statutes

targeted at particular conduct at a particular moment, but it is unconstitutional for a state to punish people based on what they *might* do in light of the conduct of others. *See generally City of Chicago v. Morales*, 527 U.S. 41, 99 (1999); *Robinson v. California*, 370 U.S. 660, 666 (1962); *Lanzetta v. State of New Jersey*, 306 U.S. 451, 455-56 (1939).

5. The lower court was correct that Arizona’s sexual assault statute cannot inherently predict future dangerousness

The State’s theory would allow a person to be detained forever, because if people accused of sexual assault for whom PEPG has been shown are presumptively too dangerous to allow on the street, they certainly won’t be any safer after they’ve been found guilty beyond a reasonable doubt and spent years in prison. In *Hendricks*, this Court upheld a scheme for detaining “sexually violent” people post-conviction only because it required an individualized showing of dangerousness with annual opportunities for the individual to prove he was not dangerous. 521 U.S. at 360-63. For this reason alone, Prop 103 was a blatant overreach that does not merit this Court’s attention.

Further, it is empirically, indisputably false that persons accused of Arizona’s sexual assault statute necessarily threaten community safety. Maricopa County prosecutors and judges regularly determine that people indicted for sexual assault should be given a suspended sentence with probation.¹¹ The trial court found that, in Mr. Goodman’s bail hearing, “there was no evidence introduced that [Mr. Goodman] poses an ongoing danger to the Victim or community,” and the State has never since disputed that fact. Pet. App. 84 (emphasis added).¹² Similarly, every

¹¹ *See, e.g.,* App. 51-61 (*State v. Minniefield*, CR2015-000878-001, dks. 1 & 57 (Super. Ct., Ariz.)); App. 62-70 (*State v. Begay*, CR2014-137705-001, dks. 7 & 41 (Super. Ct., Ariz.)); App. 71-79 (*State v. Gerrad Nance*, CR2015-001755-001, dks. 1 & 35 (Super. Ct., Ariz.)); App. 80-89 (*State v. Burks*, CR2015-126663-001, dks. 7 & 95 (Super. Ct., Ariz.)); App. 90-98 (*State v. Kingsley*, CR2014-005888-001, dks. 1 & 56 (Super. Ct., Ariz.)).

¹² *See also* App. 99-102 (*State v. Figueroa*, CR2017-106797-001, dkt. 14 (Super. Ct., Ariz.) (finding that state failed to prove future dangerousness of sexual assault defendant after an evidentiary hearing)); App. 103-106 (*State v. Henderson*, CR2017-107553-001, dkt. 12 (Super. Ct., Ariz.) (same)).

defendant receives an evidence-based risk assessment from the trial court's pretrial services division, and many defendants accused of sexual assault are found to pose no risk to the community.¹³ The State has insisted at each step that the judiciary declare a fact—the categorical dangerousness of people accused of sexual assault—that is not a fact. Judicial fiats enforcing untruths as truths do not engender trust in the courts.

To the extent that any crime could be so heinous as to merit pretrial detention simply because of its heinousness, Arizona's sexual assault statute is not it because it is not a straightforward rape statute. Although rape is a subset of what can be charged, the statute also encompasses non-penetrative sexual contact, and its definition of "without consent" broadly includes deception. Pet. App. 94-97. For example, in one of the companion cases brought to the lower court with Mr. Goodman's, the State brought sexual assault charges against a 72-year-old man who had invasive colon cancer *for receiving an enema under false pretenses*.¹⁴ He was jailed on the State's theory that all persons accused of sexual assault are too dangerous to allow on the streets, and he died under custody of the Maricopa County Sheriff's Office.¹⁵ Another example is, because the statute's definition of "without consent" includes the deception of one person to another that they are married, a couple who lived together as married for decades where one partner believes that Arizona recognizes common-law marriage and the other knows that it does not, then the partner with the better knowledge of Arizona law would be committing sexual assault. See Pet. App. 95. For these reasons, the Arizona Supreme Court has held that sexual assault is not inherently violent. *State v. Bible*, 175 Ariz. 549, 604 (1993).

¹³ See, e.g., App. 107-110 (*State v. Jariwala*, CR2016-154858-001, dkt. 4 at 3 (Super. Ct., Ariz.) (pretrial determination of minimal risk of sexual assault defendant)).

¹⁴ App. 111-37, particularly 116-20 & 131. (*State v. Jerry Geisler*, CR2017-121763-001 (Super. Ct., Ariz.)).

¹⁵ App. 116-20.

The recidivism statistics do not help the State and its *amici*. First, their cited studies, with two exceptions, concern convicted persons, not the pretrial context at issue here. Further, they do not involve Arizona’s sexual assault statute, instead addressing either rape (which is only a subset of the sexual assault statute) or “sex offenses” as a whole, including things like indecent exposure or the possession of child pornography. In part, the lower court addressed these statistics, including those relied upon by this Court in *Smith v. Doe*, 538 U.S. 84, 103 (2003) and *McKune v. Lile*, 536 U.S. 24 (2002). *See* Pet App. 13-16. And this Court’s statements in those cases that the “risk of recidivism posed by sex offenders is ‘frightening and high’” were not based in fact and have since been widely criticized.¹⁶ Finally, convicted sex offenders have a lower rate of recidivism than any category except homicide offenders, and they are equal to DUI offenders.¹⁷ The only two cited studies pertaining to pre-conviction release conclude that accused rapists—and, again, Arizona’s sexual assault statute includes much conduct that is not rape—were rearrested (not necessarily convicted) for a felony in 3 percent, in one study, and 4 percent, in the other, of cases—the *lowest* rates of all defendants except, again, for murderers.¹⁸

¹⁶ *See, e.g.*, Ira Mark Ellman & Tara Ellman, “Frightening and High”: The Supreme Court’s Crucial Mistake About Sex Crime Statistics, 30 Const. Comment. 495 (Fall 2015); Adam Liptak, *Did the Supreme Court Base a Ruling on a Myth?*, New York Times, 2017, <https://nyti.ms/2mydQOQ> (last visited Dec. 9, 2018); Radley Balko, *The Big Lie About Sex Offenders*, Washington Post, 2017, <https://wapo.st/2zRvmSi> (last visited Dec. 9, 2018).

¹⁷ *See, e.g.*, Bureau of Justice Statistics (“BJS”), *Recidivism of Offenders Placed on Federal Community Supervision in 2005: Patterns from 2005 to 2010*, at 6 (June 2016), available at <https://www.bjs.gov/content/pub/pdf/ropfcs05p0510.pdf>; *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, at 8 (April 2014), available at <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>; BJS, *Recidivism of Prisoners Released in 1994*, at 8 (June 2002), available at <https://www.bjs.gov/content/pub/pdf/rpr94.pdf>; accord Arizona Criminal Justice Commission: Statistical Analysis Center Publication, *Recidivism of Sex Offenders Released from the Arizona Department of Corrections*, at 9 (Feb. 2009), available at <https://cvpcs.asu.edu/sites/default/files/content/projects/Rodriguez%20stevenson.pdf>.

¹⁸ *See* BJS, *Felony Defendants in Large Urban Counties*, 2009—Statistical Table 19 (DOJ 2013), available at <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf> (last visited Dec. 9, 2018); BJS, *Felony Defendants in Large Urban Counties*, 2006 9 (DOJ 2010), available at <https://www.bjs.gov/content/pub/pdf/fdluc06.pdf> (last visited Dec. 9, 2018).

6. Sexual assault does not categorically present a flight risk

Bail historically may be denied for individuals facing the death sentence or life imprisonment based on the reasonable presumption that they would flee to save their lives. *See, e.g., United States v. Kennedy*, 618 F.2d 557, 558-59 (9th Cir. 1980). As noted above, individuals charged with sexual assault in Arizona typically receive terms of years or even probation; Mr. Goodman was sentenced to four years.¹⁹ The presumptive sentence for a first-time offender is 7 years, and the maximum is 14 years. Pet. App. 97. No authority suggests that any sentence less than the death penalty or lifetime imprisonment can support a presumption of flight risk.

7. Conclusion: The lower court’s decision was correct

States cannot detain a person without an individualized finding that the person threatens community safety or presents a flight risk. Mere accusation and a finding of PEPG that a person may have committed sexual assault cannot substitute for this finding. For these reasons, the lower court’s decision was correct, and this Court’s intervention is unnecessary.

II. This Case Is Not a Good Candidate for Revisiting this Court’s Approach to “Facial Challenges”

The State asks this Court to examine the Arizona Supreme Court’s interpretation of “facial” versus “as-applied” challenges. This Court should decline for three reasons.

First, the State’s request is premature. Neither the State nor—more surprisingly—the professor *amici* cited this Court’s most recent explanation of facial-versus-applied challenges in *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015), although the lower court relied on *Patel* in each of the cases that the State disagrees with. *See Simpson v. Miller*, 387 P.3d 1270, 1273-74 (Ariz. 2017); *Morreno v. Brickner*, 416 P.3d 807, 811 (Ariz. 2018); Pet. App. 20 (incorporating

¹⁹ App. 138-43 (*State v. Goodman*, No. CR2017-108708-001, dkt. 55 (Super. Ct., Ariz.)).

Morreno). There has not been a fair chance yet to see whether courts continue to express confusion regarding facial challenges post-*Patel*.

Second, the choice of whether to entertain a “facial” versus “as-applied” challenge is a matter of judicial discretion, not constitutional interpretation. In that sense, the lower court’s decision to invalidate Arizona’s constitutional provision on its face is similar to the lower court’s decision to hear the case after Mr. Goodman had been convicted even though there was no “case or controversy” under Article III of the United States Constitution. *See, e.g., Lee v. Am. Nat. Ins. Co.*, 260 F.3d 997, 1001-02 (9th Cir. 2001) (state courts are not bound by Article III standing requirements). The same principle applies to the state court’s decision to invalidate its own law wholly rather than in part. The difference between “facial” invalidation and “as-applied” invalidation concerns the scope of the remedy, not a court’s substantive interpretation of the law:

When a court pronounces a statute facially invalid, the force of its holding inheres entirely in the doctrines of claim preclusion, issue preclusion, and precedent as well as in the scope of any injunction that the court issues to enforce its judgment. In the case of the Supreme Court, the doctrine of precedent is especially important, because the Court’s precedents on issues of federal law bind all inferior courts.

Richard H. Fallon, Jr., *Fact and Fiction About Facial Challenges*, 99 Cal. L. Rev. 915 (“Fallon”), 974 (2011). The Arizona Supreme Court is not an “inferior court” in the sense that it must heed this Court’s rules regarding procedure or the exercise of its discretion, so long as its procedures and discretionary decisions do not result in a deprivation of a party’s constitutional rights. *See generally Montgomery v. Louisiana*, 136 S. Ct. 718, 732-36 (2016). The Arizona Supreme Court has simply decided to provide a broad remedy rather than a narrow one:

If [a federal court’s hypothetical pronouncement] of facial invalidity [of a state statute] occurred in a class action on behalf of all doctors practicing medicine in the state, it could, of course, bar all prosecutions under the statute. But this result would depend, once again, on the sweep and force of the federal injunction and on the

doctrine of issue preclusion, not on any talismanic force inhering in the terms “facial challenge” or “facial invalidity.” . . . It would much enhance the clarity of the analysis to speak instead about broad and narrow judicial rulings, about the claim and issue preclusive effects of lower court judgments

Fallon at 974. Thus, if the lower court erred in its interpretation of the Constitution, then this Court’s contrary interpretation would control all courts in the nation. But the lower court’s decision to provide a broad remedy has no basis in the Constitution or federal law any more than if its decision to invalidate Prop 103 on its face flowed from its interpretation of the state constitution.

Finally, neither the State nor the lower court dissenters have proposed a viable interpretation of standing, giving this Court little to work with. The State and the dissenters argue that the removal of an entire stage of due process—here, the bail determination—cannot be challenged on its face so long as some defendant, at some point, would have been denied relief *had he received* due process. Under this theory, the State could pass a statute: EVERYONE MUST BE IMPRISONED IMMEDIATELY. And no citizen caught up in the State’s mass arrests could challenge that statute on its face because someone, somewhere in the State of Arizona has absconded after being found guilty, violated their terms of probation, or escaped from the state prison, providing at least one “circumstance” under which “the law can be applied constitutionally.” Pet. 34. Instead, says the State, every single citizen would need to bring an as-applied challenge. Pet 35. That can’t be right. *See Patel*, 135 S. Ct. at 2451 (“[The City’s] logic would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches. For this reason alone, the City’s argument must fail.”). Surely another petitioner can offer this Court a more viable argument.

Besides, the *Salerno* test has a plain meaning when read within its context. This Court’s sentence, “The fact that the Bail Reform Act might operate unconstitutionally under some

conceivable set of circumstances is insufficient to render it wholly invalid,” 481 U.S. at 745, taken within the context of the rest of the opinion, its comparison to the procedures in *Schall*, *id.* at 752, and the other detention cases discussed above and cited within *Salerno*, should be read as a comment on the *accuracy* of the Bail Reform Act. The critical inquiry in all of this Court’s detention jurisprudence has been whether the state or federal government has implemented procedures sufficiently robust to avoid *incorrectly* detaining a person who is neither dangerous nor a flight risk. *Salerno* itself repeatedly said that the Act withstood a facial challenge because it was not “by any means a scattershot attempt to incapacitate those who are merely suspected of these serious crimes,” *id.* at 750, its “procedures . . . are specifically designed to further the accuracy” of future dangerousness, *id.* at 751, and because of the extensive nature of those procedures. Similarly, *Schall* rested on the fact that there did not appear to be “any additional procedures that would significantly improve the accuracy” of the court’s decision, 467 U.S. at 277, and *Addington* required a higher burden “to reduce the chances that inappropriate commitments will be ordered,” 441 U.S. at 427. This Court in *Salerno* meant that the Act’s procedures sufficiently guarded against the risk of error, even if it was not perfect. By contrast, the State would remove all process entirely and let the chips fall where they may. An imperfect process, however, cannot be fairly compared to the complete removal of process. Even the *Salerno* formulation requires states and courts to consider “sets of circumstances” rather than rely on generalizations drawn from untruths told about people other than the defendant. Certainly nothing in *Salerno* or this Court’s other cases allow categorical detention on the basis of dangerousness without individualized proof.

CONCLUSION

For these reasons, Mr. Goodman respectfully asks this Court to deny the petition.

Respectfully submitted this 19th day of December, 2018.

MARICOPA COUNTY PUBLIC DEFENDER

By 

NICHOLAUS PODSIADLIK

Deputy Public Defender

(Counsel of Record)

Downtown Justice Center

620 West Jackson, Suite 4015

Phoenix, Arizona 85003

(602) 506-7711

Nick.Podsiadlik@maricopa.gov

Counsel for RESPONDENT

SFNP121918P

APPENDIX

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Appendix A

Transcript of Proceedings for Feb. 27, 2017, *State v. Goodman*,

No. CR2017-108708-001 (Super. Ct., Ariz.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

vs.

GUY JAMES GOODMAN (001),

Defendant.

No. CR2017-108708-001 DT

Phoenix, Arizona
February 27, 2017
2:07 p.m.

BEFORE COMMISSIONER KEVIN B. WEIN

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

Proceedings recorded by electronic sound recording; transcript produced by AVTranz, an eScribers, LLC company.

KAREN RAILE
Transcriptionist



I N D E XFebruary 27, 2017

<u>PLAINTIFF'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
Patricia Ramirez	7	22	32	--	--

<u>DEFENDANT'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
None					

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EXHIBITSPLAINTIFF'S EXHIBITSNO. DESCRIPTIONIDEVD

None

DEFENDANT'S EXHIBITSNO. DESCRIPTIONIDEVD

None

APPEARANCESFebruary 27, 2017

Judge: Commissioner: Kevin B. Wein

For the Plaintiff:

Kathleen Tyma

Witnesses:

Patricia Ramirez

For the Defendant:

Jamie Jackson

Witnesses:

None

1 Phoenix, Arizona

2 February 27, 2017

3 (Commissioner Kevin B. Wein Presiding)

4 EVIDENTIARY HEARING:

5 THE COURT: State versus Guy Goodman, and it's a PF
6 number, PF2017-108708. Counsel.

7 MS. TYMA: Good afternoon, Your Honor. Katie Tyma on
8 behalf of the State.

9 MR. JACKSON: Jamie Jackson on behalf of Guy Goodman,
10 who's present and in handcuffs, and is seated next to me at the
11 Defense table, Your Honor.

12 THE COURT: Thank you. Sir, please state your name
13 and date of birth.

14 THE DEFENDANT: Guy Goodman,

15 THE COURT: Okay. It's the time set for an
16 evidentiary review hearing. Is the State ready to proceed?

17 MS. TYMA: Yes, Judge.

18 THE COURT: All right. You may call your first
19 witness.

20 MS. TYMA: And before I begin, Judge --

21 THE COURT: Yeah.

22 MS. TYMA: -- I'll be brief. But just for purposes
23 of the record --

24 THE COURT: Sure.

25 MS. TYMA: -- the State does object to holding a

1 hearing in this matter because the State does not believe that
2 Simpson II applies to the charge in this case of sexual
3 assault. Based on what I understand to be the Court's prior --

4 THE COURT: Yeah.

5 MS. TYMA: -- rulings, I am prepared to proceed, but
6 I would ask -- I would ask the Court to vacate the hearing, the
7 State objects. And I would ask the Court to issue a stay if
8 the Court is not inclined to grant the State's request.

9 THE COURT: Thank you. Counsel, you want to be
10 heard?

11 MR. JACKSON: Your Honor, just that we believe it
12 does apply, and based on due process rights for Mr. Goodman,
13 holding him not bondable, and the fact that does not predict
14 future dangerousness. And we feel that it should go forward.

15 THE COURT: Thank you. As the State mentioned, I
16 have ruled on this a couple times. I think one has already
17 been taken up on a special action. So I am going to deny the
18 motion.

19 I do believe paragraph 30 of the Supreme Court's
20 opinion is relevant here. And so for reasons that I've stated
21 on the record before, I am also going to deny the request for a
22 stay at this point.

23 So the State may call its first witness.

24 MS. TYMA: Thank you, Your Honor. The State calls
25 Detective Patricia Ramirez.

1 THE COURT: Thank you.

2 PATRICIA RAMIREZ

3 called as a witness for the Plaintiff, having been duly sworn,
4 testified as follows:

5 THE COURT: Have a seat. Okay, counsel.

6 MS. TYMA: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MS. TYMA:

9 Q Good afternoon, Detective.

10 A Good afternoon.

11 Q If you would, please introduce yourself.

12 A My name is Patricia Ramirez. I'm a detective, a
13 police officer with the City of Tempe. I've been an officer
14 for 15 years, a detective for ten. Currently, I'm assigned in
15 the special victim's unit, and I have been for nine years.

16 Q And during your time with the special victim's unit,
17 did you become involved in the investigation of a subject by
18 the name of Guy James Goodman?

19 A Yes.

20 Q How did you become involved in that investigation?

21 A In May of 2015, this case was reassigned due to
22 Detective Scoville (phonetic) retiring initially; after that,
23 given to Detective Lauren Wallace (phonetic). She then went to
24 a special assignment, and then in the year 2015 it was
25 reassigned to me.

1 Q Fair to say it was still an open investigation at the
2 time it was assigned to you?

3 A Correct.

4 Q And we'll get to talk about what had already occurred
5 in the case in more detail in a moment, but as part of your
6 portion of the investigation, did you have the opportunity to
7 have contact with Mr. Goodman?

8 A Yes.

9 Q And do you see that person here in the courtroom
10 today?

11 A I do.

12 Q Would you please point him out to us and describe
13 what he's wearing?

14 A He's to the right of me. He is in a striped gray and
15 light gray shirt.

16 MS. TYMA: May the record reflect that the witness
17 has identified the Defendant.

18 THE COURT: Yes.

19 MS. TYMA: Thank you.

20 BY MS. TYMA:

21 Q So you indicated you were not the initial case agent
22 assigned to the investigation. How did the matter initially
23 come to police attention?

24 A Sure. November 6th of 2010, our Tempe police patrol
25 division were dispatched out to a location, to a residence in

1 the city of Tempe. Officers then responded to an allegation of
2 a sexual assault investigation where they were the initial
3 officers, the patrol officers. So it was initially
4 investigated by them, and then it came to the special victim's
5 unit.

6 Q So was that by way of somebody having called 911?

7 A Correct.

8 Q Who was the person who called 911 in this matter, if
9 you know?

10 A I do not know who specifically called 911.

11 Q Okay. No problem, we'll get back to that in a
12 moment.

13 Although the case was not assigned to you at that
14 time, was it, after being investigated, as you said, initially
15 by patrol officers, assigned to another detective in the
16 special victim's unit?

17 A Yes.

18 Q And did that person have the opportunity to interview
19 the complaining party, the victim in this matter?

20 A Yes.

21 Q And was that Stephanie (phonetic)?

22 A Correct.

23 Q The -- I should have been more clear. The victim was
24 Stephanie , who was the detective that had the opportunity
25 to interview her?

1 A It was Detective Sue Scoville at the time.

2 Q And at the request of the county attorney's office,
3 did you have the opportunity to speak to Stephanie recently and
4 make sure that she was still interested in prosecution in this
5 matter?

6 A Yes.

7 Q And did she confirm that she was?

8 A She did.

9 Q What information did Stephanie provide to the
10 original detective in this case back in --

11 MR. JACKSON: Objection. Foundation, hearsay. When
12 was that conversation?

13 THE COURT: Counsel?

14 MS. TYMA: I can certainly lay some additional
15 foundation.

16 THE COURT: Thank you.

17 BY MS. TYMA:

18 Q You indicated that an initial call came in to police
19 in November of 2010.

20 A Correct.

21 Q In November of 2010, did the original detective have
22 the opportunity to interview Stephanie?

23 A She did.

24 Q And you indicated that was a detective with the
25 special victim's unit?

1 A Correct.

2 Q Do you know who it was?

3 A Yes. Detective Sue Scoville.

4 Q And what did Stephanie indicate to that detective?

5 A She provided a second statement as she had provided a
6 first statement to the patrol division. And she had stated
7 November 5th of 2010, she was out socializing with a couple
8 friends on Bell Avenue, that they had socialized also with a
9 male who at the time was a promoter for a business, the School
10 of Rock.

11 She had stated that they had consumed alcohol while
12 out, and then they had relocated to her apartment. She was
13 there with a couple female friends as well as the promoter, who
14 was identified as Guy. He came to their apartment, and then
15 through the course of the evening, she decided to go to bed.

16 Her friends asked if they could stay over as well as
17 the male because they had been drinking alcohol. She stated
18 that she was a little reluctant, but she agreed; everybody had
19 consumed alcohol. She went up to the second floor where her
20 bedroom was, they stayed on the first floor.

21 Q You referred to an individual, the promoter, and then
22 I think you said he was known to her as Guy. Was that the
23 person later identified to you as Guy Goodman?

24 A Yes.

25 Q And who you previously identified in court?

1 A Yes.

2 Q Had Stephanie met Guy prior to this evening?

3 A No.

4 Q Was he friends with any of the other individuals that
5 were present that evening to your knowledge?

6 A Not to my knowledge.

7 Q You indicated that she went to the second floor where
8 her bedroom was, and where did everyone else remain?

9 A On the first floor.

10 Q What did she indicate was the next thing she
11 remembered?

12 A She went to sleep, and she next recalled
13 somebody -- being touched on her vaginal area. She recalled
14 that her underwear was pulled down, and she awoke to someone
15 touching her vaginal area. She then identified that person as
16 the male who was there, Guy.

17 She responded by yelling, pushing him away, grabbing
18 her phone, and running outside of the apartment where she then
19 spoke to a person named Mary Jo (phonetic) about the incident.

20 Q You said she described that the person was touching
21 her vaginal area. What specifically did she describe was
22 occurring?

23 A Digital penetration.

24 Q I'm assuming she didn't use that word?

25 A No. She stated that he was fingering her, and that

1 she -- she was awoken by that. She grabbed her personal items
2 after yelling, pushing him away, and she ran out of her own
3 apartment and she ran to her next-door apartment where she knew
4 two people.

5 Q I know we talked about different terminology. Fair
6 to say it was clarified to me he had used his fingers inside
7 her vagina.

8 A Correct.

9 Q And was she able to identify to that detective who
10 that subject was?

11 A She was.

12 Q How did she identify him?

13 A She participated -- in November of 2010, she
14 participated in a photographic lineup where she did identify
15 him.

16 Q And you indicated she left her home at that point and
17 went to, was it a neighbor?

18 A Correct.

19 Q Who was that person that you identified?

20 A That was Mary Jo (phonetic), and an Anthony
21 (phonetic) were just right next door.

22 Q And were those individuals also contacted as part of
23 the investigation?

24 A Correct.

25 Q Back in 2010 by the initial detective?

1 A Yes.

2 Q Were they also contacted by you recently to determine
3 whether they would still be willing to participate in
4 prosecution?

5 A Yes.

6 Q And they indicated they would?

7 A Yes.

8 Q What information did -- let's start with Mary, what
9 information does she have to provide?

10 A Mary Jo confirmed that the victim had come into her
11 apartment, had explained that she had just been awoken to
12 someone touching her in a non-consensual, sexual manner. Mary
13 Jo then reacted by exiting her own -- that apartment, and she
14 entered the victim's apartment where she confronted Guy on the
15 matter. And then she told him to leave after confronting him.

16 Q Did he leave the area?

17 A He did.

18 Q You said that Anthony was also questioned regarding
19 this investigation back in 2010?

20 A Correct.

21 Q Did he have anything to add?

22 A No.

23 Q Or what did he indicate was his --

24 A He confirmed what Mary Jo's actions were, but he was
25 not at the party that evening.

1 Q Thank you for clarifying that.

2 A You're welcome.

3 Q Back on November -- and let me be clear. I think we
4 started talking about November 5th and November 6th. You
5 talked about some events that occurred the evening of
6 November 5th, correct?

7 A Correct.

8 Q The report would have been into the early morning
9 hours of November 6th, 2010, correct?

10 A Correct.

11 Q And the report of when the incident had occurred
12 would have been into November 6th.

13 A Correct.

14 Q On November 6th, did Stephanie participate in a
15 sexual assault examination?

16 A She did.

17 Q And evidence was collected from her sex kit at that
18 time?

19 A Correct.

20 Q Back in December of 2010, did a detective with the
21 special victim's unit have the opportunity to interview
22 Mr. Goodman?

23 A Correct -- yes.

24 Q Was it the same detective that we previously
25 discussed?

1 A It was.

2 Q And what was his statement with regard to the
3 incident?

4 A He confirmed that he was at the party. He stated
5 that he had been drinking alcohol, so he had asked to stay at
6 the apartment. He stated that he couldn't sleep, so he went
7 upstairs. One of the females had said that he would freak out
8 Stephanie if he was seen up there. He said that he would keep
9 his hands to himself.

10 And that he went up and he laid in the bed, he stated
11 that a comforter was covering Stephanie; he was over the
12 comforter, Stephanie was under the comforter. Detective
13 Scoville asked him if there would be any reason why his DNA
14 would be on her vagina, and he declined stating that there was
15 no sexual contact between the two.

16 Q So when asked if there was any reason his DNA would
17 be on her, he said no.

18 A Correct.

19 Q Was a sample of his -- a buccal swab obtained from
20 him for DNA comparison?

21 A That did occur at the same time, yes.

22 Q And you had earlier given us kind of a rundown of the
23 progression of how the case was passed from different
24 detectives on to you. When does the case kind of reinitiate
25 for your purposes?

1 A The case comes to me in April of 2015. I follow
2 along, waiting for the scientific analysis to be completed by
3 the Arizona Department of Public Safety. So during the course
4 of 2015, I'm checking on the case but still waiting for the
5 analysis. And then in May of 2016, the DNA, I receive a
6 scientific report from Arizona DPS.

7 Q And what was the result of the report that you
8 received?

9 A So in May of 2016, I received that a DNA match comes
10 back from the victim's genital swabs, and also a match to Guy
11 Goodman's DNA.

12 Q And I just want to make sure I understand what you
13 mean by that. You said there was a match to Guy Goodman's DNA,
14 which was located in what part of the victim's sex kit?

15 A The genital swab, the exterior genital swab, so.

16 Q What was your next step in the investigation after
17 that came back in May of 2016?

18 A I then began to look for the victim because the time
19 had gone by, by all the years. Our department would like that
20 contact in person, certainly it can be difficult that I'm now
21 coming all these years later. So in November of 2016, I was
22 finally able to find the victim to see if she was still willing
23 to go forward and aid in prosecution. She stated that she was.

24 Q So meaning when this number of years have passed,
25 your policy or procedure is not to just start calling people on

1 the phone asking about a rape that occurred seven years ago?

2 A That is correct.

3 Q Okay. Okay. And you indicated she did confirm, once
4 you were able to contact her. Was your next step in the
5 investigation then to re-contact Mr. Goodman?

6 A It was.

7 Q Were you successful in doing that?

8 A I was.

9 Q Did you ask -- did you read him his Miranda rights
10 and ask if he would like to speak with you?

11 A I advised him of his Miranda rights, and then he
12 continued with the interview.

13 Q And thank you for clarifying that. What -- and was
14 this in January of this year that you had personal contact with
15 Mr. Goodman?

16 A It was February.

17 Q That's what I meant, thank you.

18 A Right, February 22nd of this year.

19 Q Did you give him the opportunity, again, to tell his
20 side of the story of what occurred back in November of 2010?

21 A I did.

22 Q And what was his first version of events?

23 A He -- he did recall the location. He recalled
24 Detective Scoville making contact with him and getting a sample
25 of his DNA. He then stated that they had consumed alcohol.

1 He had stated that he slept over, but that he slept
2 on an ottoman. He actually denied sleeping on the bed with
3 Stephanie, but stated that he was on the ottoman with other
4 females. And then as the interview progressed, he slightly
5 changed that, and he continued to state that, although putting
6 himself at the scene.

7 Q And I'll get back to that in just a moment. We
8 discussed this being Stephanie's residence. Was her residence
9 within the city of Tempe?

10 A Yes.

11 Q And that was the location that he was acknowledging
12 having been present at when you spoke with him?

13 A Correct.

14 Q After he provided you with that information, did you
15 question him further?

16 A I did.

17 Q How so?

18 A I then in the interview informed him of the DPS
19 analysis, the scientific report that I had, and I reminded him
20 of his initial statements in which he denied that anything
21 would come back on the victim as he did not have a sexual
22 relationship -- any contact with her. I then informed him of
23 the DNA match.

24 Q Prior to informing him of the DNA match, did you
25 again, as you said, remind him of his previous statement that

1 he had not had sexual contact with anybody at the party?

2 A Correct.

3 Q And he confirmed that?

4 A Correct.

5 Q That he said he awoke to a woman pushing him.

6 A He awoke to a woman pushing him and that he was
7 blamed of a sexual assault, but that he had denied the sexual
8 assault and sexual contact.

9 Q And then you mentioned that you confronted him with
10 the scientific results. What was his response to that?

11 A He then stated that -- he then admitted to the
12 digital penetration. He had denied penile/vaginal intercourse
13 happening, but then he then stated that he was drinking, that
14 he -- he then stated that he walked upstairs to her bedroom,
15 that she was asleep, and that he had -- he stated that she had
16 flirted with him earlier in the evening, that he was hoping
17 that she would, in a sense, agree to the contact, but that she
18 was asleep when he performed the digital penetration; and then
19 she awoke and pushed him away, and in a sense freaked out on
20 him.

21 Q So I want to make sure I'm understanding you
22 correctly. He agreed that she was asleep when he came into the
23 room?

24 A Correct, yes.

25 Q Agreed that she was asleep when he began to digitally

1 penetrate her?

2 A Yes.

3 Q But indicated to you he hoped she would just agree to
4 it after the fact.

5 A Yes.

6 Q Did you ask him any further questions or information
7 about that incident and that victim?

8 A I did continue to confront him on her being asleep,
9 not being able to give consent because she was asleep, she had
10 not agreed to it. And at a point in the interview, I was using
11 a body camera. He did look at the body camera, pointed it at
12 stating that he was speaking to her, and that he apologized for
13 what he did to her.

14 MS. TYMA: If I may have just a moment, Your Honor.

15 THE COURT: Uh-huh.

16 (Pause)

17 BY MS. TYMA:

18 Q Just a couple other points of clarification,
19 Detective. At one point during your interview, did you
20 ask -- after confronting him with the victim's statement, did
21 you ask him if the victim was lying?

22 A I did.

23 Q And he responded, obviously not.

24 A Correct.

25 MS. TYMA: I have no further questions.

1 THE COURT: Thank you. Counsel?

2 MR. JACKSON: Your Honor, do you mind if I sit, or --

3 THE COURT: However you're comfortable.

4 CROSS-EXAMINATION

5 BY MR. JACKSON:

6 Q Stephanie was interviewed back the night that this
7 allegedly happened, correct?

8 A Correct.

9 Q In the early morning?

10 A Correct.

11 Q Before the SANE exam?

12 A Correct.

13 Q And it was at that point she said she was unsure if
14 he penetrated her with his fingers, correct?

15 A She -- that is correct.

16 Q She did say that he definitely was touching the
17 outside.

18 A Correct.

19 Q She said she was drinking herself.

20 A That is correct.

21 Q She -- Guy was lying on his -- beside her as she was
22 lying on her side?

23 A Correct.

24 Q And he was behind her?

25 A Correct.

1 Q Did she mention how long the touching of her vagina
2 lasted?

3 A I do not recall that.

4 Q But she didn't say, stop, when he was touching her
5 vagina, did she?

6 A She abruptly awoke to someone touching her, and she
7 pushed him away, and she ran out of her apartment.

8 Q In fact, that didn't happen until his penis touched
9 her buttocks, correct? The back of her butt. Then she said
10 stop.

11 A She -- she gave -- she had initially talked about his
12 penis, but then she also had stated she wasn't sure, for
13 example, if it was hard or soft. But her statement was
14 consistent in terms of, it was not consensual, she was asleep,
15 she awoke to someone sexually touching her; she grabbed two
16 personal items and she ran out of the apartment while
17 screaming. People heard her screaming.

18 Q Specifically her statements are to Sergeant
19 Willickson (sic), which was the first person on the scene,
20 correct?

21 A Wilcoxson (phonetic), Sergeant Wilcoxson, yes.

22 Q However, later she stated she was unsure if
23 penetration occurred, but he definitely was touching the
24 outside of the vulva. You agree with that?

25 A Right. Yes.

1 Q He then began attempting to put his penis inside her
2 vagina. Did he say that?

3 A She?

4 Q Yes.

5 A She stated that, yes.

6 Q Yes. So at this point, she still hasn't -- not said
7 stop. It's not until she said no and pulled away was when he
8 tried to put her -- his penis in her vagina, correct? Would
9 you like to --

10 A Correct.

11 Q -- refresh -- you agree with that?

12 A I agree with that.

13 Q There was no physical injuries to Stephanie?

14 A That is correct.

15 Q No bruises?

16 A That is correct.

17 Q Wasn't violently punching her, holding her down?

18 A She did not report that.

19 Q Stephanie actually did not call the police, did she?

20 A I could not recall who specifically called the
21 police.

22 Q In fact, she wasn't going to call the police, but
23 Mary Jo did, correct?

24 A Mary Jo assisted her, yes.

25 Q Assisted her or called the police for her because she

1 want going to do it?

2 A Again, that wasn't clear for me, so I'm uncomfortable
3 saying who called the police when earlier I've stated twice
4 that I wasn't sure who called specifically.

5 Q There was other individuals that were in the
6 apartment, correct, and they were interviewed by detectives?

7 A They were interviewed by -- yes, that's correct.

8 Q Now, it's Li Mae (phonetic) and Ashley (phonetic)?

9 A Correct.

10 Q Stephanie denied, at least to the detective when she
11 was interviewed, that she was flirting with Mr. Goodman,
12 correct?

13 A That's correct.

14 Q But Ashley had testified -- or told the police that
15 Stephanie was grinding and flirting with Mr. Goodman; is that
16 not correct?

17 A She didn't say flirting, she said grinding while
18 dancing earlier on Bell Avenue.

19 Q And they were all flirting. He was flirting with the
20 girls.

21 A He stated that in his statement that he was
22 flirting --

23 Q Ashley stated that.

24 A Ashley -- Ashley stated --

25 MS. TYMA: I'm going to object to hearsay as to

1 anyone's statements besides the victim, the Defendant, or the
2 two witnesses that the detective indicated she contacted.
3 Otherwise we're talking about statements that were not made to
4 this detective seven years ago that she has not followed up on.
5 She hasn't had contact with those individuals.

6 BY MR. JACKSON:

7 Q So you did not contact Li Mae or Ashley?

8 A They have not returned my call, no.

9 Q You are now in charge of the investigation in this
10 case, correct?

11 A I am case agent today.

12 Q So you have reviewed all the police reports?

13 A I have.

14 Q You reviewed the SANE examiner's report or their
15 statements?

16 A I didn't specifically review the SANE exam report. I
17 took Detective Scoville's report.

18 Q But you looked at his report --

19 A Her report.

20 Q Her report, I'm sorry.

21 A That's okay.

22 Q -- of the SANE exam, correct? You've reviewed that?

23 A Correct. Yes.

24 Q Stephanie admitted she had been drinking?

25 A She did.

1 Q She told the SANE nurse that -- she never mentioned
2 anything about penetration to the SANE nurse, did she?

3 A That is correct.

4 Q Just that he was rubbing her vagina with his hand?

5 A Her statement slightly changed, although it didn't
6 change away from nonconsensual sexual contact. But her
7 statement did slightly change in terms of it happening fast,
8 and what happened specifically. So she, in recalling --

9 MR. JACKSON: Objection. Nonresponsive.

10 BY MR. JACKSON:

11 Q Did she tell the SANE nurse that he was rubbing my
12 vagina with his hand, and did not mention for penetration?

13 MS. TYMA: I'd ask that we wait for the Court to rule
14 on the objection.

15 THE COURT: I'm going to overrule the objection, and
16 I will allow the Defense to follow up the question.

17 BY MR. JACKSON:

18 Q In reviewing the report, there is a report that the
19 detective talked with a SANE nurse, correct?

20 A An officer talked to a SANE nurse, yes.

21 Q Yes. And in that report, Stephanie admitted she had
22 been drinking.

23 A Correct, sir.

24 Q And she said that Guy was rubbing her vagina with his
25 hand, correct?

1 A Correct.

2 Q Never said anything to them about penetration.

3 A Correct.

4 Q You spoke with Mary Jo, correct?

5 A I did.

6 Q She originally had said that she had confronted

7 Mr. Goodman, correct?

8 A Correct.

9 Q Originally she said that happened in the bedroom at
10 one point, that he was lying on his back in the bedroom?

11 A Correct.

12 Q But later said that that happened in the living room
13 where Li Mae and Ashley were, correct?

14 A Correct.

15 Q Did you ever clarify which one it was with her?

16 A No.

17 Q But she gave those two versions of it.

18 A That's correct.

19 Q Mr. Goodman didn't make any admissions at that point,
20 did he?

21 A No.

22 Q But he was confronted by the three girls.

23 A Correct.

24 Q Now, I want to talk a little bit about, you
25 said -- what happened from 2010 to 2015 with this DNA? Why was

1 the work not done?

2 A It was at the lab, so Detective Scoville submitted
3 that to the lab, and I was waiting on the results from that.
4 Well, Detective Wallace was actually waiting on the results.
5 Detective Scoville had retired.

6 Q When did Scoville retire?

7 A I don't know specifically when she retired.

8 Q Was it closer to 2010 or closer to 2015?

9 A Closer to 2015, but she went to the patrol division.
10 She ended her last years in the patrol division. So she left
11 the special victim's unit, cases are then reassigned if they're
12 still pending; for example, DPS analysis.

13 So then it was given to Detective Wallace, and then
14 in the meantime, our department was waiting on the DNA results
15 to come back.

16 Q From 2010?

17 A That is correct.

18 Q From November 2010.

19 A That is correct, sir.

20 Q And from 2010 to 2016 -- or 2017 when you had contact
21 with Mr. Goodman, you have any other cases that you suspect
22 Mr. Goodman of?

23 A I do not have any other investigations that I'm
24 assigned to in reference to Mr. Goodman being an investigative
25 lead or being a part of, no.

1 Q And are you aware of any that -- of -- that he might
2 be involved in?

3 A No, sir.

4 Q And in 2010, Mr. Goodman cooperated with detectives
5 when they came and contacted him.

6 A He did.

7 Q And in 2017 you contacted him, and he was cooperative
8 with you.

9 A He was.

10 Q And in that interview with you, you actually were the
11 first one to mention that the victim had accused him of
12 digitally penetrating her before he ever admitted to doing
13 that, correct?

14 A Correct.

15 Q So prior to you saying that that's what she alleged,
16 he denied any involvement.

17 A He denied any sexual contact with the victim.

18 Q And it wasn't until you said, that's what she was
19 saying, he was drunk, that he admitted to the penetration,
20 correct?

21 A Can you ask me that one more time?

22 Q It wasn't until -- you already admitted -- or said
23 that you mentioned to him first that Stephanie was accusing him
24 of something, correct? You said, you have a witness that's
25 accusing you of something, correct?

1 A Correct.

2 Q That it was after that that he admitted to the
3 penetration?

4 A He admitted to the penetration after I informed him
5 that I had a match of his DNA, that science was there involved
6 in the case. And then he admitted to sexual contact.

7 Q And also that Stephanie had -- you had already told
8 him what she accused him of before he admitted it, correct?

9 A He was aware that I was interviewing him in reference
10 to a sexual assault investigation, yes.

11 Q But specifically, that the victim said that
12 he's -- that he touched her with his penis, because he did
13 not -- or with his finger --

14 A That was --

15 Q -- because he denied any penis -- penile touching,
16 correct?

17 A That's correct, sir.

18 Q Are you aware -- have you seen the report for the
19 DNA?

20 A I have.

21 Q And do you know what type of DNA they said they had
22 of Mr. --

23 A It's a Y-STR, which is the male DNA, the male
24 chromosome. It's not spermatozoa match, it's DNA, but it's the
25 Y-STR.

1 Q And there's -- did they take multiple swabs of
2 Stephanie, are you aware, when they did the SANE report?
3 Specifically, the DNA that came back to him was on the outside
4 of her vagina, correct?

5 A It -- it is -- so what is on the report, it is the
6 exterior genital swab.

7 Q And they also sometimes do an internal swabbing,
8 correct?

9 A You would have to ask the nurse in charge of this
10 case.

11 Q But you're not aware -- they don't have any DNA from
12 the inside of her vagina?

13 A I can only respond to what the report is. It's the
14 external genital swab.

15 MR. JACKSON: No further questions.

16 THE COURT: Redirect?

17 MS. TYMA: Thank you, Judge. Just briefly.

18 REDIRECT EXAMINATION

19 BY MS. TYMA:

20 Q Detective, you were asked some questions about
21 whether Stephanie initially indicated she was unsure if there
22 was penetration; do you recall that line of questioning?

23 A I do.

24 Q Was that something that was clarified in the
25 interview with the initial detective on the case?

1 A Yes.

2 Q And how was it made certain that penetration had
3 occurred based on that interview?

4 A She had reported -- she had initially stated that she
5 observed Mr. Goodman's penis. She clearly stated she saw his
6 penis, but she could not tell -- at one point she said it was
7 erect, but then she went back and said she didn't know if it
8 was soft or erect, but that she had stated that he had
9 performed nonconsensual digital penetration with her.

10 Q So -- and again, please correct me if I make a
11 mistake, my understanding of your testimony is she was unsure
12 if penile/vaginal penetration had occurred.

13 A Correct.

14 Q But that she was clear that digital penetration had
15 occurred.

16 A Correct.

17 Q Is there a difference between the interview a patrol
18 officer will do initially on scene versus the specialized
19 interview you as a special victim's unit detective will later
20 do?

21 A Yes.

22 Q How so?

23 A Well, our training is different. We are all in our
24 unit. We're also child forensic interview trainers, and we can
25 then use that also in an adult interview. Plus we go through

1 special training in terms of sexual assault and trauma, and
2 we -- we are given more time in a sense.

3 It is -- we have to respond to calls. The patrol
4 officer is going to take that initial statement but it is not
5 as extensive due to training versus when it comes down to the
6 Criminal Investigations Bureau, we do have that training. And
7 so it is a different interview -- more in-depth, I would say,
8 with the second interview.

9 Q And not only is your training different, but is your
10 role a little bit different in the investigation?

11 A Well, we are neutral fact finders.

12 Q And let me clarify. Is the patrol officer's role a
13 little bit different than yours as a detective?

14 A Yes.

15 Q In what type of information they will obtain, or how
16 much.

17 A Yes.

18 Q How so?

19 A So the patrol officer is going to get the initial
20 statements, but even as -- in terms of, like, child
21 investigations, our policy is they are not going to do certain
22 interviews; and the same thing for adult interviews. They are
23 going to get the basics, like in if we have a crime, if we
24 don't have a crime, but do the calls for service.

25 Their role, it is going to be a briefer interview,

1 but we definitely know we're investigating, for example, in
2 this case, a sexual assault. And then we move to do a medical
3 forensic examination. And then after the medical forensic
4 examination, the person typically will come to our station
5 or -- it just depends on time, trauma, if the victim needs
6 rest. There's a lot that goes in before that second interview
7 actually happens.

8 Q Thank you for clarifying that. You were asked a
9 number of questions about all the times that Stephanie did not
10 say "stop." During the time frame where Stephanie did not say
11 stop, was Stephanie asleep according to her statement?

12 A Yes, she was asleep.

13 Q Was she asleep according to the Defendant's
14 statement?

15 A Yes, she was asleep according to his statement.

16 Q And according to his statement, she was asleep when
17 he inserted his fingers in her vagina.

18 A Correct.

19 Q And again, he agreed that penetration of the digital
20 nature did occur.

21 A Correct.

22 Q When -- and Stephanie was also clear that she awoke
23 to the conduct already occurring?

24 A That is correct.

25 Q And how did she react?

1 A She -- she awoke to finding her underwear pulled
2 down, down to her thighs, and she reacted by yelling, pushing
3 him away, grabbing two personal items, and running out of the
4 apartment and going to the neighbors.

5 Q And when you spoke to the Defendant, he agreed that
6 she pushed him.

7 A That is correct.

8 Q You were asked about whether you have any other cases
9 currently involving Mr. Goodman. Did you review briefly his
10 criminal history as part of your investigation?

11 A I did.

12 Q And did you find that he had a number of prior
13 arrests?

14 A He did.

15 Q For felony theft?

16 A Correct.

17 Q Arson of a structure?

18 A Correct.

19 Q Endangerment?

20 A Yes.

21 Q And are you aware that he spent time in prison for at
22 least one of those offenses?

23 A Yes.

24 Q You were asked some questions about, we'll call it
25 the Defendant's final statement to you, his admissions. Prior

1 to admitting to digital penetration, the Defendant's story was
2 not -- that he touched her, but only outside the vagina,
3 correct?

4 A Correct.

5 Q It was a flat-out denial of any sexual contact.

6 A That is correct.

7 Q You had mentioned in your testimony that the DNA
8 result was a Y-STR result and not sperm.

9 A Correct.

10 Q That would be consistent with Stephanie's disclosure;
11 fair to say?

12 A That's correct.

13 Q She wasn't disclosing that he had ejaculated on her?

14 A Correct.

15 Q In your experience, is it a common -- something that
16 you commonly run into in your interviews that a victim or a
17 witness might describe rubbing or a contact that has a
18 different legal definition for you?

19 A That's correct.

20 Q And maybe you can help clarify that.

21 A So a -- well --

22 Q I can maybe ask a better question.

23 A Okay. Please.

24 Q Are there times where the disclosure indicates
25 penetration occurred, but the description might be that there

1 was rubbing or that there wasn't sex?

2 A That's correct.

3 Q And is that something that you clarify as part of
4 your interviews?

5 A I do.

6 Q Whether the slightest penetration has occurred?

7 A Yes.

8 MS. TYMA: I have no further questions, Your Honor.

9 THE COURT: Thank you. You may step down.

10 Any other witnesses?

11 MS. TYMA: No, Your Honor.

12 THE COURT: All right. Closing?

13 MS. TYMA: Thank you, Your Honor.

14 First I would ask the Court as to Simpson I to find
15 proof evident or presumption great that the Defendant did
16 commit the crime of sexual assault. The victim disclosed
17 having been asleep throughout the entire contact. The
18 Defendant admitted, in fact, that the victim was asleep when
19 the sexual contact occurred.

20 He admitted that he didn't have her consent because
21 she was asleep, but was hoping that maybe she would agree with
22 it after the fact and just go with it. She didn't. That
23 testimony was clear from both the victim's statement as well as
24 the Defendant's statement.

25 They're both consistent that digital penetration

1 occurred, they're both consistent that she was asleep, and
2 they're both consistent that she pushed him away when she was
3 able to wake up and discover what was happening. The idea that
4 she was supposed to say stop or no while she was asleep is
5 certainly not a requirement under the statute.

6 It is clear that not only was she not consenting
7 while she was asleep, but it's clear from his statement that he
8 was very aware she was not consenting. And again, that as soon
9 as she did wake up, she ended the contact, pushed him away, and
10 police were contacted.

11 With regard to the second prong, the Defendant
12 represents a danger to the community for a number of reasons.
13 The Defendant does have a prior criminal history. He has been
14 to prison for -- and the Court can take judicial notice if the
15 Court wants to look up any of the information. I'm
16 specifically referencing CR2005-031521.

17 In that matter, the Defendant was given probation for
18 his first felony offense, and repeatedly did not comply with
19 probation and was revoked to prison for that matter. If that's
20 not an indicator of the Defendant's future conduct, I don't
21 know what is.

22 The Defendant was given the opportunity to comply
23 with probation, very similar to what the Court may consider in
24 terms of asking the Defendant to comply with certain release
25 conditions. Well, he was given that opportunity and he failed

1 to comply so many times, and to such a degree that he was
2 revoked from probation and sent to prison. If that's not an
3 indicator of future conduct, I don't know what is.

4 But aside from the Defendant's prior criminal
5 history, prior chance at obeying the law and failing to do so,
6 I would ask the Court to consider the dangerousness based upon
7 the facts of this case. The fact that the Defendant may be an
8 opportunistic rapist, an opportunistic sexual assault offender
9 does not make him less dangerous.

10 The opportunity that he takes advantage of will
11 continue to present itself, so he does represent a continuing
12 danger. The fact that the victim was by all accounts asleep
13 throughout the entire contact also demonstrates the danger that
14 the Defendant represents in this matter.

15 With regard to any other release conditions, I would
16 ask the Court to consider the prior criminal history, the
17 failure to comply with probation, the repeated arrests and
18 police contacts; as well as the fact that essentially, what the
19 Defense will be asking the Court to do is to impose terms
20 asking the Defendant to comply with the law when, after the
21 Court finds proof evident presumption great, what we know is
22 that the Defendant has refused to do that in the past.

23 When we have an individual, as in this case, who not
24 only in the facts underlying this case chose to ignore the law,
25 ignore the social and moral constraints of not engaging in

1 sexual contact with an individual while they're asleep, as well
2 as the prior criminal history that demonstrates he will
3 repeatedly disregard a court order and disregard a law, I don't
4 see how the Court can in this case then hope that in this
5 instance, the Defendant will obey a court order despite the
6 previous indications.

7 So that's why in this particular case, Your Honor,
8 the State does not believe that any other release conditions
9 would be sufficient to protect the community.

10 And if I may have just a moment, Judge. Never mind.
11 I will -- if the Court's going to issue a bond, I just want to
12 be heard with regard to the victim's --

13 THE COURT: And if I decide that there's a bond, I'll
14 let you --

15 MS. TYMA: Thank you.

16 THE COURT: One question I have, is the 2005 matter
17 the only -- the extent of the criminal history?

18 MS. TYMA: I can -- that's the only ICCES conviction
19 that I located.

20 THE COURT: Okay.

21 MS. TYMA: There is -- and I know the Court and
22 counsel have access to the same documents that I do. Just to
23 bring to the Court's attention, there was positive drug tests
24 during the probation matter, failures to report, failures to
25 comply with other terms, DUI arrests; so of course, DUI arrests

1 don't show up for me in ICCES. Failure to take a --

2 THE COURT: No additional criminal convictions other
3 than this CR2005 theft, correct?

4 MS. TYMA: I don't know that for certain, Judge.
5 That was all I located in the short --

6 THE COURT: Let me ask you a different question. Do
7 you have any evidence that there are any additional
8 arrests -- or any additional convictions?

9 MS. TYMA: I don't have anything else for the Court
10 right now. Thank you, Judge.

11 THE COURT: Counsel.

12 MR. JACKSON: Your Honor, as to the first factor of
13 proof evident presumption great, I would argue that the State
14 has not met that burden in this case. We have a victim here
15 who herself is saying she's unsure if penetration occurred.

16 The detective later tried to say that the penetration
17 was regarding to the penile/vaginal penetration, which is not
18 what I asked her specifically, where she said that as one
19 penetrated her vagina with his fingers, however later she
20 stated she was unsure if penetration occurred, but he
21 definitely was touching the outside of her vulva. There was no
22 mention of any penile touching of the vulva.

23 So that could only be the finger penetration they're
24 talking to. There is no other evidence besides her testimony
25 that there was any penetration. The DNA, the touch DNA is on

1 the outside of the vagina.

2 As to the confession, again, it is only after the
3 detective has manipulated the confession by saying what's
4 happened and getting him to a, hey, it would be better for you
5 if you say this or that; and I think that given that, the State
6 has not met their burden in this case.

7 Regardless of the proof evident presumption great, I
8 think the next factor would be the inherent dangerousness of
9 Mr. Goodman. Here we have a sexual assault that is nonviolent.
10 The detective was asked if there was any other investigations
11 open for this.

12 There's no -- we're almost talking seven years ago.
13 If this was so dangerous -- they sat on DNA for five years, and
14 in a lab. Nobody further went out to check on, hey, what's
15 going on with this. I think that shows that, you know, this
16 wasn't a priority because of dangerousness.

17 The State's argument that because he violated, in
18 2005, over 12 years ago when he was 18 years old, that he is a
19 danger to society because of the theft I think is -- I think
20 it's crazy. I think a -- there's plenty of provisions that can
21 be put in place to protect the community.

22 We have an ankle monitor, we have pretrial services.
23 We can have zoning restrictions on where he can go, curfew. So
24 I feel -- and obviously I think you said if we are going to do
25 a bond, we can discuss later what the -- argue a bond or --

1 THE COURT: Yeah, let me -- focus just on the
2 non-bondability. If I decide to do a -- if I decide to
3 implement one, I'll allow both sides the opportunity to be
4 heard on release conditions.

5 MR. JACKSON: I think, you know, we -- we get the
6 constriction. We have to look at Salerno (phonetic) here and
7 look at the individual factors and determinations. Here, there
8 is no inherent danger, there is no injury, there is no
9 violence, there is no danger to the community.

10 I mean, we sat individuals -- if you're likening it
11 to people who kill people -- to get a bond in the future, and
12 they've done more violence than Mr. Goodman. Obviously, the
13 nature and the allegation of the charges are one of a sexual
14 assault where an individual could fear that they were violated,
15 but there's no danger in this to future victims, especially if
16 the Court can put in --

17 It's not just that there's no future danger, it's
18 that there's nothing to put in place to protect against those
19 future dangers, and we do have that -- we can put a bond on, we
20 can put an ankle monitor, we can put restrictions on the
21 curfew. And again, I think that trying to liken the fact that
22 2005, over 12 years ago, that there was a failure to comply
23 with those is not indicative of what's going to happen in the
24 future.

25 THE COURT: Okay. As to the first point, I do

1 believe that there is proof evident or presumption great that
2 the Defendant did commit this offense. I think the victim's
3 reporting, which does -- at least in the opinion of this Court
4 is credible.

5 The fact that Defendant's identification -- or,
6 excuse me, the victim's identification of the Defendant
7 occurred as well as Defendant's own admissions, I think taken
8 together, those are factors -- or that does meet the State's
9 burden of proof evident and presumption great that this offense
10 was committed, and was committed by the Defendant.

11 Moving on to the second factor, I do not believe,
12 based on everything that I've seen, that the State has met its
13 burden of clear and convincing evidence to show that this
14 Defendant is an ongoing danger to this victim or to the
15 community. There is no question the Defendant was a danger to
16 the victim on the night in question.

17 What I need to weigh is whether or not Defendant is
18 an ongoing danger, and I have not heard evidence that rises to
19 the level of clear and convincing evidence that demonstrates
20 that the Defendant is in fact an ongoing danger to the
21 community and/or this victim in particular. For that reason, I
22 do believe Defendant is entitled to a bond on this matter.

23 I will hear from both the State and Defense as to
24 release conditions.

25 MS. TYMA: Thank you, Judge. I would ask the Court

1 to impose a \$250,000 bond in this case. The Defendant, as the
2 Court has heard, does have a prior history as well as multiple
3 police contacts, as well -- and arrests, which is one of the
4 factors the Court can consider in addition to convictions; as
5 well as his prior poor performance on probation.

6 A number of positive drug tests are noted in the
7 probation documentation, testing positive for cocaine, failing
8 to take advantage of substance abuse treatment options, and as
9 the Court is aware, having been -- having to be revoked to
10 prison for noncompliance.

11 With regard to dangerousness, not as it relates to
12 the non-bondable argument, but as it relates to his release
13 conditions, the State does believe that having committed this
14 offense and having a prior history of noncompliance is
15 sufficient to warrant a substantial bond in this case. So I
16 would ask the Court to impose a \$250,000 bond.

17 I would also ask the Court to impose electronic
18 monitoring as required by statute with house arrest, with a
19 curfew to later be determined by pretrial services if they find
20 it appropriate.

21 Thank you, Judge.

22 THE COURT: One second. Go ahead, counsel.

23 MR. JACKSON: Your Honor, we're asking that you place
24 a \$35,000 bond on Mr. Goodman with ankle monitor, with a
25 curfew. As it stands now, Mr. Goodman was employed; he does

1 have employment if he is released.

2 Recently, in the last few years, he has lost his
3 mother. He does have a stable place to live. He has -- was
4 working a full-time job, was working -- that's where the
5 detective actually found him was through his employment where
6 he has been for about a year and a half at Dunkin Donuts.

7 I think the bond is appropriate. I think a \$250,000
8 bond to an indigent is essentially under Rule 8 -- or the 8th
9 Amendment, is like being held non-bondable.

10 THE COURT: Thank you. Okay. I am going to impose a
11 bond in this matter. I am going to impose a \$70,000 secured
12 appearance bond. If Defendant is able to post that bond he
13 shall be released to pretrial services with electronic
14 monitoring. I will allow adult probation to determine the
15 terms of the electronic monitoring that will be installed
16 before he is released.

17 Defendant is obviously to have no contact with the
18 victim whatsoever, not to return to the scene of the alleged
19 offense; not to possess any weapons; not to drink any alcoholic
20 beverages and drive or drive without a valid driver's license.
21 He is ordered to continue to reside at his present local
22 address.

23 Any other conditions the State wants to argue for?

24 MS. TYMA: Not at this time, Judge. Thank you.

25 THE COURT: All right. Anything else from the

1 Defense?

2 MR. JACKSON: Nothing, Your Honor.

3 THE COURT: All right. Thank you very much.

4 (Proceedings concluded at 3:02 p.m.)

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CERTIFICATE

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/s/

KAREN RAILE
Transcriber

March 10, 2017

Appendix B

State v. Minniefield, CR2015-00878-001 dkts. 1 & 57 (Super. Ct., Ariz.)

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Lee White
Deputy County Attorney
Bar ID #: 017551
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *M. Johnston*
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15 JAN -8 PM 4:45

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

TRAYLYN MINNIEFIELD,

Defendant.

CR 2015 -0 0 0 0 7 8 -0 0 1

INDICTMENT
632 GJ 142

**COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY (TRAYLYN MINNIEFIELD)**
**COUNT 2: KIDNAPPING, A CLASS 2
FELONY (TRAYLYN MINNIEFIELD)**

The Grand Jurors of Maricopa County, Arizona, accuse TRAYLYN MINNIEFIELD, on
January 8, 2015, charging that in Maricopa County, Arizona:

COUNT 1:

TRAYLYN MINNIEFIELD, on or about January 13, 2013, intentionally or knowingly, did
engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of
VICTIM A, in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and
13-801.

COUNT 2:

TRAYLYN MINNIEFIELD, on or about January 13, 2013, knowingly did restrain VICTIM A with the intent to inflict death, physical injury, or a sexual offense on her or to otherwise aid in the commission of a felony, in violation of A.R.S. §§ 13-1304, 13-1301, 13-701, 13-702, and 13-801.

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY



Lee White
Deputy County Attorney

LW/jdb

A True Bill

("A True Bill")

Date: January 8, 2015



FOREPERSON OF THE GRAND JURY

COURT INFORMATION SHEET (CIS)

COUNTY ATTORNEY CASE NO: 0131534338

STATE v. TRAYLYN MINNIEFIELD

Aliases:

Defendant's

WARRANT - IN CUSTODY OTHER CHARGES

Last Known Address:

Phoenix AZ 85051

Defendant's Attorney:

John Dewitt
180 E. Coronado Road #66
Phoenix, AZ 85004

CR 2015 - 000078 - 001

DEFENDANT'S DESCRIPTION:

Race: B Sex: M Hair: BLK Eyes: BRO Wgt: 180 Hgt: 5'06 DOB:

FBI#: _____ SID#: _____ Booking#: P939720 Soc Sec#: UNK

FILING STATUS:

Date Filed: _____ Court #:

Grand Jury #: 632 GJ 142

Date Indictment Filed: January 8, 2015

Attorney: Lee White

Bar ID: 017551

Location: Downtown

CHARGES:

COUNT 1: SEXUAL ASSAULT, A CLASS 2 FELONY

COUNT 2: KIDNAPPING, A CLASS 2 FELONY

<u>COUNT</u>	<u>ARS LITERAL</u>	<u>DATE OF CRIME</u>	<u>PCN</u>
1	13-1406A	1/13/2013	
2	13-1304A3	1/13/2013	

DEPARTMENTAL REPORTS:

DR 201300071137 - Phoenix Police Department

CO-DEFENDANTS:

IMPORTANT NOTICE

CR 2015 -000878-001

THIS IS A JUVENILE VICTIM SEX CRIME CASE

1-22-16 E. Wm

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-000878-001 DT

12/16/2015

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
E. Estrella/S. Cornfield
Deputy

STATE OF ARIZONA

LEE S WHITE

v.

TRAYLYN JAMES MINNIEFIELD (001)

ALBERT H DUNCAN

APO-SENTENCINGS-CCC
APPEALS-CCC
D & C MATERIALS-CSC
DISPOSITION CLERK-CSC
MCSO-ATTN RECORDS MANAGER
RFR

SUSPENSION OF SENTENCE - PROBATION GRANTED

10:50 a.m.

Courtroom CCB 9A

State's Attorney: Lindsey Coates
Defendant's Attorney: Albert Duncan
Defendant: Present

Court Reporter, Scott Kindle, is present.

A record of the proceeding is also made by audio and/or videotape.

Count(s) 1 and 2: WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-000878-001 DT

12/16/2015

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1 (Amended) Attempted Sexual Assault

Class 3 Felony

A.R.S. § 13-1001, 1406, 1401, 3821, 610, 902, 701, 702, and 801

Date of Offense: 1/13/2013

Non Dangerous - Non Repetitive

OFFENSE: Count 2 Kidnapping

Class 2 Felony

A.R.S. § 13-1304, 1301, 610, 701, 702, and 801

Date of Offense: 1/13/2013

Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on probation for:

Count 1 Probation Term: Lifetime

To begin 12/16/2015.

2. IT IS ORDERED that probation in Count 1 shall run concurrent with probation in Count

Count 2 Probation Term: 3 years

To begin 12/16/2015.

1. IT IS ORDERED that probation in Count 2 shall run concurrent with probation in Count

Condition 6: Report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. Keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. Provide DNA testing if required by law.

Condition 8: Request and obtain written permission of the APD prior to leaving the State.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-000878-001 DT

12/16/2015

Condition 15: Restitution, Fines and Fees:

PROBATION SERVICE FEE: Count 1 - \$65.00 per month, beginning 2/01/2017.

SEX OFFENDER REGISTRATION FEE: Count 1 - \$250.00, payable \$20.00 per month, beginning 2/01/2017.

PROBATION ASSESSMENT: Count 1 - \$20.00 payable on 2/01/2017.

Count 1: Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00 payable on 2/01/2017.

Count 1: \$50.00 to the Address Confidentiality Program, payable on 2/01/2017.

Count 1: \$500.00 assessment for Dangerous Crimes Against Children or Sexual Assaults, payable \$10.00 per month, beginning 2/01/2017.

All amounts payable through the Clerk of the Superior Court.

The Court retains jurisdiction for any future restitution hearings for 6 months from this date.

Condition 16: Not consume or possess any substances containing alcohol.

Condition 18: Count 2: Be incarcerated in the county jail for 12 month(s), beginning 12/16/2015 with credit for 0 day(s) served.

Not to be released until 12/15/2016.

Report to the APD within 72 hours of release from jail. Comply with all program rules.

Defendant shall participate in Work Furlough (participation is contingent upon Jail Classification/ MCSO approval).

IT IS FURTHER ORDERED that the Defendant be screened for A.R.S. 13-923 eligibility on both Counts 1 and 2.

Condition 19: Not have any contact with the victim(s) in any form, unless approved in writing by the APD.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-000878-001 DT

12/16/2015

Condition 21: Abide by the special conditions of probation as noted on the attachment to the Uniform Conditions of Supervised Probation as follows:

Sex Offender

Computer Usage: Ownership and Monitoring

Pursuant to A.R.S. § 13-3821(K), notification is made to the Sheriff of Maricopa County, Arizona.

Condition 22: Other: Defendant shall register as a sex offender. Defendant shall be screened for ARS 13-923 eligibility.

IT IS FURTHER ORDERED that Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant placed on probation who has not already had a State Identification Number (SID) established to submit to fingerprint processing.

The Court finds that Defendant is eligible under A.R.S. § 13-923 for an annual review of Conditions of Probation. Defendant is advised of the right to request the annual review hearing. Currently assigned counsel or office shall represent Defendant at any A.R.S § 13-923 review hearing set in this matter, unless allowed to withdraw by later Order of the Court.

Defendant is advised pursuant to A.R.S. § 13-805 that failure to maintain contact with the Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

Count(s) 2: IT IS ORDERED remanding Defendant to the custody of the Maricopa County Sheriff.

Count(s) 1: IT IS FURTHER ORDERED Defendant be released from custody for this count only.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-000878-001 DT

12/16/2015

IT IS ORDERED directing the Clerk of the Court to seal the Presentence Report, not to be opened without further order of the Court.

IT IS FURTHER ORDERED directing the Clerk of the Court to seal the Sentencing Memorandum, not to be opened without further order of the Court.

FILED: Presentence Report, Sentencing Memorandum

The Presentence Report indicates that the Defendant has been in custody for 1,056 days. Defense counsel presents a copy of a Juvenile Delinquency Profile dated January 28, 2013 indicating that the Defendant was held in custody at the Durango Juvenile Facility for 11 additional days, from January 13, 2013 to January 24, 2013, when he was released to the Maricopa County Sheriff's department and transported to jail. Defendant counsel indicates that these additional 11 days should be credited toward any future period of incarceration in this matter. The Court will not address this issue at this time.

11:14 a.m. Matter concludes.

IT IS ORDERED that defense counsel shall preserve defendant's file for post-conviction relief purposes. If defense counsel receives notice that defendant is seeking post-conviction relief, counsel shall prepare the file for delivery to PCR counsel and shall make timely arrangements for the exchange thereof when notified. Further, upon exchange of the file, defense counsel shall file with the court a Notice of Compliance that shall, at a minimum, include date of compliance, recipient of the file, and an itemization of contents of the file. A copy of the Notice shall be provided to PCR counsel, the State and the PCR Unit.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HONORABLE DANIEL KILEY

Date: 12-16-15

No. CR 2015-000579-A11

STATE v. Naylyn James Mimmie Held

CLERK OF THE COURT

E. Estrella

Deputy

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.

(right index fingerprint)




JUDICIAL OFFICER OF THE SUPERIOR COURT

Page

App. 061

Appendix C

State v. Begay, CR2014-137705-001, dkts. 7 & 41 (Super. Ct., Ariz.)

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Lee White
Deputy County Attorney
Bar ID #: 017551
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaomjc2@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *M. Jeanes* DEP
FILED

14 AUG 11 PM 3:45

DR 201499636 - Tempe Police Department
1514723

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

RASHAWN BEGAY,

Defendant.

CR2014-137705-001

INDICTMENT
619 GJ 349

**COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY (RASHAWN BEGAY)**
**COUNT 2: KIDNAPPING, A CLASS 2
FELONY (RASHAWN BEGAY)**
**COUNT 3: ASSAULT, A CLASS 1
MISDEMEANOR (RASHAWN BEGAY)**

The Grand Jurors of Maricopa County, Arizona, accuse RASHAWN BEGAY, on August 11, 2014, charging that in Maricopa County, Arizona:

COUNT 1:

RASHAWN BEGAY, on or about August 5, 2014, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of VICTIM A, in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 2:

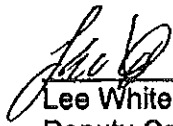
RASHAWN BEGAY, on or about August 5, 2014, knowingly did restrain VICTIM A with the intent to inflict death, physical injury, or a sexual offense on her or to otherwise aid in the commission of a felony, in violation of A.R.S. §§ 13-1304, 13-1301, 13-701, 13-702, and 13-801.

COUNT 3:

RASHAWN BEGAY, on or about August 5, 2014, intentionally or knowingly did cause physical injury to VICTIM A, in violation of A.R.S. §§ 13-1203(A)(1), (B), 13-707, and 13-802.

A TRUE BILL
("A True Bill")

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY



Lee White
Deputy County Attorney

LW/jdb

Date: August 11, 2014



FOREPERSON OF THE GRAND JURY

COURT INFORMATION SHEET (CIS)

COUNTY ATTORNEY CASE NO: 0131514723

STATE v. RASHAWN BEGAY

Aliases:

Defendant's NSI

Last Known Address:

Defendant's Attorney: Unknown

DEFENDANT'S DESCRIPTION:

Race: I Sex: M Hair: BLK Eyes: BRO Wgt: 160 Hgt: 5'07 DOB:

FBI#: SID#: Booking#: T103427 Soc Sec#:

FILING STATUS:

Date Filed: Court #: CR2014-137705-001

Grand Jury #: 619 GJ 349

Date Indictment Filed: August 11, 2014

Attorney: Lee White

Bar ID: 017551

Location: Downtown

CHARGES:

COUNT 1: SEXUAL ASSAULT, A CLASS 2 FELONY

COUNT 2: KIDNAPPING, A CLASS 2 FELONY

COUNT 3: ASSAULT, A CLASS 1 MISDEMEANOR

<u>COUNT</u>	<u>ARS LITERAL</u>	<u>DATE OF CRIME</u>	<u>PCN</u>
1	13-1406A	8/5/2014	
2	13-1304A3	8/5/2014	
3	13-1203A1	8/5/2014	

DEPARTMENTAL REPORTS:

DR 201499636 - Tempe Police Department

EXTRADITE: OK

CO-DEFENDANTS:

2-27-15

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-137705-001 DT

02/24/2015

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT

B. Navarro

Deputy

STATE OF ARIZONA

LEE S WHITE

v.

RASHAWN BEGAY (001)

NIKOLAS D FORNER

APO-SENTENCINGS-CCC

APPEALS-CCC

D & C MATERIALS-CSC

DISPOSITION CLERK-CSC

MCSO-ATTN RECORDS MANAGER

PRETRIAL SERVICES AGENCY-CCC

RFR

SUSPENSION OF SENTENCE - PROBATION GRANTED

9:04 a.m.

Courtroom 6A SCT

State's Attorney:

Kevin Pollak for Lee S. White

Defendant's Attorney:

Nikolas D. Forner

Defendant:

Present

Court Reporter, Rochelle Dobbins, is present.

A record of the proceeding is also made by audio and/or videotape.

The Court is in receipt of an Electronic Monitoring Status Report dated February 23, 2015 from Pretrial Services Agency.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-137705-001 DT

02/24/2015

The State requests that restitution remain open.

The Victim presents statements to the Court.

Count(s) 1 (as amended) and 2: WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1 (AS AMENDED): SEXUAL ABUSE

Class 5 Felony

A.R.S. § 13-1404, 13-1401, 13-3821, 13-610, 13-902, 13-701, 13-702, and 13-801

Date of Offense: August 5, 2014

Non Dangerous - Non Repetitive

OFFENSE: Count 2: KIDNAPPING

Class 2 Felony

A.R.S. § 13-1304, 13-1301, 13-610, 13-701, 13-702, and 13-801

Date of Offense: August 5, 2014

Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on probation for:

Count 1 (as amended) Probation Term: Lifetime

To begin February 24, 2015.

IT IS ORDERED that probation in Amended Count 1 shall run concurrent with probation in Count 2.

Count 2 Probation Term: 4 years

To begin February 24, 2015.

IT IS ORDERED that probation in Count 2 shall run concurrent with probation in Amended Count 1.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-137705-001 DT

02/24/2015

Condition 6: Report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. Keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. Provide DNA testing if required by law.

Condition 8 - Request and obtain written permission of the APD prior to leaving the State.

Condition 15: Restitution, Fines and Fees:

PROBATION SERVICE FEE: Count 1 (as amended) - \$65.00 per month, beginning June 1, 2015.

SEX OFFENDER REGISTRATION FEE: Count 1 (as amended) - \$250.00, payable \$25.00 per month, beginning June 1, 2015.

PROBATION ASSESSMENT: Count 1 (as amended) - \$65.00 payable on June 1, 2015.

Count 1 (as amended): Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00 payable on June 1, 2015.

Count 1 (as amended): \$50.00 to the Family Offense Assessment, payable \$10.00 per month, beginning June 1, 2015.

Count 1 (as amended): \$50.00 to the Address Confidentiality Program, payable \$10.00 per month, beginning June 1, 2015.

All amounts payable through the Clerk of the Superior Court.

The Court retains jurisdiction for any future restitution hearings.

Condition 19: Not have any contact with the victim(s) in any form, unless approved in writing by the APD.

Condition 21 - Abide by the special conditions of probation as noted on the attachment to the Uniform Conditions of Supervised Probation as follows:

Sex Offender

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-137705-001 DT

02/24/2015

Pursuant to A.R.S. § 13-3821(K), notification is made to the Sheriff of Maricopa County, Arizona.

IT IS FURTHER ORDERED that Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant placed on probation who has not already had a State Identification Number (SID) established to submit to fingerprint processing.

Defendant is advised pursuant to A.R.S. § 13-805 that failure to maintain contact with the Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

IT IS ORDERED granting the Motion to Dismiss the following: Count 3.

IT IS FURTHER ORDERED that Defendant must submit to DNA testing for law enforcement identification purposes in accordance with A.R.S. §13-610.

The presentence investigation report is filed under this cause number.

IT IS ORDERED directing the Clerk of the Court to seal Defendant's Sentencing Memorandum dated February 23, 2015, not to be opened without further order of the Court.

FILED: Defendant's Sentencing Memorandum; Electronic Monitoring Status Report dated February 23, 2015 from Pretrial Services Agency

9:14 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HONORABLE WARREN J. GRANVILLE

Date: 2-24-15

CLERK OF THE COURT
B. Navarro

No. CR 2014-137705-001

STATE v. BEGAY

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.

(right index fingerprint)



Warren J. Granville

JUDGE OF THE SUPERIOR COURT

Page 5

Appendix D

State v. Nance, CR2015-001755-001, dkts. 1 & 35 (Super. Ct., Ariz.)

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Bradley Miller
Deputy County Attorney
Bar ID #: 025631
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *E. Masio* DEP
FILED

15 APR 21 PM 3:53

DR 20143450322 - Mesa Police Department
1548486

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

GERRAD BENTON NANCE,

Defendant.

CR 2015 - 001755 - 1001

INDICTMENT
640 GJ 166

**COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY DOMESTIC VIOLENCE (GERRAD
BENTON NANCE)**

**COUNT 2: PREVENTING USE OF
TELEPHONE IN EMERGENCY OR FALSE
REPRESENTATION OF EMERGENCY, A
CLASS 2 MISDEMEANOR (GERRAD
BENTON NANCE)**

**COUNT 3: UNLAWFUL IMPRISONMENT, A
CLASS 6 FELONY (GERRAD BENTON
NANCE)**

The Grand Jurors of Maricopa County, Arizona, accuse GERRAD BENTON NANCE, on April 21, 2015, charging that in Maricopa County, Arizona:

COUNT 1:

GERRAD BENTON NANCE, on or about December 10, 2014, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of VICTIM A, in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, 13-3601, and 13-801.

COUNT 2:

GERRAD BENTON NANCE, on or about December 10, 2014, intentionally did prevent or interfere with VICTIM A using a telephone in an emergency situation, in violation of A.R.S. §§ 13-2915, 13-707, and 13-802.

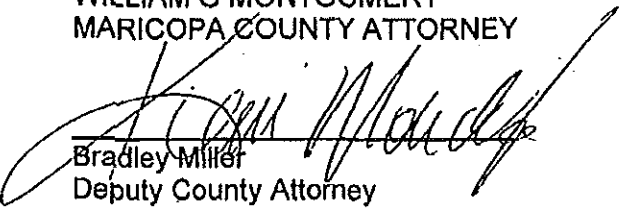
COUNT 3:

GERRAD BENTON NANCE, on or about December 10, 2014, knowingly did restrain VICTIM A, in violation of A.R.S. §§ 13-1301, 13-1303, 13-701, 13-702, and 13-801.

A True Bill
("A True Bill")

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Date: April 21, 2015


Bradley Miller
Deputy County Attorney

T. R. P.
FOREPERSON OF THE GRAND JURY

BLM/jdb

IMPORTANT NOTICE

JVSC

CR 2015-001755-001

THIS IS A JUVENILE VICTIM SEX CRIME CASE

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

2/2/2016 8:00 A.M.

CR2015-001755-001-DT

01/27/2016

COMMISSIONER VIRGINIA L. RICHTER

CLERK OF THE COURT
D. Van Hoorn
Deputy

STATE OF ARIZONA

BRADLEY LEWIS MILLER

v.

GERRAD BENTON NANCE (001)

JOY RIDDLE

APO-SENTENCINGS-CCC
APPEALS-CCC
DISPOSITION CLERK-CSC
RFR

SUSPENSION OF SENTENCE - PROBATION GRANTED

2:20 p.m.

Courtroom CCB 1004

State's Attorney: Bradley Miller
Defendant's Attorney: Joy Riddle
Defendant: Present

Court Reporter, Dalia Ambriz, is present.

A record of the proceeding is also made by audio and/or videotape.

This is the time set for Sentencing.

Count(s) 1: WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

Docket Code 109

Form R109B-10

Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-001755-001 DT

01/27/2016

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1 (As Amended) Sexual Abuse

Class 5 Felony

A.R.S. § 13-1404, 1401, 3821, 610, 902, 701, 702, 801

Date of Offense: 12/10/2014

Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on probation for:

Count 1 Probation Term: Lifetime

To begin 01/27/2016.

IT IS ORDERED that probation in Count 1 shall run concurrent with probation in CR2014-161367-001.

Condition 6: Report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. Keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. Provide DNA testing if required by law.

Condition 8: Request and obtain written permission of the APD prior to leaving the State.

Condition 9: May apply for Interstate Compact supervision in the state of North Carolina and will not proceed to that state until reporting instructions are received and the APD issues a written travel permit.

Condition 15: Restitution, Fines and Fees:

PROBATION SERVICE FEE: Count 1 - \$65.00 per month, beginning 03/01/2016.

PROBATION ASSESSMENT: Count 1 - \$20.00 payable on 03/01/2016.

Count 1: Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00 payable on 03/01/2016.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-001755-001 DT

01/27/2016

INTERSTATE COMPACT APPLICATION FEE: Count 1 - \$300.00, payable in full at the time of submission of the application.

Count 1: \$50.00 to the Address Confidentiality Program, payable on 03/01/2016.

All amounts payable through the Clerk of the Superior Court.

Condition 19: Not have any contact with the victim(s) in any form, unless approved in writing by the APD.

Condition 21: Abide by the special conditions of probation as noted on the attachment to the Uniform Conditions of Supervised Probation as follows:

Sex Offender

Condition 22: The defendant shall appear for the review hearing as set forth below.

IT IS FURTHER ORDERED that Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant placed on probation who has not already had a State Identification Number (SID) established to submit to fingerprint processing.

The Court finds that Defendant is eligible under A.R.S. § 13-923 for an annual review of Conditions of Probation. Defendant is advised of the right to request the annual review hearing. Currently assigned counsel or office shall represent Defendant at any A.R.S. § 13-923 review hearing set in this matter, unless allowed to withdraw by later Order of the Court.

IT IS ORDERED setting a Review Hearing on 01/27/2017 at 8:15 a.m. before this division.

Defendant is advised pursuant to A.R.S. § 13-805 that failure to maintain contact with the Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.
2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-001755-001 DT

01/27/2016

IT IS ORDERED granting the Motion to Dismiss the following: Counts 2 and 3.

IT IS FURTHER ORDERED that Defendant must submit to DNA testing for law enforcement identification purposes in accordance with A.R.S. §13-610.

The presentence investigation report is filed under this cause number.

2:31 p.m. Matter concludes.

IT IS ORDERED that defense counsel shall preserve defendant's file for post-conviction relief purposes. If defense counsel receives notice that defendant is seeking post-conviction relief, counsel shall prepare the file for delivery to PCR counsel and shall make timely arrangements for the exchange thereof when notified. Further, upon exchange of the file, defense counsel shall file with the court a Notice of Compliance that shall, at a minimum, include date of compliance, recipient of the file, and an itemization of contents of the file. A copy of the Notice shall be provided to PCR counsel, the State and the PCR Unit.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HONORABLE VIRGINIA RICHTER

Date: 01/27/2016

No. CR2015-001755-001 DT

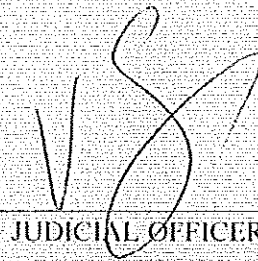
STATE v. GERRARD BENTON NANCE

CLERK OF THE COURT

D. Van Hoorn
Deputy

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.

(right index fingerprint)



JUDICIAL OFFICER OF THE SUPERIOR COURT

Hon. Virginia Richter

Appendix E

State v. Burks, CR2015-126663-001, dkts. 7 & 95 (Super. Ct., Ariz.)

MICHAEL K. JEANES, CLERK
BY *E. Masio* DEP
FILED

15 JUN 16 PM 4:13

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Michael Minicozzi
Deputy County Attorney
Bar ID #: 024743
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

DR 201501055196 - Phoenix Police Department
1558609

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

ROBERT RAY BURKS,
aka ROBERT RAY BURKS
aka ROBERT BURKS

Defendant.

CR2015-126663-001

INDICTMENT
640 GJ 452

**COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY (ROBERT RAY BURKS)**

**COUNT 2: SEXUAL ASSAULT, A CLASS 2
FELONY (ROBERT RAY BURKS)**

**COUNT 3: KIDNAPPING, A CLASS 2
FELONY (ROBERT RAY BURKS)**

The Grand Jurors of Maricopa County, Arizona, accuse ROBERT RAY BURKS, on June
16, 2015, charging that in Maricopa County, Arizona:

COUNT 1:

ROBERT RAY BURKS, on or about June 3, 2015, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of VICTIM A (To Wit: Defendant put his penis in the Victim's vagina), in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 2:

ROBERT RAY BURKS, on or about June 3, 2015, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of VICTIM A (To Wit: Defendant put his mouth on the Victim's vagina), in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

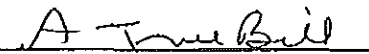
COUNT 3:

ROBERT RAY BURKS, on or about June 3, 2015, knowingly did restrain VICTIM A with the intent to inflict death, physical injury, or a sexual offense on her or to otherwise aid in the commission of a felony, in violation of A.R.S. §§ 13-1304, 13-1301, 13-701, 13-702, and 13-801.

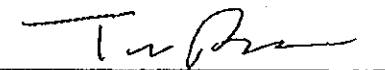
WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY


Michael Minicozzi
Deputy County Attorney

MM/jdb


("A True Bill")

Date: June 16, 2015


FOREPERSON OF THE GRAND JURY

IMPORTANT NOTICE

RDOC

PURSUANT TO RULE 2.3(b) OF THE ARIZONA RULES
OF CRIMINAL PROCEDURE, THE DEFENDANT IS
CHARGED WITH ANY OFFENSE LISTED IN A.R.S TITLE
13, CHAPTERS 14, 32, 35 OR 35.1 OR IN WHICH THE
VICTIM WAS A JUVENILE AT THE TIME OF THE
OFFENSE. THIS CASE IS SUBJECT TO THE
PROVISIONS OF SUPREME COURT RULE
123(G)(1)(C)(ii)(H)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DEC 19 2016 8:00 a.m.

CR2015-126663-001 DT

12/14/2016

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
D. McGraw
Deputy

STATE OF ARIZONA

MICHAEL ANTHONY MINICOZZI

v.

ROBERT RAY BURKS (001)

DAVID HINTZE

APPEALS-CCC
D&C MATERIALS-CSC
DISPOSITION CLERK-CSC
MCSO-ATTN RECORDS MANAGER
RFR

SUSPENSION OF SENTENCE - PROBATION GRANTED

10:37 a.m. This is the time set for Sentencing.

Courtroom 7A South Court Tower

State's Attorney: Michael Minicozzi
Defendant's Attorney: David Hintze
Defendant: Present

Court Reporter, Lori Thielmann, is present.

A record of the proceedings is also made digitally.

The Court having received the Defendant's Motion to Seal Document, and there being no objection by the State,

IT IS ORDERED granting Defendant's Motion to Seal Document.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-126663-001 DT

12/14/2016

IT IS ORDERED directing the Clerk of Court to seal Defendant's Motion to Seal Document and Defendant's Sentencing Memorandum, not to be opened without further order of the Court, all in accordance with the formal written Order signed by the Court on December 14, 2016, and filed (entered) by the Clerk on December 14, 2016.

FILED: Defendant's Sentencing Memorandum

Count(s) 1, 2, and 3: WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1 (as amended) ATTEMPT TO COMMIT SEXUAL ASSAULT
Class 3 Felony

A.R.S. § 13-1406, 13-1001, 13-902(E), 13-1401, 13-3821, 13-610, 13-701, 13-702, and
13-801

Date of Offense: June 3, 2015
Non Dangerous - Non Repetitive

OFFENSE: Count 2 (as amended) ATTEMPT TO COMMIT SEXUAL ASSAULT
Class 3 Felony

A.R.S. § 13-1406, 13-1001, 13-902(E), 13-1401, 13-3821, 13-610, 13-701, 13-702, and
13-801

Date of Offense: June 3, 2015
Non Dangerous - Non Repetitive

OFFENSE: Count 3 KIDNAPPING
Class 2 Felony

A.R.S. § 13-1301, 13-1304, 13-118, 13-610, 13-701, 13-702, and 13-801
Date of Offense: June 3, 2015
Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on probation for:

Count 1 Probation Term: LIFETIME

To begin December 14, 2016.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-126663-001 DT

12/14/2016

IT IS ORDERED that probation in Count 1 shall run concurrent with probation in Counts 2 and 3.

Count 2 Probation Term: LIFETIME

To begin December 14, 2016.

IT IS ORDERED that probation in Count 2 shall run concurrent with probation in Counts 1 and 3.

Upon physical release from prison pursuant to A.R.S. §13-603(K). Count 3: For a period of 7 years.

IT IS ORDERED that probation in Count 3 shall run concurrent with probation in Counts 1 and 2.

Condition 6: Report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. Keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. Provide DNA testing if required by law.

Condition 8: Request and obtain written permission of the APD prior to leaving the State.

Condition 15: Restitution, Fines and Fees:

PROBATION SERVICE FEE: Count 1 - \$65.00 per month, beginning August 1, 2017.

SEX OFFENDER REGISTRATION FEE: Count 1 - \$250.00, payable \$5.00 per month, beginning August 1, 2017.

PROBATION ASSESSMENT: Count 1 - \$20.00 payable on August 1, 2017.

Count 1: Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00 payable on August 1, 2017.

Count 1: \$50.00 to the Address Confidentiality Program payable on August 1, 2017.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-126663-001 DT

12/14/2016

Count 1: \$500.00 for Dangerous Crimes Against Children or Sexual Assaults, payable on August 1, 2017.

All amounts payable through the Clerk of the Superior Court.

The Court retains jurisdiction for any future restitution hearings.

Condition 16: Not consume or possess any substances containing alcohol.

Condition 18: Count 3: Be incarcerated in the county jail for 170 calendar day(s), beginning December 14, 2016 with credit for 0 day(s) served.

Not to be released until June 2, 2017.

Report to the APD within 72 hours of release from jail. Comply with all program rules.

See Term 22 as it relates to jail term.

Condition 19: Not have any contact with the victim(s) in any form, unless approved in writing by the APD.

Condition 21: Abide by the special conditions of probation as noted on the attachment to the Uniform Conditions of Supervised Probation as follows:

Mental Health

Sex Offender

Pursuant to A.R.S. § 13-3821(K), notification is made to the Sheriff of Maricopa County, Arizona.

Condition 22: Other: Defendant shall register as a sex offender. Do not return to the scene of the crime. Defendant shall be released from jail to the custody of his ACT team. Defendant is not eligible for 2:1 credit, work release, or work furlough.

IT IS FURTHER ORDERED that Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant placed on probation who has not already had a State Identification Number (SID) established to submit to fingerprint processing.

Docket Code 109

Form R109B-10

Page 4

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2015-126663-001 DT

12/14/2016

Defendant is advised pursuant to A.R.S. § 13-805 that failure to maintain contact with the Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

Count(s) 3: IT IS ORDERED remanding Defendant to the custody of the Maricopa County Sheriff.

Count(s) 1 and 2: IT IS FURTHER ORDERED Defendant be released from custody for these counts only.

IT IS ORDERED exonerating any bond previously posted in this matter to the party posting same.

IT IS FURTHER ORDERED that Defendant must submit to DNA testing for law enforcement identification purposes in accordance with A.R.S. §13-610.

10:52 a.m. Matter concludes.

IT IS ORDERED that defense counsel shall preserve defendant's file for post-conviction relief purposes. If defense counsel receives notice that defendant is seeking post-conviction relief, counsel shall prepare the file for delivery to PCR counsel and shall make timely arrangements for the exchange thereof when notified. Further, upon exchange of the file, defense counsel shall file with the court a Notice of Compliance that shall, at a minimum, include date of compliance, recipient of the file, and an itemization of contents of the file. A copy of the Notice shall be provided to PCR counsel, the State and the PCR Unit.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HONORABLE DANIELLE VIOLA

Date: 12/14/2014

No. CR2015-126663-001

CLERK OF THE COURT
D. MCGRAW
Deputy

STATE v. BURKS

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.

(right index fingerprint)



JUDICIAL OFFICER OF THE SUPERIOR COURT

Appendix F

State v. Kingsley, CR2014-005888-001, dkts. 1 & 56 (Super. Ct., Ariz.)

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Bradley Miller
Deputy County Attorney
Bar ID #: 025631
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *Michael Merkle* DEP.
FILED

14 DEC -2 PM 4:13

DR 201215091 - Paradise Valley Police Department
DR 201414935 - Paradise Valley Police Department
1522496

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

HARRISON KINGSLEY,

Defendant.

CR 2014 -00 5888 -001

INDICTMENT
627 GJ 406

COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY (HARRISON KINGSLEY)

COUNT 2: SEXUAL ASSAULT, A CLASS 2
FELONY (HARRISON KINGSLEY)

The Grand Jurors of Maricopa County, Arizona, accuse HARRISON KINGSLEY, on
December 2, 2014, charging that in Maricopa County, Arizona:

COUNT 1:

HARRISON KINGSLEY, on or about *October 4, 2012* ~~September 20, 2014~~, intentionally or knowingly, did
engage in sexual intercourse or oral sexual contact with VICTIM A, without the consent of

VICTIM A, in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 2:

July 5 2014
HARRISON KINGSLEY, on or about ~~October 2, 2014~~, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with VICTIM B, without the consent of VICTIM B, in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY


Bradley Miller
Deputy County Attorney

BLM/jdb

A TRUE BILL
("A True Bill")

Date: December 2, 2014

L. Hart
FOREPERSON OF THE GRAND JURY

COURT INFORMATION SHEET (CIS)

COUNTY ATTORNEY CASE NO: 0131522496

STATE v. HARRISON KINGSLEY

Aliases:

Defendant's WARRANT

Last Known Address:

Defendant's Attorney: Unknown

CR 2014-005888-001

DEFENDANT'S DESCRIPTION:

Race: W Sex: M Hair: BRO Eyes: BLU Wgt: 180 Hgt: 6'00 DOB:

FBI#: UNK SID#: UNK Booking#: UNK Soc Sec#:

FILING STATUS:

Date Filed: _____ Court #: **CR 2014-005888-001**

Grand Jury #: 627 GJ 406

Date Indictment Filed: December 2, 2014

Attorney: Bradley Miller

Bar ID: 025631

Location: Downtown

CHARGES:

COUNT 1: SEXUAL ASSAULT, A CLASS 2 FELONY

COUNT 2: SEXUAL ASSAULT, A CLASS 2 FELONY

<u>COUNT</u>	<u>ARS LITERAL</u>	<u>DATE OF CRIME</u>	<u>PCN</u>
1	13-1406A	9/23/2014	
2	13-1406A	10/20/2014	

DEPARTMENTAL REPORTS:

DR 201215091 - Paradise Valley Police Department

DR 201414935 - Paradise Valley Police Department

EXTRADITE: OK

CO-DEFENDANTS:

1-14-16 8:00am

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-005888-001 DT

01/06/2016

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT

B. Navarro

Deputy

STATE OF ARIZONA

BRADLEY LEWIS MILLER

v.

HARRISON KINGSLEY (001)

KAREN E VANDERGAW
TRACEY WESTERHAUSEN

APO-SENTENCINGS-CCC
APPEALS-CCC
CERTIFICATION DESK-CSC
DISPOSITION CLERK-CSC
MCSO-ATTN RECORDS MANAGER
PRETRIAL SERVICES AGENCY-CCC
RFR
BOARD OF MESSAGE THERAPY
1400 W WASHINGTON ST #300
PHOENIX AZ 85007

SUSPENSION OF SENTENCE - PROBATION GRANTED

9:00 a.m.

Courtroom 6A SCT

State's Attorney:	Bradley Miller
Defendant's Attorney:	Karen E. Vandergaw
<i>Knapp</i> Counsel:	Tracy Westerhausen
Defendant:	Present

Court Reporter, Rochelle Dobbins, is present.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-005888-001 DT

01/06/2016

A record of the proceeding is also made by audio and/or videotape.

Count(s) 1 (as amended) and 2 (as amended): WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 1 (AS AMENDED): ATTEMPTED SEXUAL ASSAULT
Class 3 Felony

A.R.S. § 13-1001, 13-1406, 13-1401, 13-3821, 13-610, 13-902, 13-701, 13-702, and 13-

801

Date of Offense: October 4, 2012

Non Dangerous - Non Repetitive

OFFENSE: Count 2 (AS AMENDED): ATTEMPTED SEXUAL ASSAULT
Class 3 Felony

A.R.S. § 13-1001, 13-1406, 13-1401, 13-3821, 13-610, 13-902, 13-701, 13-702, and 13-

801

Date of Offense: July 25, 2014

Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on probation for:

Count 1 (as amended) Probation Term: Lifetime

To begin January 6, 2016.

IT IS ORDERED that probation in Amended Count 1 shall run concurrent with probation in Amended Count 2.

Count 2 (as amended) Probation Term: Lifetime

To begin January 6, 2016.

IT IS ORDERED that probation in Amended Count 2 shall run concurrent with probation in Amended Count 1.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-005888-001 DT

01/06/2016

Condition 6: Report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. Keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. Provide DNA testing if required by law.

Condition 8: Request and obtain written permission of the APD prior to leaving the State.

Condition 15: Restitution, Fines and Fees:

PROBATION SERVICE FEE: Count 2 (as amended) - \$65.00 per month, beginning March 1, 2016.

SEX OFFENDER REGISTRATION FEE: Count 2 (as amended) - \$250.00, payable \$25.00 per month, beginning March 1, 2016.

PROBATION ASSESSMENT: Count 2 (as amended) - \$20.00 payable on March 1, 2016.

Count 2 (as amended): Time payment fee pursuant to A.R.S. § 12-116 in the amount of \$20.00 payable on March 1, 2016.

Count 2 (as amended): \$50.00 to the Address Confidentiality Program, payable \$10.00 per month, beginning March 1, 2016.

Count 2 (as amended): \$500.00 for Dangerous Crimes Against Children or Sexual Assaults, payable \$25.00 per month, beginning March 1, 2016.

Count 1 (as amended): \$500.00 for Dangerous Crimes Against Children or Sexual Assaults, payable \$25.00 per month, beginning March 1, 2016.

All amounts payable through the Clerk of the Superior Court.

The Court retains jurisdiction for any future restitution hearings.

Condition 19: Not have any contact with the victim(s) in any form, unless approved in writing by the APD.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-005888-001 DT

01/06/2016

Condition 21: Abide by the special conditions of probation as noted on the attachment to the Uniform Conditions of Supervised Probation as follows:

Sex Offender

Computer Usage: Ownership and Monitoring

Pursuant to A.R.S. § 13-3821(K), notification is made to the Sheriff of Maricopa County, Arizona.

IT IS FURTHER ORDERED that Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant placed on probation who has not already had a State Identification Number (SID) established to submit to fingerprint processing.

Defendant is advised pursuant to A.R.S. § 13-805 that failure to maintain contact with the Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.
2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

The presentence investigation report is filed under this cause number.

LET THE RECORD REFLECT that notification to the Board of Message Therapy has been sent via the Clerk of Court Certification Desk.

9:10 a.m. Matter concludes.

IT IS ORDERED that defense counsel shall preserve defendant's file for post-conviction relief purposes. If defense counsel receives notice that defendant is seeking post-conviction relief, counsel shall prepare the file for delivery to PCR counsel and shall make timely arrangements for the exchange thereof when notified. Further, upon exchange of the file, defense counsel shall file with the court a Notice of Compliance that shall, at a minimum, include date of compliance, recipient of the file, and an itemization of contents of the file. A copy of the Notice shall be provided to PCR counsel, the State and the PCR Unit.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

HONORABLE WARREN J. GRANVILLE

Date: 1-6-14

CLERK OF THE COURT
B. Navarro

No. CR 2014-005888-001

STATE v. KINGSLEY

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.

(right index fingerprint)



Warren J. Granville

JUDGE OF THE SUPERIOR COURT

Page 5

Appendix G

State v. Figueroa, CR2017-106797-001, dkt. 14 (Super. Ct., Ariz.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-106797-001 DT

02/16/2017

COMMISSIONER KEVIN B. WEIN

CLERK OF THE COURT
T. Gaulke
Deputy

STATE OF ARIZONA

FRANKIE LYNN GRIMSMAN

v.

JOSE LOUIE FIGUEROA (001)

EMILY S WOLKOWICZ

MINUTE ENTRY

2:04 p.m.

Courtroom 3D, South Court Tower

State's Attorney:	Jeffrey Roseberry for Frankie Grimsman
Defendant's Attorney:	Emily Wolkowicz
Defendant:	Present

A record of the proceedings is made digitally in lieu of a court reporter.

Brad Breckow was sworn and testified.

On February 16, 2017 Defendant filed a Motion to Strike the State's Response to Defendant's Motion to Hold ARS § 13-3961(D) Hearing. For the reasons explained on the record the Defendant's motion was denied.

The Court considered the State's Response to be a motion to vacate the evidentiary review hearing set in this matter and heard oral argument on that motion. The State argued that *Simpson v. Miller*, ____ Ariz. ____, 2017 WL 526027 (Feb. 9, 2017) applied only to Defendants

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-106797-001 DT

02/16/2017

charged with Sexual Conduct with a Minor Under the Age of Fifteen and therefore this Defendant, who has been charged with sexual assault, is not entitled to an evidentiary review hearing.

The Court received and considered briefing from the parties and the applicable law. For the reasons outlined below and on the record, the Court denied the State's motion to vacate the evidentiary review hearing.

In *Simpson v. Miller*, ___ Ariz. ___, 2017 WL 526027 (Feb. 9, 2017) the Arizona Supreme Court addressed the question of whether the State of Arizona may forbid bail for defendants accused of sexual conduct with a minor under the age of 15. The Court held that such a prohibition violated the Fourteenth Amendment's due process guarantee and reasoned that the State may not "deny bail categorically for those accused of crimes that do not inherently predict future dangerousness." *Id.* at ¶30. In light of the Supreme Court's opinion, the State may not hold a Defendant non-bondable based on the category of the offense (i.e. sexual assault) unless the State can prove that the offense itself is inherently predictive of future dangerousness. The State has offered no evidence to make that showing. Accordingly, holding this Defendant non-bondable on charges of sexual assault without an individualized evidentiary review hearing is a violation of the 14th Amendment of the United States Constitution. For these reasons, the State's Motion to Vacate was denied and an evidentiary review hearing was held pursuant to ARS § 13-3961(D).

At that hearing, the Court found that the State had met its burden to show that there is proof evident or presumption great that this Defendant committed the charged offense. The Court found that the reporting by the victim, the admissions of the Defendant and the DNA evidence was sufficient to meet the State's burden on both counts. The State did not meet its burden of clear and convincing evidence to show that Defendant poses a substantial danger to other persons or the community. While it is clear that there is evidence that Defendant posed a danger to the Victim on the night in question there was no evidence introduced that Defendant poses an ongoing danger to the Victim or the community. Defendant is a 53 year old individual with no criminal history whatsoever. The Victim and the Defendant are connected through extended family and there was no evidence introduced of prior history between the Victim and the Defendant. Likewise, there was no evidence introduced of any contact between the Defendant and the Victim following the night in question and no evidence of any threats or efforts at intimidation by the Defendant towards the Victim or any witnesses. Accordingly, release of the Defendant subject to the following conditions is warranted.

Defendant shall be released from custody at such time as he can post a \$50,000 secured appearance bond. If Defendant is able to post this bond, he shall be released to pretrial services with drug, alcohol and electronic monitoring. The monitoring device shall be installed before

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-106797-001 DT

02/16/2017

release from custody. The type of monitoring shall be determined by the Adult Probation Department. In addition, the following release conditions are also imposed if Defendant is released from custody:

- Defendant shall not return to the scene of the alleged crime.
- Defendant shall not initiate contact with the alleged complainant or witness.
- Defendant shall not initiate contact with the alleged victim or victims.
- Defendant shall not have any physical contact with any alleged victim.
- Defendant shall not possess any drugs without a valid prescription.
- Defendant shall not possess or consume any alcohol.
- Defendant shall not possess any weapons.
- Defendant shall not leave the state.
- Defendant shall continue to provide the court with proof of your local address.
- Defendant shall submit to 10-Print fingerprint at the arresting police department.
- Defendant shall continue to reside at his present local address.
- Defendant shall not leave Maricopa County.

2:55 p.m. Matter concludes.

Appendix H

State v. Henderson, CR2017-107553-001, dkt. 12 (Super. Ct., Ariz.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-107553-001 DT

02/17/2017

COMMISSIONER KEVIN B. WEIN

CLERK OF THE COURT
A. Callahan
Deputy

STATE OF ARIZONA

KATHLEEN CAMPBELL

v.

MARLIN BRYAN HENDERSON (001)

MICHAEL L FREEMAN

PSA - RELEASE & REPORTS

MINUTE ENTRY

2:07 p.m.

Courtroom SCT 3D

State's Attorney:	Joe Heinrichson on behalf of Katie Campbell
Defendant's Attorney:	Michael Freeman
Defendant:	Present

A record of the proceedings is made digitally in lieu of a court reporter.

This is the time set for a Review Hearing (Simpson II hearing) regarding the defendant's Non-Bondable Status under A.R.S. §13-3961.

Witness, Detective Brooke Scritchfield, is sworn and testifies.

On February 16, 2017 the State filed a Motion to Vacate the Evidentiary Review Hearing. The State argued that *Simpson v. Miller*, ____ Ariz. ____, 2017 WL 526027 (Feb. 9, 2017) applied only to Defendants charged with Sexual Conduct with a Minor Under the Age of Fifteen and therefore this Defendant, who has been charged with sexual assault, is not entitled to an

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-107553-001 DT

02/17/2017

evidentiary review hearing. The Court received and considered briefing from the State and the applicable law. For the reasons outlined below and on the record, the Court denied the State's motion to vacate the evidentiary review hearing.

In *Simpson v. Miller*, ____ Ariz. ____, 2017 WL 526027 (Feb. 9, 2017) the Arizona Supreme Court addressed the question of whether the State of Arizona may forbid bail for defendants accused of sexual conduct with a minor under the age of 15. The Court held that such a prohibition violated the Fourteenth Amendment's due process guarantee and reasoned that the State may not "deny bail categorically for those accused of crimes that do not inherently predict future dangerousness." *Id.* at ¶30. In light of the Supreme Court's opinion, the State may not hold a Defendant non-bondable based on the category of the offense (i.e. sexual assault) unless the State can prove that the offense itself is inherently predictive of future dangerousness. The State has offered no evidence to make that showing. Accordingly, holding this Defendant non-bondable on charges of sexual assault without an individualized evidentiary review hearing is a violation of the 14th Amendment of the United States Constitution. For these reasons, the State's Motion to Vacate was denied and an evidentiary review hearing was held pursuant to ARS § 13-3961(D).

At that hearing, the Court found that the State had met its burden to show that there is proof evident or presumption great that this Defendant committed the charged offense. The Court found that the reporting by the victim and the DNA evidence was sufficient to meet the State's burden. The State did not meet its burden of clear and convincing evidence to show that the Defendant poses a substantial danger to other persons or the community. While it is clear that there is evidence that Defendant posed a danger to the Victim on the night in question there was no evidence introduced that Defendant poses an ongoing danger to the Victim or the community. There was no evidence of any felony criminal history or similar prior similar offenses or charges. There was no evidence of prior history between the Victim and the Defendant. Likewise, there was no evidence introduced of any contact between the Defendant and the Victim following the night in question and no evidence of any threats or efforts at intimidation by the Defendant towards the Victim or any witnesses. Defendant also self-surrendered to police on a scheduled date. Accordingly, release of the Defendant subject to the following conditions is warranted.

Defendant shall be released from custody at such time as he can post a \$50,000 secured appearance bond. If Defendant is able to post this bond, he shall be released to pretrial services with electronic monitoring. The monitoring device shall be installed before release from custody. The type of monitoring shall be determined by the Adult Probation Department. In addition, the following release conditions are also imposed if Defendant is released from custody:

- Defendant shall not return to the scene of the alleged crime.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-107553-001 DT

02/17/2017

- Defendant shall not initiate contact with the alleged complainant or witness.
- Defendant shall not initiate contact with the alleged victim or victims.
- Defendant shall not have any physical contact with any alleged victim.
- Defendant shall not possess any drugs without a valid prescription.
- Defendant shall continue to provide the court with proof of his local address.
- Defendant shall continue to reside at his present local address.

3:37 p.m. Matter concludes.

Appendix I

State v. Jariwala, CR2016-154858-001, dkt. 4 (Super. Ct., Ariz.)

IN THE

SAN MARCOS JP (CHANDLER)

COURT

STATE OF ARIZONA, COUNTY OF MARICOPA

Michael K Jeanes, Clerk of Court

*** Electronically Filed ***

D. Casales, Deputy

11/29/2016 5:02:00 PM

Filing ID 7911627

PAGE 1 OF 2

****FINAL****

RELEASE QUESTIONNAIRE

Notice: Unless a specific Form IV is sealed or ordered redacted by the Court, all Form IVs are public records of the Court or Clerk at the time they are provided to the Court and will be released in their entirety upon request.

DEFENDANT'S NAME ANANDKUMAR JARIWALA

DOB

BOOKING NO. T320077

ALIAS(ES)

CASE NO. PF2016154858001

A. GENERAL INFORMATION

Charges

1 Cts. 13-1204B AGG ASLT DV-IMPEDE BREATHING F4
1 Cts. 13-1406A SEXUAL ASSAULT F2
1 Cts. 13-1406A SEXUAL ASSAULT F2
1 Cts. 13-1406A SEXUAL ASSAULT F2

Pursuant to A.R.S. §41-1750 ten-print fingerprints were taken of the arrested person? ☒ Yes ☐ No

If yes, PCN = _____

Pursuant to A.R.S. §13-610 one or more of the above charges requires the arresting agency to secure a DNA sample from the arrested person? ☒ Yes ☐ No

If yes, does the defendant have a valid DNA sample on file with AZDPS? ☐ Yes ☐ No

If no, Arresting Agency has taken required sample? ☒ Yes ☐ No

Offense Location:

Offense Date: 2016-11-21

Arrest Location:

Date: 2016-11-22 Time: 15:41

B. PROBABLE CAUSE STATEMENT

1. Please summarize and include the facts which establish probable cause for the arrest:
SEE ATTACHED PROBABLE CAUSE STATEMENT TURNED INTO THE ACCEPTANCE WINDOW.

C. OTHER INFORMATION (Check if applicable)

1. ☐ Defendant is presently on probation, parole or any other form of release involving other charges or convictions:
Explain:

2. List any prior:
Arrests?

Convictions?

F.T.A.'s?

3. Is there any indication the defendant is:

☐ An Alcoholic? ☐ An Addict?
☐ Mentally disturbed? ☐ Physically Ill?

4. ☒ Defendant is currently employed

With whom MTBA

How long:

5. Where does the defendant currently reside?

With whom

How long: _____ years _____ months _____ days

6. What facts indicate the defendant will flee if released?
Explain:

7. What facts does the state have to oppose an unsecured release? Explain: VICTIM IS TERRIFIED OF DEFENDANT.

D. CIRCUMSTANCES OF THE OFFENSE (Check if applicable)

1. ☐ Firearm or other weapon was used
Type:

☒ Someone was injured by the defendant

☐ Medical attention was necessary

Nature of injuries: N/A

2. ☐ Someone was threatened by the defendant
Nature and extent of threats:

3. Did the offense involve a child victim? ☐ Yes ☒ No
If yes, was DCS notified? ☐ Yes ☒ No

4. If property offense, value of property taken or damaged:

☐ Property was recovered

5. Name(s) of co-defendant(s):

App. 108

DEFENDANT'S NAME ANANDKUMAR JARIWALA

DOB - - BOOKING NO. T320077

CASE NO. PF2016154858001

Page 2 of 2

E. CRIMES OF VIOLENCE

1. Relationship of defendant to victim: HUSBAND TO VICTIM

☒ Victim(s) and defendant reside together

2. How was the situation brought to the attention of the police?

☒ Victim ☐ Third Party ☐ Officer observed

3. ☒ There are previous incidents involving these same parties

Explain: VICTIM REPORTS SEXUAL ASSAULTS HAVE OCCURRED OVER THE LAST MONTH

4. Is defendant currently the subject of:

☒ An order of protection ☐ Any other court order

☐ Injunction against harassment

Explain:

DEFENDANT WAS SERVED AN OOP AFTER BEING ARRESTED

F. DOMESTIC VIOLENCE ISSUES (Check if applicable)

Defendant's actions

☐ Threats of homicide/suicide/bodily harm

☐ Control/ownership/jealousy issues ☐ Crime occurs in public

☐ Prior history of DV ☐ Kidnapping

☒ Frequency/intensity of DV increasing ☐ Depression

☐ Access to or use of weapons ☐ Stalking behavior

☐ Violence against children/animals

☐ Multiple violations of court orders

G. CIRCUMSTANCES OF THE ARREST (Check if applicable)

1. Did the defendant attempt to:

☐ Avoid arrest ☐ Resist arrest ☐ Self Surrender

Explain:

N/A

2. ☐ Defendant was armed when arrested

Type:

3. ☐ Evidence of the offense was found in the defendant's possession

Explain:

4. Was the defendant under the influence of alcohol or drugs at the time of the offense?

☐ Yes ☐ No ☒ Unk

H. DRUG OFFENSES

1. If the defendant is considered to be a drug dealer, please state the supporting facts:

2. What quantities and types of illegal drugs are directly involved in the offense?

☐ Drug field test completed

☐ Defendant admission of drug type

Approximate monetary value: \$

3. Was any money seized?

☐ Yes ☐ No

Amount: \$

I. ADDITIONAL INFORMATION

1. Military Service:

Has the defendant served in the military services of the United States? ☐ Yes ☐ No ☒ Unknown

If yes, currently on active duty? ☐ Yes ☐ No

Branches Served In:

(AF - Air Force AR - Army CG - Coast Guard MC - Marine Corp
MM - Merchant Marines NG - National Guard NV - Navy
RS - Reserves)

2. Is the defendant homeless?

☐ Yes ☒ No ☐ Unknown

3. Do you need the court to provide an interpreter to help communicate and to understand what is being said?

☐ Yes ☒ No

If so, what language:

****If a fugitive arrest, a Form IVA must also be completed****

I certify that the information presented is true to the best of my knowledge.

ENGLERT/442

ARRESTING OFFICER/SERIAL NUMBER

AZ0070500/480-782-4130

ARREST AGENCY/DUTY PHONE NUMBER

2016-11-22

DATE

2016132705/AZ0070500

DEPARTMENTAL REPORT NO.

DEPARTMENTAL REPORT NO.

DEPARTMENTAL REPORT NO.

Pretrial Services-Court Report

State of Arizona vs ANANDKUMAR JARIWALA		Reviewed By: Sandra Sanchez
Superior Court of Arizona, at 7:09 AM on 11/23/2016		Booking #: T320077
IA Type:	Superior Court New Case	DQB:
Interview Type:	Full	Gender: Male
State of Residence:	Arizona	Ethnicity: Unknown
Country Of Residence:	United States	Arrest Date: 11/22/2016

Charge(s):		
Statute:	Discription:	Class Felony:
13-1204B	AGG ASLT DV-IMPEDE BREATHING	F4
13-1406A	SEXUAL ASSAULT	F2
13-1406A	SEXUAL ASSAULT	F2
13-1406A	SEXUAL ASSAULT	F2

New Violent Criminal Activity Flag: NO

Failure to Appear Score

1	2	3	4	5	6
---	---	---	---	---	---

New Criminal Activity Score

1	2	3	4	5	6
---	---	---	---	---	---

Public Safety Assessment-Court	
Risk Factors	Responses
1. Age at Arrest	23 or older
2. Current Violent Offense	Yes
a. Current Violent Offense and Under 21	No
3. Pending Charge at the Time of the Offense	No
4. Prior Misdemeanor Conviction	No
5. Prior Felony Conviction	No
6. Prior Violent Conviction	0
7. Prior Failure to Appear pre-trial in Past Two Years	0
8. Prior Failure to Appear pre trial Older than Two Years	No
9. Prior Sentence to Incarceration	No

Appendix J

State v. Geisler, CR2017-121763-001, dchts. 10, 13, 14, 30, 43, 44 (Super. Ct., Ariz.)

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Rachel Fleming
Deputy County Attorney
Bar ID #: 030630
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *J. Cardenas* DEP
FILED

2017 MAY 18 PM 4:15

DR 1709433 - Scottsdale Police Department
1657761

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

JERRY ALAN GEISLER,

Defendant.

CR2017-121763-001

INDICTMENT
693 GJ 533

**COUNT 1: SEXUAL ASSAULT, A CLASS 2
FELONY (JERRY ALAN GEISLER)**

**COUNT 2: SEXUAL ASSAULT, A CLASS 2
FELONY (JERRY ALAN GEISLER)**

**COUNT 3: SEXUAL ASSAULT, A CLASS 2
FELONY (JERRY ALAN GEISLER)**

**COUNT 4: FRAUDULENT SCHEMES AND
ARTIFICES, A CLASS 2 FELONY (JERRY
ALAN GEISLER)**

**COUNT 5: FRAUDULENT SCHEMES AND
ARTIFICES, A CLASS 2 FELONY (JERRY
ALAN GEISLER)**

**COUNT 6: FRAUDULENT SCHEMES AND
ARTIFICES, A CLASS 2 FELONY (JERRY
ALAN GEISLER)**

COUNT 7: TAMPERING WITH PHYSICAL

The Grand Jurors of Maricopa County, Arizona, accuse JERRY ALAN GEISLER, on May 18, 2017, charging that in Maricopa County, Arizona:

COUNT 1:

JERRY ALAN GEISLER, on or about March 31, 2017, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with Victim A, without the consent of Victim A (to wit: enema in anus - first time), in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 2:

JERRY ALAN GEISLER, on or about April 3, 2017, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with Victim A, without the consent of Victim A (to wit: enema in anus - second time), in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 3:

JERRY ALAN GEISLER, on or about April 10, 2017, intentionally or knowingly, did engage in sexual intercourse or oral sexual contact with Victim A, without the consent of Victim A (to wit: enema in anus - third time), in violation of A.R.S. §§ 13-1406, 13-1401, 13-3821, 13-610, 13-701, 13-702, and 13-801.

COUNT 4:

JERRY ALAN GEISLER, on or about March 31, 2017, pursuant to scheme or artifice to defraud, knowingly did obtain a benefit from Victim A, by means of fraudulent pretenses, representation, promises, or material omissions (to wit: rubbing of legs - first time), in violation of A.R.S. §§ 13-2310, 13-701, 13-702, and 13-801.

COUNT 5:

JERRY ALAN GEISLER, on or about April 3, 2017, pursuant to scheme or artifice to defraud, knowingly did obtain a benefit from Victim A, by means of fraudulent pretenses, representation, promises, or material omissions (to wit: rubbing of legs - second time), in violation of A.R.S. §§ 13-2310, 13-701, 13-702, and 13-801.

COUNT 6:


JERRY ALAN GEISLER, on or about April 10, 2017, pursuant to scheme or artifice to defraud, knowingly did obtain a benefit from Victim A, by means of fraudulent pretenses, representation, promises, or material omissions (to wit: rubbing of legs - third time), in violation of A.R.S. §§ 13-2310, 13-701, 13-702, and 13-801.

COUNT 7:

JERRY ALAN GEISLER, on or between May 10, 2017 and May 11, 2017, with intent that it be used, introduced, rejected or made unavailable in an official proceeding which was then pending or which JERRY ALAN GEISLER knew was about to be instituted, did destroy, mutilate, alter, conceal or remove physical evidence, to wit: Victim A, with the intent to impair its verity or availability, in violation of A.R.S. §§ 13-2809, 13-2801, 13-701, 13-702, and 13-801.

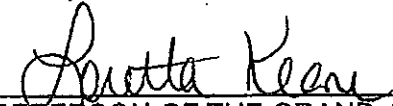
A True Bill
("A True Bill")

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY



Rachel Fleming
Deputy County Attorney

Date: May 18, 2017



FOREPERSON OF THE GRAND JURY

as

IMPORTANT NOTICE

RDOC

PURSUANT TO RULE 2.3(b) OF THE ARIZONA RULES OF CRIMINAL PROCEDURE, THE DEFENDANT IS CHARGED WITH ANY OFFENSE LISTED IN A.R.S TITLE 13, CHAPTERS 14, 32, 35 OR 35.1 OR IN WHICH THE VICTIM WAS A JUVENILE AT THE TIME OF THE OFFENSE. THIS CASE IS SUBJECT TO THE PROVISIONS OF SUPREME COURT RULE 123(G)(1)(C)(ii)(H)

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

Rachel Fleming
Deputy County Attorney
Bar ID #: 030630
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

JERRY ALAN GEISLER,

Defendant.

CR2017-121763-001

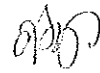
**MOTION TO HOLD DEFENDANT NON-
BONDABLE ON SEXUAL ASSAULT**

(Assigned to the Honorable Barbara Spencer)

Despite a direct ruling to the contrary by the Court of Appeals that sexual assault offenses remain non-bondable after *Simpson v. Miller*, 241 Ariz. 341, 387 P.3d 1270 (2017) ("*Simpson II*"), Defendant has asked that this Court hold a § 13-3961(D) hearing and potentially set bond on the sexual assault offense in this case. That action would be in contravention of binding precedent of the Court of Appeals. This Response is supported by the Memorandum of Points and Authorities provided herein.

Submitted May 24th, 2017.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY:  _____
/s/ Rachel Fleming
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF SUMMARY OF THE FACTS.

Defendant is charged with three counts of Sexual Assault, class 2 felonies, three counts of Fraudulent Schemes and Artifices, class 2 felonies, and one count of Tampering with Physical Evidence, a class 6 felony, committed in April and March 2017. As to Counts 1 through 3, Defendant has been charged pursuant to A.R.S. § 13-1401(A)(4) and A.R.S. § 13-1401(A)(7)(c), specially that there was penetration of the anus and the victim was intentionally deceived as to the nature of the act.

As to the charges, the State has alleged that Defendant intentionally falsified multiple letters from a therapist named “Yvonne” in order to coerce the victim, who was his home care provider, to penetrate his anus with an enema and rub his legs with lotion for the purposes of sexual arousal. Each time Defendant coerced the victim into giving him an enema and rubbing his legs with lotion, the victim saw that Defendant had an erection and ejaculated. Each of the falsified letters told the victim that she needed to perform these acts in order to provide Defendant with some level of medical treatment. Defendant did not provide any information regarding “Yvonne” and detectives did not find any psychologists, counselors, or behavioral therapists named “Yvonne” working in Maricopa County.

II. PROCEDURAL POSTURE

On February 9, 2017, the Arizona Supreme Court decided *Simpson II*. The decision by its terms holds only that the provisions of article 2, section 22(A) of the Arizona Constitution and A.R.S. § 13-3961(A)(3), categorically denying bail for all persons charged with sexual conduct with a minor, are unconstitutional on their face. *Id.* at ¶ 31. The Court went on to state that the defendant in *Simpson II* would instead be subject to A.R.S. § 13-3961(D), which allows the court to deny bail

on the State's motion if the court finds by clear and convincing evidence following a hearing that: (1) "the person charged poses a substantial danger to another person or the community," (2) no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community," and (3) "the proof is evident or the presumption great that the person committed the offense." *Id.* at ¶ 29.

The decision by its terms did not affect the status of sexual assaults as non-bondable offenses or require that a 13-3961(D) hearing be held in sexual assault cases. Indeed, the only mention of sexual assaults in the opinion is to distinguish those offenses from the one at issue in predicting future dangerousness. *Id.* at ¶ 27.

The State filed special actions on March 3, 2017 in *State v. Wein/Goodman*, 1 CA-SA 17-0077 and *State v. Wein/Henderson*, 1 CA-SA 17-0072 in the Arizona Court of Appeals arguing that *Simpson II* by its terms did not include sexual assaults in the offenses required to be subject to hearings under A.R.S. § 13-3961(D). By Order dated April 4, 2017, that Court granted relief in these consolidated special actions with an opinion to follow. In *State v. Wein (Henderson and Goodman)*, 2017 WL 1458782 (April 25, 2017), the Court of Appeals unequivocally held that the *Simpson II* holding did not apply to defendants who are charged with sexual assault. The fact that the crime is non-consensual in nature satisfies the requirement of inherent dangerousness and no further findings pursuant to A.R.S. § 13-3961(D) need to be made. *Id.* at ¶ 9. This Court should note that defense counsel in the present case is a listed as counsel for the party interest as to *Henderson*. See Attachment A.

III. ARGUMENT

A. This Court is Bound to Hold Defendant Non-Bondable Under the Court of Appeals Decision in *Henderson and Goodman*.

The Court of Appeals decision in *Henderson and Goodman* could not be clearer. It holds that


sexual assault remains a non-bondable offense and that no § 13-3961(D) hearing needs to be held. Henderson at ¶ 9. This decision was binding upon the Superior Court immediately upon its publication. *Francis v. Ariz. Dept. of Transp.*, 192 Ariz. 269, 271, 963 P.2d 1092, 1094 (App. 1998). This Court is bound by decisions of the Arizona appellate courts and has “no authority to overrule, modify, or disregard them.” *City of Phoenix v. Leroy’s Liquors, Inc.*, 177 Ariz. 375, 378, 868 P.2d 958, 961 (App. 1993).

IV. CONCLUSION

The State therefore asks this Court to affirm that Defendant is non-bondable on the crime of sexual assault—by operation of the Arizona constitution and the Court of Appeals’ decision in *Henderson and Goodman*—and is therefore not entitled to an A.R.S. § 13-3961(D) hearing pursuant to *Simpson II*.

Submitted May 24th, 2017.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY


BY: 

/s/ Rachel Fleming
Deputy County Attorney

Copy delivered
May 24th, 2017, to:

The Honorable Barbara Spencer
Judge of the Superior Court

Michael Freeman
16427 N. Scottsdale Road, Ste. 300
Scottsdale, AZ 85254
Attorney for Defendant

BY: 

/s/ Rachel Fleming
Deputy County Attorney

ATTACHMENT A

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Petitioner,*

v.

THE HONORABLE KEVIN B. WEIN, Commissioner of the SUPERIOR
COURT OF THE STATE OF ARIZONA, in and for the County of
MARICOPA, *Respondent Commissioner,*

MARLIN BRYAN HENDERSON, *Real Party in Interest.*

STATE OF ARIZONA, *Petitioner,*

v.

THE HONORABLE KEVIN B. WEIN, Commissioner of the SUPERIOR
COURT OF THE STATE OF ARIZONA, in and for the County of
MARICOPA, *Respondent Commissioner,*

GUY JAMES GOODMAN, *Real Party in Interest.*

No. 1 CA-SA 17-0072
No. 1 CA-SA 17-0077
(Consolidated)
FILED 4-25-2017

Petition for Special Action from the Superior Court in Maricopa County
No. CR2017-108708-001
No. CR2017-107553-001
The Honorable Kevin B. Wein, Commissioner

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Maricopa County Attorney's Office, Phoenix

By Lisa Marie Martin

Counsel for Petitioner

Maricopa County Public Defender's Office, Phoenix

By Nicholaus Podsiadlik, Jamie A. Jackson

Counsel for Real Party in Interest Goodman

Michael L. Freeman, Scottsdale

Counsel for Real Party in Interest Henderson

OPINION

Judge Jon W. Thompson delivered the Opinion of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

THOMPSON, Judge:

¶1 This consolidated special action concerns bail in sexual assault cases following *Simpson v. Miller (Simpson II)*, 241 Ariz. 341, 387 P.3d 1270 (2017). The state argues that trial courts are erroneously holding bail hearings for individual defendants charged with sexual assault. It asserts that no hearing is required for a determination of future dangerousness. The real parties in interest assert *Simpson II* requires a finding of individualized dangerousness for each defendant before denying bail. Because this issue is important and the potential threat to the community great, we have, in a previously entered order, accepted jurisdiction and granted the state relief. Sexual assault remains a non-bailable offense.

JURISDICTION

¶2 Special action jurisdiction is available when there is no other equally plain, speedy or adequate remedy by appeal. Ariz. R. Spec. Act. 1(a). Another critical factor is whether the case presents an issue of statewide importance affecting numerous cases. *Lind v. Sup. Ct.*, 191 Ariz. 233, 236, ¶ 10, 954 P.2d 1058, 1061 (App. 1998). The issue presented here is of statewide importance, is likely to recur numerous times, and is an issue of first impression following *Simpson II*. There is no remedy by appeal. For these reasons, we accepted special action jurisdiction.

STATE v. HON. WEIN/GOODMAN
Opinion of the Court

PROCEDURAL AND FACTUAL BACKGROUND

¶3 On February 9, 2017, our supreme court issued *Simpson II*. On February 13, 2017, the Maricopa County superior court issued a “Protocol for Setting *Simpson v. Miller* Review Hearings.” That protocol stated of *Simpson II*:

In summary, the ruling held unconstitutional the portion of A.R.S. 13-3961(A) [2010] that allowed a defendant charged with Sexual Assault, Sexual Conduct with a Minor under 15, or Molestation of a Child under 15 to be held without bond if the Court has only made a “proof evident and presumption great” finding. The ruling held that in addition to a finding of proof evident and presumption great, the State must prove by clear and convincing evidence (at a “full blown adversary hearing”) that no condition or combination of conditions of release may be imposed that will reasonably assure that the safety of the other person or community (per A.R.S. § 13-3961(D) [2010]).

¶4 Goodman and Henderson were each charged with one count of sexual assault under Arizona Revised Statutes (A.R.S.) § 13-1406 (2010), a class 2 felony. In both cases, the superior court held an evidentiary hearing to determine whether the defendant could properly be held without bail under A.R.S. § 13-3961(D). In both cases, the superior court found proof evident and presumption great that the defendants committed sexual assault. However, because the court found that the state did not prove by clear and convincing evidence that the defendants were an ongoing danger to the community or to the victim, both defendants were held to be bailable. Defendant Goodman was allowed a \$70,000 secured appearance bond. Defendant Henderson was allowed a \$50,000 secured appearance bond.

DISCUSSION

¶5 In *Segura v. Cunanan*, this court provided the historical context of bail in this state.

Not all defendants are entitled to bail. Since statehood, the Arizona Constitution has provided that all offenses are bailable, “except for capital offenses when the proof is evident or the presumption great.” Ariz. Const. art. 2, § 22 (as quoted in *Wiley v. State*, 18 Ariz. 239, 158 P. 135 (1916)). Over the years, the list of nonbailable offenses was expanded, and by

STATE v. HON. WEIN/GOODMAN
Opinion of the Court

2006 included capital offenses, sexual assault, certain crimes against children, offenses committed when the person charged is on bail on a separate felony charge, and felony offenses if the person charged poses a substantial danger to any other person. Ariz. Const. art. 2, § 22. In each case, the standard of proof was that the proof is evident or the presumption great as to the charge. *Id.*; see also A.R.S. § 13-3961 (Supp. 2007) (statutory provision supplementing constitution).

219 Ariz. 228, 234, ¶ 24, 196 P.3d 831, 837 (App. 2008) (addressing the availability of bail to persons charged with serious felony offenses and in the country illegally). Section 22(A)(1) of our Constitution now reads that "All persons charged with a crime shall be bailable by sufficient sureties, except: For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great." This case presents questions of law, which we review de novo. *US West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 201 Ariz. 242, 244, ¶ 7, 34 P.3d 351, 353 (2001).

¶6 In *Simpson II*, the court examined whether bail was potentially available to Defendant Martinez, who was charged with sexual conduct with a minor under the age of fifteen. The court said:

The crime charged against Martinez, however, is not in itself a proxy for dangerousness. Section 13-1405(A) states, "A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age." Section 13-1405(B) classifies felonies for sexual conduct with a minor under age fifteen but does not alter the definition of the crime. The crime can be committed by a person of any age, and may be consensual. Hence, as the court of appeals noted, *Simpson*, 240 Ariz. at 215[,], ¶ 20, 377 P.3d at 1010, the offense sweeps in situations where teenagers engage in consensual sex. In such instances, evident proof or presumption great that the defendant committed the crime would suggest little or nothing about the defendant's danger to anyone. Cf. A.R.S. § 13-1406 (defining sexual assault as "intentionally or knowingly engaging in sexual intercourse or oral sexual contact . . . without consent of such person").

STATE v. HON. WEIN/GOODMAN
Opinion of the Court

Simpson II, 241 Ariz. at 349, ¶ 27, 387 P.3d at 1278 (emphasis added). The court concluded, as an issue of first impression, that due to the possibility that teenage consensual sex might be charged under the terms of the offense, a blanket prohibition on bail for the crime of sexual conduct with a minor violated due process rights. *Id.* at ¶ 31. It went on to require that before a denial of bail, in sexual conduct with a minor cases, an individualized determination must be made that the defendant is dangerous even when proof is evident or the presumption great that the defendant committed the crime. *Id.*

¶7 Sexual assault is not a crime like sexual conduct with a minor which could potentially include consensual situations and which, therefore, may involve a defendant who is not a danger to the community. The Court expressed this comparison with a “Cf.” citation. The Bluebook explains the citation signal “Cf.” as “Cited authority supports a proposition different from the main proposition but sufficiently analogous to lend support. Literally, ‘cf.’ means ‘compare.’” The Bluebook: A Uniform System of Citation R. 1.2(a), at 59 (Columbia Law Review Ass’n et al. eds. 20th ed. 2015); see *State v. Nixon*, 1 CA-CR 16-0391, 2017 WL 1278849, slip op at *3, ¶ 10 (Ariz. App. April 6, 2017) (same).

¶8 *Simpson II* used the Cf. citation to highlight the difference between the two offenses. This citation makes sense because A.R.S. § 13-1406(A) reads: “A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person *without consent* of such person[.]” (emphasis added). Unlike sexual conduct with a minor, lack of consent is an element of the crime of sexual assault. A.R.S. §§ 13-1405 (2010), -1406 (2010). We are bound by our Supreme Court’s analysis in *Simpson II* and have no authority to overrule or disregard it. See *State v. Sullivan*, 205 Ariz. 285, 289, ¶ 15, 69 P.3d 1006, 1009 (App. 2003).

¶9 *Simpson II* held that persons charged with sexual conduct with a minor under fifteen years of age are entitled to a hearing as to dangerousness. Sexual assault remains a non-bailable offense. Where proof is evident or the presumption is great that a defendant committed sexual assault, the non-consensual nature of the crime fulfills the requirement for finding inherent dangerousness. No section 13-3961(D) hearing need be held.

STATE v. HON. WEIN/GOODMAN
Opinion of the Court

CONCLUSION

¶10

For the above stated reasons, the state is granted relief.



AMY M. WOOD • Clerk of the Court
FILED: AA



IN THE SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Final Release Order

Michael K Jeanes, Clerk of Court

*** Electronically Filed ***

D. Casales, Deputy

5/25/2017 9:49:00 AM

Filing ID 8364809

State of Arizona

3 Cnt 13-1406A SEXUAL ASSAULT F2N

3 Cnt 13-2310A FRAUDULENT SCHE F2N

1 Cnt 13-2809A1 TAMP W/PHY EVID F6N

vs.

Jerry Alan Geisler

CaseNumber: CR2017-121763-001

It is hereby ordered that Jerry Alan Geisler shall NOT be released as indicated and must comply with ALL release conditions.

NEXT HEARING (S)

Evidentiary Hearing June 02, 2017 at 11:00 AM at Central Court Building, 201 W. Jefferson, 10th Floor, Phoenix, AZ, 85003-2243 Courtroom: 1002 Docket: SIM01

Initial Pretrial Conference July 10, 2017 at 08:15 AM at Central Court Building, 201 W. Jefferson, 10th Floor, Phoenix, AZ, 85003-2243 Courtroom: 1004 Docket: CMC04

Initial Pretrial Conference July 13, 2017 at 08:15 AM at Central Court Building, 201 W. Jefferson, 10th Floor, Phoenix, AZ, 85003-2243 Courtroom: 1004 Docket: CMC04

Comprehensive PreTrial Conference August 09, 2017 at 08:31 AM at Central Court Building, 201 W. Jefferson, 11th Floor, Phoenix, AZ, 85003-2243 Courtroom: 1101 Docket: CRJ11

RELEASE TYPE

Not Bailable As A Matter of Right

The Defendant is Not-Bailable as a matter of Right and shall NOT be released from custody in this Cause Number until further order of the Court. The defendant is Not-Bailable for the following reason:

Sexual Assault

The Court has determined that you are not eligible for release. To challenge this determination at any time during your case, a written motion must be filed with the Clerk of the Court and a copy of the motion must be delivered to the Central Court Building Criminal Information Desk, 201 W Jefferson (second floor), Phoenix, Arizona.

You must appear at all court proceedings in this case or your release conditions can be revoked, a warrant will be issued and proceedings may go forward in your absence. You must maintain contact with your attorney. If convicted, you will be required to appear for Sentencing. If you fail to appear, you may lose your right to a direct appeal. In addition, failure to appear at a future court proceeding may result in a waiver of any claim that you were not informed of a plea offer made in your case by the State. a. You will appear to answer and submit to all further orders and processes of the court having jurisdiction of the case. b. You will refrain from committing any criminal offenses. c. You will diligently prosecute any appeal. d. You will not leave the state without permission of the court. If you violate any conditions of this release order, the court may order the bond and any security deposited in connection therewith forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of your violation of any conditions of your release. After a hearing, if the court finds that you have not complied with the conditions of release, it may modify the conditions or revoke your release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be impossible for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.



IN THE SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Final Release Order

Case#: CR2017-121763-001

ACKNOWLEDGEMENT BY DEFENDANT

I have received a copy of this order. I understand the standard conditions, all other conditions and the consequences of violating this release order. I agree to comply fully with each of the conditions imposed in this release order, and to promptly notify the court in the event I change my place of residence.

Date 5/25/2017 9:39 AM

Address:

City, State, Zip:

Julie Mata

Signature:

J. Geisler

Julie Mata

Judge / Commissioner

Jerry Alan Geisler

Defendant

MICHAEL L. FREEMAN

16427 North Scottsdale Road, Suite 300

Scottsdale, Arizona 85254

(480) 471-5624 Office

(480) 443-8854 Facsimile

E-Mail - fmarina@aol.com

Cell Phone 602-206-7594

State Bar No. 010237

Attorney for Defendant

IN THE SUPERIOR COURT
STATE OF ARIZONA, MARICOPA COUNTY

STATE OF ARIZONA,

Plaintiff,

v.

JERRY ALAN GEISLER,

Defendant.

) Case No. CR2017-121763-001DT
)
) Motion to Remand and Dismiss
) (Oral Argument requested)
) (Status conference July 13, 2017)
) (Assigned to the Honorable Master Trial Calendar)

COMES NOW Defendant Jerry Geisler, through undersigned counsel, and respectfully requests this Honorable Court dismiss this case and remand this case to the Maricopa County Grand Jury for a redetermination of probable cause. The State did not present evidence to the Grand Jury in a fair and impartial manner; therefore, Mr. Geisler was denied a substantial procedural right. The denial of such right violated Rule 12.9 of the Arizona Rules of Criminal Procedure, and the Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution as well as Article II, Section 4 of the Arizona Constitution. The Defendant also requests the State provide exculpatory information to the Grand Jury, if the remand is granted, pursuant to Bashir v. Pineda, 226 Ariz. 351, 248 P. 3d 199(App. 2011) This remand motion was timely filed since the Grand Jury transcript was filed on June 13, 2017.

MEMORANDUM OF POINTS AND AUTHORITIES

Statement of Facts

The Defendant has been charged with three Counts of sexual assault, A.R.S. § 13-1406, and



Maricopa County
Office of the Medical Director

Exhibit
Two

Correctional Health Services
3250 W. Lower Buckeye Rd.
Phoenix, AZ 85009
Phone: 602-876-7114
Fax: 602-269-9678
www.maricopa.gov

July 5th, 2017

To Whom It May Concern:

Jerry Geisler T364295 DOB 12/25/45 is currently housed at the Towers Jail. He is suffering from invasive colon cancer. This is a terminal diagnosis. Despite the seriousness of his condition, I cannot give a definitive prognostication regarding how long Mr. Geisler has to live. However, this terminal condition would usually carry a life expectancy of less than 1 year.

As Medical Director of Maricopa County Correctional Health Services, it is my obligation to notify the court on a patient's behalf if and when a terminal diagnosis is given.

If there are any further questions, feel free to contact me at 602-527-6458.

Sincerely,

A handwritten signature in black ink, appearing to be "J Alvarez", with a long horizontal stroke extending to the right.

Jeff Alvarez, MD
Medical Director
Correctional Health Services
Maricopa County

MICHAEL L. FREEMAN

16427 North Scottsdale Road, Suite 300

Scottsdale, Arizona 85254

(480) 471-5624 Office

(480) 443-8854 Facsimile

E-Mail - famarina@aol.com

Cell Phone 602-206-7594

State Bar No. 010237

Attorney for Defendant

IN THE SUPERIOR COURT
STATE OF ARIZONA, MARICOPA COUNTY

STATE OF ARIZONA,

Plaintiff,

v.

JERRY ALAN GEISLER,

Defendant.

Case No. CR2017-121763-001DT

Supplement to Motion to Dismiss With Prejudice

(No current Dates)

(Assigned to the Honorable Jose Padilla)

COMES NOW Defendant Jerry Geisler, through undersigned counsel, and respectfully supplements his request this Honorable Court dismiss this case with prejudice and replies to the State's following response:

-----Original Message-----

From: Fleming Rachel <flemingr@mcao.maricopa.gov>

To: 'Michael Freeman' <famarina@aol.com>; Treece Mauri

<treecem@superiorcourt.maricopa.gov>; belliot <belliot@scottsdaleaz.gov>

Sent: Thu, Aug 3, 2017 3:51 pm

Subject: RE: Geisler, Jerry Alan; CR2017-121763-001 Motion to Dismiss
Attached

Hello all,

The State has no objection to the Motion to Dismiss, but would ask that the case be dismissed without prejudice.

If the Court would like, I can file the above as a formal Response.

Thank you,

1 **Rachel Fleming**
2 *Deputy County Attorney*
3 MCAO, Sex Crimes East
4 602-506-3023
5 flemingr@mcao.maricopa.gov

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MEMORANDUM OF POINTS AND AUTHORITIES

Judges and lawyers sometimes wonder why the public thinks legal proceedings are intentionally unintelligible to the average observer. Usually, it is because a system that is supposed to be based on logic and reason makes a decision that is neither logical nor reasonable.

Here, the State of Arizona invites the court to dismiss an indictment against a dead person "without prejudice". In so doing, the court will then make it possible for the State to go get a new indictment against a person who cannot be physically arrested, summoned to court, arraigned, represented and advised by an attorney, tried by a jury or sentenced by a judge. Precious judicial and prosecutorial resources could then be used for a controversy that no longer exists.

Mr. Geisler was 71 years old and in ill health. He had no previous encounters with law enforcement. Faced with terminal cancer, he sought care with a home provider who knowingly and consensually provided lotion and enemas which helped him feel better as the colon cancer ultimately killed him.

LEGAL AUTHORITY

Rule 16.6 governs the dismissal of a prosecution. The applicable portion of the

rule regarding whether the dismissal should be with or without prejudice is subsection

d.

d. Effect of Dismissal. Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court order finds that the interests of justice require that the dismissal be with prejudice. What constitutes the “interests of justice” under the usual circumstances, and these circumstances?

The reason for the requirement [in Rule 16.6 (d) that a court find that a dismissal with prejudice is in the interests of justice] is obviously to ensure that the court, prior to dismissing the case, properly balance the conflicting interests involved, society’s and the defendant’s, in deciding whether to make the dismissal with ... prejudice. *State ex rel. Jenney v. Superior Court*, 122 Ariz. 89, 90, 593 P.2d 312, 313 (App 1979) *State v. Huffman*, 222 Ariz. 416, 215 P.3d 390,395 (App 2009) (Emphasis supplied.) The Huffman court provided a catalog of decisions from other states defining what constitutes the interests of justice in dismissing a case in a way that it cannot be refiled:

“General weighing of defendant’s interests against state’s (Alaska)
“Consideration of defendant’s constitutional rights and interests of society”
(California) “Court weighs defendant’s constitutional rights against societal interests”
(Montana) “Requires a ‘sensitive balance’ between defendant and state” (New York)
“Court must respond to “rights and interests of prosecution, the accused and victims”
and “deserve the discretion to be able to craft a solution that works in a given case”

(Ohio)

1 Huffman, Id. (internal citations omitted) The “interests of justice” cannot be
2
3 tied to a specific list of factors. There is not a single Arizona statute, rule or case that
4
5 would suggest dismissing an indictment against a person who is no longer capable of
6
7 being indicted—because he is deceased—should be other than “with prejudice”.

8 The duty of the court at this point is to consider the balancing test and then rule:
9
10 We . . . see no need to limit trial courts to any specific list of factors they may utilize in
11
12 deciding whether and in what manner a prosecution should be dismissed under the
13
14 unique circumstances before them. The court’s duty is satisfied as long as it has
15
16 considered the relevant competing interests of the defendant and the state in light of
17
18 the particular circumstances of each case. Huffman, Id. (Emphasis supplied)

19 For Mr. Geisler, a dismissal with prejudice simply confirms that neither he
20
21 nor the case can be resuscitated.

22 RESPECTFULLY SUBMITTED this 3rd day of August, 2017.

23 /s/ Michael L. Freeman

24
25 _____
26 MICHAEL L. FREEMAN

27 Attorney for Defendant

28 Copy Of The Foregoing Emailed This 3rd Day Of August, 2017 To:
The Honorable Jose Padilla Maricopa County Superior Court
Rachel Fleming Maricopa County Attorney’s Office
Ted and Dana Geisler

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

Rachel Fleming
Deputy County Attorney
Bar ID #: 030630
301 W. Jefferson, 5th Floor
Phoenix, AZ 85003
Telephone: (602) 506-8556
mcaosvd@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

JERRY ALAN GEISLER,

Defendant.

CR2017-121763-001

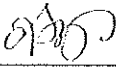
**STATE'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS WITH
PREJUDICE**

(Assigned to the Honorable Jose Padilla)

The State of Arizona, by and through undersigned counsel, hereby responds to Defendant's Motion to Dismiss with Prejudice (hereinafter "Motion"). The State has no objection to Defendant's Motion, but asks that this Court dismiss the above-entitled action *without* prejudice for the reason that it serves the interests of justice. The State's request is not for the purpose of infringing upon any of Defendant's constitutional rights, but is based on the possibility, even if unlikely, that Defendant's death certificate is not valid. In lieu of this Response, the State is not requesting oral argument, asks that this Court make its determination on the pleadings, and asks that any warrants or summons associated with this action be quashed and any dates vacated.

Submitted August 4th, 2017.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

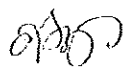
BY: 

/s/ Rachel Fleming
Deputy County Attorney

Copy delivered
August 4th, 2017, to:

The Honorable Jose Padilla
Judge of the Superior Court

Michael L. Freeman
16427 N. Scottsdale Road, Ste. 300
Scottsdale, AZ 85254
Attorney for Defendant

BY: 

/s/ Rachel Fleming
Deputy County Attorney

:rf

Appendix K

State v. Goodman, No. CR2017-108708-001, dkt. 55 (Super. Ct., Ariz.)

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

CR2017-108708-001 DT

HONORABLE WARREN JAMES GRANVILLE

THE STATE OF ARIZONA)

V.)

KATHLEEN TYMA

GUY JAMES GOODMAN (001))

JAMIE ALLEN JACKSON

DOB: 5/31/1984)
_____)

SENTENCING ORDER

Imprisonment/Supervised Probation

This is the time set for Sentencing hearing held on September 18, 2017 at 8:30 AM in the South Court Tower - 6A for CR2017-108708-001 DT and Defendant GUY JAMES GOODMAN.

Hearing Start: 09:51 AM

Present in the courtroom,

Attorney	Tyma, Kathleen
Defendant	Guy Goodman
Defendant's Attorney	Emilie Lambert
Public Defender	Jamie Jackson

A record of the proceedings is recorded by Court Reporter, ROCHELLE DOBBINS.

Count(s) [001];

WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court that the Defendant is guilty of the following offense(s):

Count 001

As Amended, §13-1304 KIDNAP, Felony 2
A.R.S. § 13-118, 13-1301, 13-1304, 13-701, 13-702, 13-801
Date of Offense: 11/6/2010
Non Dangerous - Non Repetitive

AS PUNISHMENT, IT IS ORDERED the Defendant is sentenced to a term of imprisonment and is committed to Department of Corrections/Arizona State Prison as follows:

Count 001 - A Minimum term of 4 years to begin on: 9/18/2017 with a presentence credit for 208 day(s) (time served).

IT IS ORDERED that the Defendant shall pay financial obligations through the Clerk of the Superior Court as directed.

	Total	Payment	Begin	Note
Probation Assess.	\$20.00		To be determined	

Community Supervision: Count(s) [001] - Waived pursuant to A.R.S. § 13-603(K), due to a term of probation in Count(s) [002].

In the event the Defendant is released by the Department of Corrections on a temporary release basis, and a term of Community Supervision has been waived, the length of probation shall be extended to include the time of Defendant's temporary release, pursuant to A.R.S. § 13-901(B).

The Arizona Department of Corrections shall notify the Clerk of the Court of Maricopa County of Defendant's release from custody via e-mail cforesponse@mail.maricopa.gov. The Clerk of the Court, upon said notification, shall furnish financial information for a Criminal Restitution Order for Judicial signature for any unpaid monies to date.

Restitution is not being requested.

IT IS ORDERED authorizing the Sheriff of Maricopa County to deliver the Defendant to the Arizona Department of Corrections to carry out the term of imprisonment set forth herein.

IT IS ORDERED that a copy of the Order of Confinement together with all presentence reports, probation violation reports and medical and psychological reports that are not sealed in this case be remitted to the Arizona Department of Corrections.

Count(s) [002];

WAIVER OF TRIAL: The Defendant knowingly, intelligently and voluntarily waived all pertinent constitutional and appellate rights and entered a plea of guilty.

IT IS THE JUDGMENT of the Court that the Defendant is guilty of the following offense(s):

Count 002

As Amended, §13-1406A ATTEMPT TO COMMIT SEXUAL ASSAULT, Felony 3

A.R.S. § 13-1001, 13-1401, 13-1406, 13-3821, 13-610, 13-701, 13-702, 13-801

Date of Offense: 11/6/2010

Non Dangerous - Non Repetitive

The Court is suspending imposition or execution of sentence and, under the supervision of the Adult Probation Department (APD), placing the Defendant on Probation for:

Count 002 - Supervised Probation for a term of life upon release from prison pursuant to §13-603(k)

IT IS ORDERED that the Defendant shall abide by all standard terms and conditions of probation including:

Condition: 3 I will report any contact I have with law enforcement to the APD within 72 hours.

Condition: 6 I will report to the APD within 72 hours of sentencing, absolute discharge from prison, release from incarceration, or residential treatment and continue to report as directed. I will also keep APD advised of progress toward case plan goals and comply with any written directive of the APD to enforce compliance with the conditions of probation. I will provide a sample for DNA testing if required by law.

Condition: 19 I will not have any contact with the victim(s) in any form, unless approved in writing by the APD.

Condition: 21 I will abide by the attached special conditions of probation:

- Sex Offender
- Computer Usage

Condition: 22 Defendant shall not return to the scene of the crime. Defendant shall register as a sex offender.

Condition 15: IT IS ORDERED that the Defendant shall pay financial obligations through the Clerk of the Superior Court as directed.

	Total	Payment	Begin	Note
Probation Svc Fee/Standard	\$65.00	\$65.00	To be determined	
Other	\$500.00	\$20.00	To be determined	Medical or Forensic Interview Expenses
Sex Offender Registration Fee	\$250.00	\$10.00	To be determined	
Address Confidentiality Program Assessment	\$50.00	\$5.00	To be determined	
Victim Rights Enforcement Assessment	\$2.00		To be determined	
Time Payment Fee	\$20.00		To be determined	
Criminal Penalty Assessment	\$13.00		To be determined	Tempe PD

The Court will retain jurisdiction over restitution for Count 002. No hearing is set at this time. In the event a restitution hearing is set, Defendant waives presence.

Restitution is to remain open for Life.

Restitution is not being requested.

IT IS FURTHER ORDERED that the Defendant shall submit to fingerprint identification processing by the Maricopa County Sheriff's Office if directed to do so by the Adult Probation Department. The Adult Probation Department shall direct any Defendant who is placed on probation and who does not already have a State Identification Number (SID) established in this matter be fingerprinted.

IT IS FURTHER ORDERED that the Defendant must submit to DNA testing for law enforcement identification purposes in accordance with ARS §13-610.

Defendant is advised that pursuant to ARS §13-805 that failure to maintain contact with the Adult Probation Department may result in the issuance of:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.
2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

The Adult Probation Department has prepared a presentence investigation and recommendation to be filed under the case number.

Hearing Concludes: 09:56 AM



DONE IN OPEN COURT 09/18/2017

Hon. Warren James Granville
Maricopa County Superior Court

IT IS ORDERED that defense counsel shall preserve defendant's file for post-conviction relief purposes. If defense counsel receives notice that defendant is seeking post-conviction relief, counsel shall prepare the file for delivery to PCR counsel and shall make timely arrangements for the exchange thereof when notified. Further, upon exchange of the file, defense counsel shall file with the court a Notice of Compliance that shall, at a minimum, include the date of compliance, recipient of the file, and an itemization of contents of the file. A copy of the Notice shall be provided to PCR counsel, the State and the PCR Unit.

Let the record reflect that the Defendant's right index fingerprint is attached to this sentencing order in open court.



Right Index finger

ENDORSEMENT PAGE

CASE NUMBER: CR2017-108708-001

SIGNATURE DATE: 9/18/2017

E-FILING ID #: 8672903

FILED DATE: 9/19/2017 8:00:00 AM

EMILIE LAMBERT

JAMIE ALLEN JACKSON

KATHLEEN TYMA

AZ DOC

DISPOSITION CLERK-CSC

MCSO-ATTN RECORDS MANAGER

RFR