

No. 21-

In the
Supreme Court of the United States

Allyn Akeem Smith,

Petitioner,

v.

State of Arizona,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARIZONA

APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI

MIKEL STEINFELD

Counsel of Record

Maricopa County Public Defender's Office

620 West Jackson, Suite 4015

Phoenix, Arizona 85003

Telephone (602) 506-7711

State Bar Attorney No. 024996

Mikel.Steinfeld@Maricopa.Gov

Counsel for Petitioner

CAPITAL CASE

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APPENDIX A

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

STATE OF ARIZONA,
Appellee,

v.

ALLYN AKEEM SMITH,
Appellant.

No. CR-18-0295-AP
Filed November 4, 2020

Appeal from the Superior Court in Maricopa County
The Honorable Michael W. Kemp, Judge
No. CR2015-106788-001

AFFIRMED

COUNSEL:

Mark Brnovich, Arizona Attorney General, Brunn (Beau) W. Roysden III, Solicitor General, Lacey Stover Gard, Chief Counsel, David R. Cole, Nate Curtisi (Argued), J.D. Nielsen, Vineet Mehta Shaw, Assistant Attorneys General, Capital Litigation Section, Phoenix, Attorneys for State of Arizona

James J. Haas, Maricopa County Public Defender, Peg Green, Nicholaus Podsiadlik (argued), Deputy Public Defenders, Phoenix, Attorneys for Allyn Smith

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JUSTICE GOULD authored the opinion of the Court, in which CHIEF JUSTICE BRUTINEL, VICE CHIEF JUSTICE TIMMER and JUSTICES BOLICK, LOPEZ, BEENE, and JUSTICE PELANDER (Retired)* joined.

JUSTICE GOULD, opinion of the Court:

¶1 Allyn Akeem Smith was sentenced to death after a jury found him guilty of first-degree murder and child abuse. We have jurisdiction of this automatic appeal pursuant to article 6, section 5(3) of the Arizona Constitution and A.R.S. § 13-4031. We affirm Smith’s convictions and sentences.

I.

¶2 On December 11, 2014, K.L. was fatally shot by Smith, her former boyfriend and the father of her two-month-old daughter, K.S.¹ K.L. and K.S. were found on a hiking path near South Mountain in Phoenix. K.L. was shot in the back of the head, while K.S. was left facedown against the ground with a bullet wound in her thigh. K.S. survived after surgery.

¶3 Smith and K.L. had a stormy relationship. Before meeting K.L., Smith was in an on-again-off-again relationship with K. Ward. At some point in 2014, Ward cheated on Smith and Smith began dating K.L. Smith and Ward were back together by October of 2014.

¶4 In early 2014, Smith got K.L. pregnant. Ward obsessed over K.L.’s pregnancy, expressing anger that Smith may have fathered a child with another woman. Smith tried to convince Ward that he was not the father. Smith and Ward also had a son, and Ward threatened to leave Smith and take their son away if Smith was indeed the father of K.L.’s child.

¶5 Almost four months before the murder, on August 17, 2014, K.L. and Smith met at Kiwanis Park. They took a walk through the park, with Smith walking several feet ahead of K.L. As they were walking, K.L. was assaulted from behind. At the time, K.L. was seven months pregnant

* Justice William G. Montgomery has recused himself from this case. Pursuant to article 6, section 3 of the Arizona Constitution, Justice John Pelander (Retired) was designated to sit in this matter.

¹ We view the facts in the light most favorable to sustaining the jury’s verdict. *State v. Rushing*, 243 Ariz. 212, 216 n.2 (2017).

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with Smith's child, and her assailant kicked her in the stomach, punched her in the back of the head and cheek, knocked her to the ground, and then punched her again. K.L. had to be treated at a hospital.

¶6 Evidence suggested that Smith was involved in the attack. Before the attack, Smith told his friend, G. Curley, that he needed help with a pregnant girl, he needed to "fuck her up" because she was pregnant, and that he was "ready to fuck this bitch up." Curley declined to help, and when Smith later repeated the request, Curley responded that it was "all on him." After the attack, Smith told K.L. he called 911, but there was no record of the call. Because no one was able to identify K.L.'s assailant, no charges were filed. However, Cell Site Location Information ("CSLI") revealed that Smith's long-time friend, R. Marley, was at or within a mile and a half radius of the park when K.L. was attacked. CSLI also revealed that Smith and Marley were together near Smith's apartment immediately after the attack.

¶7 In October 2014, K.L. gave birth to K.S. When K.L. applied for welfare benefits, the Department of Economic Security ("DES") required her to collect child support from K.S.'s father. As a result, on October 27, K.L. named Smith as the father and provided his contact information to DES to set up a DNA test.

¶8 Smith, however, repeatedly failed to show up for his appointments with DES. On December 1, after K.L.'s urging, Smith made an appointment for December 4. He did not, however, show up for that appointment. Smith made another appointment on December 9, but he did not show up for that one either. On December 10, the day before her murder, K.L. persisted in trying to get Smith to take the paternity test, informing him that DES would refer the matter to the courts if he did not show up for his test by December 11. Smith told K.L. that he wanted to meet K.S. and play with her before he took the paternity test. Smith said he would meet with K.L. and K.S. only if they were alone, reiterating, "If anyone else is there, I don't want to come." On December 10, K.L. gave Smith her address, and Smith told her that he would be there at 12:00 or 12:30 p.m. the following day.

¶9 On December 11, at 10:54 a.m., Smith deleted K.L. as a friend on Facebook. Four minutes later, he deleted his OG Triple Facebook account (an account associated with his email address), which he had used to contact K.L. Smith then went to a firearms store and purchased a Phoenix Arms .22 handgun and ammunition. He filled out paperwork and was

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captured on store video surveillance at 11:46 a.m. Then, according to Smith's CSLI, he arrived at K.L.'s apartment at approximately 12:16 p.m. Tashae Jones, K.L.'s roommate, saw Smith enter K.L.'s apartment at approximately 12:40 p.m. Smith immediately asked K.L. to have Jones leave the apartment.

¶10 Smith drove K.L. and two-month-old K.S. to a trail near the base of South Mountain, where he fired two shots; one hit K.L. in the back of the head, and another struck K.S. in the thigh. K.L. and K.S. were found around 3:00 p.m. by a hiker. K.L. was unconscious, and K.S. was lying outside her carrier face down on the ground. The paramedic who first treated K.S. had to remove gravel from her mouth. The bullet fractured K.S.'s femur, but she survived after undergoing emergency surgery. Because of K.S.'s small size, she had to be placed in a body cast to treat her fracture.

¶11 K.L. could not be revived, and a medical examiner determined that she died of a gunshot wound to the head. The Phoenix Police Department ("PPD") recovered a shell casing for a .22 caliber weapon from the crime scene.

¶12 After murdering K.L., Smith immediately drove to DES and took a paternity test. He asked an employee what would happen if K.L. did not arrive for testing. He was told that the matter would be closed. The test established that K.S. is his daughter.

¶13 Smith was indicted for first-degree murder and one count of child abuse. On September 13, 2016, the State obtained Smith's CSLI by court order pursuant to A.R.S. § 13-3016. Smith's CSLI revealed that his cell phone was within a mile and a half radius of K.L.'s apartment at 12:16 p.m. and within a mile and a half radius of the crime scene from 1:29 p.m. until 2:04 p.m. Additionally, Smith and Ward had been communicating throughout the morning, but there was a period from 12:28 p.m. to 1:39 p.m. where Smith did not answer Ward's text messages.

¶14 At trial, the jury found Smith guilty of premeditated first-degree murder of K.L. and one count of knowing or intentional child abuse involving threat of death or serious physical injury of K.S. At the end of the aggravation phase, the jury found two aggravators: (1) Smith was convicted of a serious offense (child abuse of K.S.), *see* A.R.S. § 13-751(F)(2); and (2) Smith murdered K.L. for pecuniary gain, *see id.* (F)(5), i.e. to avoid child support payments.

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¶15 In the penalty phase, Smith did not testify or exercise his right of allocution but presented twenty-nine non-statutory mitigating circumstances. *Infra* ¶ 160. He presented no statutory mitigators. After considering the mitigation evidence, the jury determined that Smith should be sentenced to death. Additionally, the trial court sentenced Smith to a consecutive presumptive prison term for his child abuse conviction.

II.

A.

¶16 Smith argues that the trial court erred in denying his motion to suppress his CSLI. We review a court’s factual findings on a motion to suppress for an abuse of discretion “but review de novo the trial court’s ultimate legal determination that the search complied with the Fourth Amendment.” *State v. Jean*, 243 Ariz. 331, 334 ¶ 9 (2018) (quoting *State v. Gilstrap*, 235 Ariz. 296, 297 ¶ 6 (2014)). Additionally, we review de novo whether the good-faith exception to the exclusionary rule applies. *State v. Weakland*, 246 Ariz. 67, 69 ¶ 5 (2019).

¶17 PPD Detective Helen Balmir prepared an affidavit and applied for a court order (“CSLI Order”) to obtain Smith’s CSLI through the Initial Appearance Court (“IA Court”). Balmir later testified at the suppression hearing that it was common practice for PPD to make such applications to the IA Court. The IA Court Commissioner granted the order that same day.

¶18 In response to the CSLI Order, AT&T (Smith’s service provider) provided “call detail reports,” which included Smith’s CSLI, subscriber information, historical detail records, and device information from March 1, 2014 through December 14, 2014. AT&T did not disclose any information regarding the content of Smith’s communications, such as texts, voicemails, or emails.

¶19 Smith moved to suppress the CSLI, arguing that under *Carpenter v. United States*, 138 S. Ct. 2206, 2220–21 (2018), the State could not obtain his CSLI without a search warrant supported by probable cause. Additionally, Smith claimed that the State violated § 13-3016 by failing to provide him notice of the CSLI Order. Following an evidentiary hearing, the trial court denied Smith’s motion, concluding that (1) there was probable cause to support the CSLI Order, and (2) lack of notification under § 13-3016 was not grounds for suppression of Smith’s CSLI.

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¶20 On appeal, Smith asserts that because the State did not have a warrant and the CSLI Order was only based on reasonable grounds, it did not comply with *Carpenter*, and his CSLI should have been suppressed. Further, Smith argues that § 13-3016(C)(3) is facially unconstitutional to the extent it allows CSLI to be obtained without a warrant.

1. Functional Equivalent of a Warrant

¶21 On appeal, the State concedes that under *Carpenter*, a search warrant was required to obtain Smith's CSLI. However, the State argues that because the CSLI Order was the functional equivalent of a warrant, it complied with *Carpenter*. The State bases this argument on the trial court's finding that "regardless of the language used in the order," the order set forth probable cause for the search. See *People v. Edwards*, 97 N.Y.S.3d 418, 421-22 (N.Y. Sup. Ct. 2019). In *Edwards*, the court held that a CSLI order complied with *Carpenter* because it "ma[de] out probable cause," and therefore "the resulting CSLI order [was] the equivalent of a search warrant, even though the issuing court used the lower" reasonable grounds standard. *Id.* at 422; see also *State v. Conner*, 249 Ariz. 121, 248 ¶ 4, 250 ¶¶ 21-22 (App. 2020) (holding that a CSLI order issued under A.R.S. § 13-3017 and 18 U.S.C. § 2703, which requires a showing of "reasonable grounds," substantially complied with the requirements of a search warrant where the trial court expressly found there was "probable cause" supporting the state's application).

¶22 We are not persuaded by the State's argument. Although the CSLI Order cites § 13-3016(C)(1) and (D)(1), which apply to warrants, the IA Court issued an "order," not a search warrant. Further, Balmir stated that she prepared her affidavit as a request for an order, not a warrant. Finally, the CSLI Order is based on a showing of reasonable grounds, not probable cause. Accordingly, we decline to recast the CSLI Order as a warrant.

2. Good Faith

¶23 On appeal, the State argues that even if the CSLI Order did not comply with *Carpenter*, the good-faith exception applies because PPD obtained the CSLI Order in good faith reliance on § 13-3016. See *Illinois v. Krull*, 480 U.S. 340, 342, 352 (1987) (applying the good-faith exception where officers "act[ed] in objectively reasonable reliance upon a statute authorizing warrantless administrative searches" where the statute was later found to be unconstitutional (emphasis omitted)); *Davis v. United States*, 564 U.S. 229, 232 (2011) (holding that "searches conducted in

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objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule”).

¶24 Courts have consistently applied the good-faith exception to CSLI orders issued prior to *Carpenter*. See, e.g., *United States v. Korte*, 918 F.3d 750, 758 (9th Cir. 2019) (applying the good-faith exception to CSLI obtained under the federal Stored Communications Act (“SCA”) where the “[g]overnment had [no] reason to doubt the [law’s] constitutionality”); *United States v. Beverly*, 943 F.3d 225, 235 (5th Cir. 2019) (stating that “every one of our sister courts” has “agreed that the good-faith exception—specifically, the *Krull* exception—applies to CSLI obtained under [the SCA] prior to *Carpenter*”); *United States v. Goldstein*, 914 F.3d 200, 204–05 (3d Cir. 2019) (to same effect); *State v. Brown*, 921 N.W.2d 804, 811–12 (Neb. 2019) (to same effect); *Reed v. Commonwealth*, 834 S.E.2d 505, 511 (Va. Ct. App. 2019) (applying the good-faith exception to CSLI obtained under a Virginia statute).

¶25 We conclude that the good-faith exception applies here. Balmir obtained Smith’s CSLI pursuant to the IA Court’s September 13, 2016 CSLI Order. In applying for the CSLI Order, Balmir reasonably relied on § 13-3016(C), which permitted the state to obtain CSLI without a warrant. Two years later, in June 2018, the Supreme Court decided *Carpenter*. See 138 S. Ct. 2206.

¶26 Smith argues, however, that the good-faith exception should not apply because *Riley v. California*, 573 U.S. 373 (2014), was decided before Balmir obtained the CSLI order. As a result, Smith contends that *Riley*’s holding—that a cellphone’s “historical location information” deserves greater protection than physical records—should have notified law enforcement that acquiring CSLI without a warrant was unconstitutional. *Id.*

¶27 Smith’s reliance on *Riley* is misplaced. *Riley* addressed a warrantless search of the *content* of a cell phone. *Id.* at 379. In contrast, here, Smith’s CSLI simply contains records about his general location; there is no content. Additionally, courts have not recognized *Riley* as a barrier to applying the good-faith exception to CSLI obtained without a warrant pre-*Carpenter*. See, e.g., *Korte*, 918 F.3d at 756; *Beverly*, 943 F.3d at 234; *Brown*, 921 N.W.2d at 807.

¶28 Because we apply the good-faith exception, Smith’s arguments regarding the more stringent standards for obtaining search

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warrants and wiretaps are irrelevant. For example, Smith cites *Berger v. New York*, 388 U.S. 41, 54 (1967), to argue that the CSLI Order was invalid. There, the Supreme Court struck down an eavesdropping statute that allowed a judge to issue a wiretap order based upon reasonable grounds. *Id.* at 54, 60. But the heightened standards for obtaining a wiretap, which involve ongoing surveillance of the content of phone conversations, do not apply to CSLI. Similarly, Smith argues that the CSLI Order did not satisfy the notice requirements for a search warrant. However, since we apply the good-faith exception here, the requirements for a search warrant are not relevant.

3. Notice

¶29 Next, Smith claims that the CSLI Order was invalid because the State did not, as required by § 13-3016(B)(3), provide “prior notice to [Smith].” Smith is wrong for two reasons. First, § 13-3016(D)(1) allows notice to “be delayed for a period of not to exceed ninety days” if the applicant “requests a delay of notification and the court finds that delay is necessary to protect the safety of any person or to prevent flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation.” Here, Balmir requested the IA Court delay disclosure of the CSLI Order pursuant to § 13-3016(C)(1), (D)(1) to prevent “jeopardizing” the investigation. The IA Court approved the request, giving the State ninety days to notify Smith.

¶30 Second, the State timely disclosed the CSLI to Smith. Specifically, in a motion dated November 8, 2016, Smith’s counsel admitted that the State disclosed Smith’s CSLI on October 18, 2016, which was thirty-five days after the IA Court issued the order and within the ninety days permitted by § 13-3016(D)(1). We recognize that approximately two years later, in his motion to suppress the CSLI and at the suppression hearing, Smith argued that he never received notice. But here, counsel’s prior statement constitutes a judicial admission. *State v. Schmid*, 107 Ariz. 191, 193 (1971) (explaining that counsel’s statement in a motion for continuance was a judicial admission). And although we typically “consider only the evidence adduced at the suppression hearing,” *Jean*, 243 Ariz. at 333 ¶ 2, neither *Jean* nor our other precedent hold that we are bound by inaccurate statements refuted by the record.

¶31 Smith also argues that there were no grounds for delaying notice. Specifically, he asserts that he could not flee the jurisdiction (he was in custody) and, because the investigation had been ongoing for over a year, providing notification could not have threatened the investigation. We

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disagree. Any one of the grounds listed in § 13-3016(D)(1) provides a basis for delaying notification. And here, based on Balmir's affidavit describing PPD's ongoing murder investigation, there was a reasonable basis for the IA Court to conclude that delayed notification was necessary to protect the State's investigation.

4. Arizona Constitution

¶32 Finally, Smith argues that the Arizona Constitution independently requires suppression. Citing *State v. Bolt*, 142 Ariz. 260, 265 (1984), Smith observes that article 2, section 8 was intended to give individuals a sense of security in their "homes and personal possessions." *Bolt* addressed warrantless entry into the home and stated that Arizona's Constitution specifically preserves "the sanctity of homes . . . in creating a right of privacy." *Id.* at 264-65. Thus, Smith argues, because CSLI provides "near perfect surveillance" akin to an ankle monitor, *see Carpenter*, 138 S. Ct. at 2218, CSLI must also implicate the same sense of security in one's home under article 2, section 8.

¶33 We disagree. Unlike *Bolt*, CSLI does not involve a warrantless entry into a person's home. And here, even if the Arizona Constitution provided greater protection, the good-faith exception applies.

5. Due Process

¶34 Smith argues that the trial court violated his due process rights under the Fourteenth Amendment for two reasons. First, he claims that he was denied the opportunity to oppose the State's application for the CSLI Order. Second, he asserts that his CSLI was obtained in violation of Arizona Rule of Criminal Procedure 15.2(g) and A.R.S. § 13-3016. We review constitutional challenges de novo. *State v. Hidalgo*, 241 Ariz. 543, 548 ¶ 7 (2017).

¶35 Neither argument is persuasive. "[D]ue process entitles parties to notice and a meaningful opportunity to be heard" *Id.* ¶ 10. To protect this constitutional guarantee, procedural due process requires that a defendant be provided "an adequate opportunity to fully present factual and legal claims," including the opportunity to respond to evidence submitted against him by the State. *Id.* at 549 ¶ 11 (quoting *Kessen v. Stewart*, 195 Ariz. 488, 492 ¶ 16 (App. 1999)); *State v. Hampton*, 213 Ariz. 167, 179 ¶¶ 48-50 (2006) (to same effect).

¶36 Citing *State v. Rosengren*, 199 Ariz. 112, 116-17 ¶ 29 (App. 2000), Smith claims that he had a due process right to oppose the State's

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application for the CSLI Order. Smith’s reliance on *Rosengren* is misplaced. That case, which involved DUI/vehicular manslaughter charges, addressed a defendant’s due process right to gather “contemporary, independent exculpatory evidence of sobriety” during the “critical window of availability” after his arrest. *Id.* at 121 ¶¶ 28–29. But here, Smith was provided the CSLI and was given a full and fair opportunity to suppress this evidence at an evidentiary hearing. And, unlike evidence of intoxication, which is fleeting and evanescent, *see id.*, Smith’s CSLI was adequately preserved despite its delayed disclosure.

¶37 Smith next argues that the State illegally obtained his CSLI by “ignor[ing] the protections” of Arizona Rule of Criminal Procedure 15.2(g)(1). Relying on *Carpenter v. Superior Court*, 176 Ariz. 486, 488 (App. 1993), and *Wells v. Fell*, 231 Ariz. 525, 528 ¶ 10 (App. 2013), Smith asserts that the State could only obtain his CSLI through a court order issued under Rule 15.2(g)(1), and that it was prohibited from obtaining such information using the procedure set forth in § 13-3016.

¶38 We disagree. Rule 15.2(g) does not, by its terms, provide the exclusive means for obtaining records and information in the possession or control of a third party. Additionally, *Carpenter* and *Wells* do not apply here because they address records within the control of a party. *See Carpenter*, 176 Ariz. at 487, 489–90 (requiring a defendant to request police reports under Rule 15.1 because such records were within the control of the State); *Wells*, 231 Ariz. at 526 ¶ 2, 527 ¶ 7, 528 ¶ 10 (providing that under Rule 15.2(g), a court may order disclosure of witness interviews in the possession of defense counsel to the state). Here, Smith did not possess or control his CSLI; this information was in the control and possession of AT&T.

¶39 Finally, Smith argues that the State violated his due process rights by failing to provide notice of the CSLI Order under § 13-3016. However, as noted above, this is inaccurate; the State provided Smith with notice of the CSLI Order. *Supra* ¶ 30.

6. Sixth Amendment

¶40 Smith claims that the State violated his Sixth Amendment right to counsel because, when it submitted its request for the CSLI Order, it did not provide notice to his attorney. As a result, he asserts that his attorney was denied the opportunity to oppose the State’s request. We review constitutional issues de novo. *Hidalgo*, 241 Ariz. at 548 ¶ 7. Because Smith did not raise this argument in the trial court, we review for fundamental error. *State v. Escalante*, 245 Ariz. 135, 138 ¶ 1 (2018).

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¶41 There was no error, much less fundamental error. Smith's Sixth Amendment right to counsel was satisfied because his attorney was (1) provided copies of the CSLI and (2) had an opportunity to suppress this evidence at an evidentiary hearing.

¶42 Additionally, Smith's reliance on *State v. Groshong*, 175 Ariz. 67, 71 (App. 1993), is misplaced. There, the State filed a motion to obtain the defendant's medical records after defense counsel asserted the records were protected by the physician-patient privilege (A.R.S. § 13-4062(4)). *Id.* While the discovery dispute was pending, the State inadvertently applied for and obtained the privileged records through a warrant. *Id.* The court of appeals affirmed the trial court's order suppressing the records, noting that under the specific circumstances of the case, the State's obtaining the records through a warrant, although inadvertent, interfered with the defendant's right to counsel. *Id.*

¶43 Here, unlike in *Groshong*, the State did not attempt to circumvent a court order or a defendant's assertion of privilege; it used lawful means to obtain non-privileged records from a third party. Additionally, Smith's counsel was not restricted from challenging the admissibility of his CSLI, and there is no evidence that the thirty-five-day delayed notice impacted his representation. *See United States v. Morrison*, 449 U.S. 361, 363 (2000) (finding that a hypothetical error did not impact the proceedings when it did not interfere with the "quality or effectiveness of [the] legal representation").

B.

¶44 Smith argues that the trial court violated the Due Process Clause of the Fourteenth Amendment by admitting Jones's pretrial identification of Smith because it was unduly suggestive and unreliable. This Court "review[s] the reliability and fairness of a challenged identification for abuse of discretion." *State v. Goudeau*, 239 Ariz. 421, 451 ¶ 103 (2016). But it "review[s] de novo the 'ultimate question' of the constitutionality of a pretrial identification." *Id.* (quoting *State v. Garcia*, 224 Ariz. 1, 7-8 ¶ 6 (2010)).

¶45 After Detective Udd learned that Smith was K.S.'s father, he obtained an MVD photograph of Smith. The day after the murder, Udd took the photograph to visit Jones, K.L.'s roommate. Udd showed Jones the photograph of Smith, asking her if she recognized the person in the photograph. Jones replied, "That's the baby's daddy." Jones also told Udd that K.L. had shown her pictures of Smith on Facebook and had identified him to her as K.S.'s father. Additionally, Jones said that Smith was at the

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apartment the day of the murder. The interview, which was recorded, was played at a subsequent *Dessureault*² hearing.

¶46 During the *Dessureault* hearing, Jones testified that she viewed Smith for multiple minutes in a bright room, wanted to see what he looked like, focused on him, and could clearly see his face. Jones also testified that she was “very sure” Smith was at the apartment. Udd later testified that Jones was “100 percent” sure when she identified Smith.

¶47 The trial court found that although showing Jones just one picture was “inherently suggestive,” the identification was admissible because it was reliable. During trial, the court properly instructed the jury on determining whether Jones’s identification was reliable. *See Rev. Ariz. Jury Instr. (“RAJI”) (Crim.) Standard Instruction 39, at 32 (3d ed. 2016).*

¶48 Due process requires that pretrial identification procedures be conducted in a manner that is “fundamentally fair and secures the suspect’s right to a fair trial.” *State v. Lehr*, 201 Ariz. 509, 520 ¶ 46 (2002). In *Dessureault*, we set forth the procedure for Arizona courts to follow when a defendant challenges a pretrial identification. 104 Ariz. at 383–84. The identification must not be the product of an “inherently suggestive” procedure or, if the procedure was inherently suggestive, it must be reliable. *State v. Rojo-Valenzuela*, 237 Ariz. 448, 450 ¶ 7 (2015); *see also Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) (concluding that “reliability is the linchpin in determining the admissibility of identification testimony”).

¶49 The State concedes that the use of a single photograph was inherently suggestive. *State v. (Johnny) Williams*, 144 Ariz. 433, 439 (1985); *see Manson*, 432 U.S. at 99, 106 (considering reliability of an identification where a single photograph lineup was “suggestive and unnecessary”).

¶50 Thus, we must determine whether Jones’s identification was reliable. In making this determination, courts apply several factors, including: (1) the witness’s opportunity “to view the criminal at the time of the crime”; (2) the “witness’ degree of attention”; (3) the “accuracy of the witness’ prior description of the criminal”; (4) the witness’s “level of certainty” at the initial viewing; and (5) the “length of time between the crime” and the witness’s identification of the defendant. *Neil v. Biggers*, 409 U.S. 188, 199–200 (1972). The witness’s identification must exhibit sufficient

² *State v. Dessureault*, 104 Ariz. 380 (1969).

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indicia of reliability under the totality of the circumstances. *Rojo-Valenzuela*, 237 Ariz. at 451 ¶ 11.

¶51 For the reasons discussed below, we conclude that based on the totality of the circumstances, the record supports the trial court's determination that Jones's identification of Smith was reliable.

1. Opportunity to View the Suspect

¶52 The record supports the trial court's finding of reliability under the first factor. A few minutes is enough time to view a suspect. *State v. Ware*, 113 Ariz. 337, 339 (1976) (determining that the first factor weighed in favor of reliability where the witness "observed the suspect face to face in the well-lighted store for approximately three minutes"); *State v. (Bernard) Smith*, 146 Ariz. 491, 497 (1985) (determining that the witness viewing the suspect walk across a parking lot weighed in favor of reliability). *But see State v. Schilleman*, 125 Ariz. 294, 296 (1980) (finding ten seconds insufficient); *State v. (Ronald T.) Williams*, 166 Ariz. 132, 137 (1987) (finding approximately five seconds insufficient).

¶53 Jones said she viewed Smith for "[m]aybe about—not even ten minutes. He walked in my house, he had on black gloves. He saw me, went in the bathroom." A few questions later, however, Jones testified that she viewed him for about two minutes. Either amount of time is sufficient. At trial, Jones testified that she saw Smith for "maybe not even five minutes." She also testified that Smith walked out "really fast" from the bathroom, but when she later left the apartment, she noticed he was standing by the stairs and she could "see his face." She said the lights were on and the apartment was "bright," and she could "clearly" see everything in the living room. She also recognized him from Facebook.

¶54 Although Jones also stated she "didn't really—I mean, he wasn't really—like, I didn't see him because he went into the bathroom so fast so—" most of her statements express that she was able to see him. When she was able to see Smith, she tried to look at him the entire time and saw him clearly.

2. Degree of Attention on Smith

¶55 The record also supports the trial court's finding under the second factor. Jones's attention was directed at Smith when he was in the apartment. *See (Bernard) Smith*, 146 Ariz. at 497 (finding the second factor weighed in favor of reliability where the witness testified that she was "able to fix her full attention on [the] defendant"). Jones also testified that she

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“wanted to see what he looked like” and was “trying to focus [her] attention on him” “the entire time.” Although she said she was “not really” curious about him, she also said she “want[ed] to meet him.”

¶56 Smith argues, however, that Jones did not pay attention to him because she could not describe his clothing or appearance. This is not entirely accurate. Jones was able to describe some of Smith’s clothing (he was wearing tight black gloves) as well as his general appearance (he was “tall, light skinned,” and “maybe African-American”). Although her inability to recall more details certainly lessens the weight of this factor, we conclude that substantial evidence supports the trial court’s finding.

3. Prior Description

¶57 Under the third factor, the court must consider the accuracy of a witness’s description before the unduly suggestive procedure. *Biggers*, 409 U.S. at 199. But here, Jones never provided a description of Smith before Udd showed her the photo. As a result, this factor weighs against a finding of reliability. *But see (Johnny) Williams*, 144 Ariz. at 440 (determining that a suggestive identification was reliable even though witness had given no prior description of the perpetrator).

4. Level of Certainty

¶58 The record also supports the trial court’s finding under the fourth factor. Jones was confident when she identified Smith. *See State v. Alvarez*, 145 Ariz. 370, 372 (1985) (determining that level of certainty favored admission where the witness responded “immediately and without hesitation”); *State v. (Joe) Williams*, 113 Ariz. 14, 18 (1976) (stating that identification was reliable in part because the witness testified that “she was sure” about the identification); *State v. Taylor*, 109 Ariz. 518, 520 (1973) (to same effect).

¶59 Udd testified that Jones was “100 percent” sure, “seemed confident,” and never hesitated. Jones testified that after looking at his photo she was “very sure” Smith was at the apartment. Additionally, at the hearing, the court played Jones’s interview. In the interview Udd stated, “I showed you a photograph and you identified an individual. Is that the same individual that came over yesterday?” Jones responded, “I believe so.”

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¶60 Smith argues that this factor weighs against reliability. To support his claim, he notes that when the State asked Jones, “When you saw [Smith], did you recognize him?” she replied, “no.” But Smith ignores the fact that the State clarified Jones’s response with its next question. Specifically, the State asked Jones whether Smith “look[ed] like anybody you had seen a photograph of before?” Jones then responded that she had seen him before in K.L.’s Facebook pictures. In short, Jones’s testimony, when examined as a whole and in context, supports the court’s finding that Jones was certain. And although Smith criticizes the certainty factor as empirically unreliable, Arizona courts have consistently given weight to this factor. *See, e.g., State v. Moore*, 222 Ariz. 1, 9 ¶ 27 (2009) (considering witness’s level of certainty); *Alvarez*, 145 Ariz. at 372 (same).

5. Length of Time

¶61 Finally, because Jones identified Smith the day after seeing him, the fifth factor also weighs in favor of admitting her identification. *See Taylor*, 109 Ariz. at 520 (finding reliability where “there was only a lapse of seven days between the time of the attack and the confrontation”).

C.

¶62 Smith argues that the trial court erred in denying his *Batson* challenges to the State’s peremptory strikes of Jurors 14 and 211. *Batson v. Kentucky*, 476 U.S. 79 (1986). These jurors were the only African Americans on the prospective jury panel. “We defer to the trial court’s ruling, which is based ‘largely upon an assessment of the prosecutor’s credibility.’” *Garcia*, 224 Ariz. at 10 ¶ 22 (quoting *State v. Roque*, 213 Ariz. 193, 203 ¶ 12 (2006)). We will not reverse a trial court’s ruling on a *Batson* challenge unless it is clearly erroneous. *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

¶63 The Equal Protection Clause of the Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” In *Batson*, the Supreme Court held that prohibiting an individual from serving on a jury based on race violates the Equal Protection Clause. 476 U.S. at 89. “A *Batson* challenge involves three steps: (1) The defendant must make a prima facie showing of discrimination, (2) the prosecutor must offer a race-neutral reason for each strike, and (3) the trial court must determine whether the [defendant] proved purposeful racial discrimination.” *State v. Medina*, 232 Ariz. 391, 404 ¶ 44 (2013) (quoting *State v. Hardy*, 230 Ariz. 281, 285 ¶ 12 (2012)).

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¶64 Here, by asking the State to provide race neutral-reasons, the trial court implicitly found that Smith made a prima facie showing of discrimination. *See id.* ¶ 45. Thus, under *Batson's* second step, the prosecutor explained that Juror 14 was hesitant about imposing the death penalty, stating that he “had to do a lot of soul searching” and that he “couldn’t make a decision” and “did not want that weight” of imposing the death penalty. The State then claimed it struck Juror 211 because she had two surgery follow-up appointments that conflicted with the trial schedule. The prosecutor also noted that Juror 211 suffered from migraines and took daily medication.

¶65 After listening to the State’s reasons for striking the jurors, the court stated:

All right. The *Batson* motions are denied. I find that the State has made race-neutral reasons for striking them. I remember juror 14 very clearly being very hesitant about being able to serve on this. We talked to him for some period of time. And I believe we spoke to him privately. 211 there were race-neutral reasons given. She does have hardships with regard to her health, at least to a certain degree. So I find that the *Batson* challenges shall be denied.

¶66 The trial court correctly concluded that the State offered race-neutral reasons for striking both jurors. The State struck Juror 14 based on his reluctance to impose the death penalty. *See State v. Escalante-Orozco*, 241 Ariz. 254, 271 ¶ 36 (2017) (explaining that potential reluctance to impose the death penalty was a race-neutral reason), *abrogated on other grounds by Escalante*, 245 Ariz. 135; *State v. Bolton*, 182 Ariz. 290, 302 (1995) (determining that prosecutors may strike jurors “who have expressed reservations about capital punishment” even if they are “not excludable for cause”). Additionally, the State explained it struck Juror 211 because she had health problems and the trial schedule conflicted with her surgery follow-up appointments. *See State v. Gay*, 214 Ariz. 214, 220–21 ¶¶ 18–19 (App. 2007) (holding that State’s explanation for striking an African American juror, which was based in part on the State’s concern that “she would be distracted by upcoming medical tests” was a race-neutral reason).

¶67 Under *Batson's* third step, the court “must determine whether the prosecutor’s stated reasons were the actual reasons or instead were a pretext for discrimination.” *Flowers v. Mississippi*, 139 S. Ct. 2228, 2241 (2019); *Hardy*, 230 Ariz. at 285 ¶ 12 (explaining that under *Batson's* third step the court evaluates the striking party’s credibility, as well as the demeanor

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of the striking attorney and the excluded juror). If the strike is based on the juror's demeanor, such as nervousness or inattention, the trial court must also evaluate whether the juror's "demeanor can credibly be said to have exhibited the basis for the strike." *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). Smith bears the burden of proving purposeful discrimination, and we will not reverse "unless the reasons provided by the State are clearly pretextual." *Roque*, 213 Ariz. at 204 ¶ 15, *abrogated on other grounds by Escalante-Orozco*, 241 Ariz. 254.

¶68 The record supports the trial court's conclusion that the strikes were not pretextual. In denying Smith's *Batson* challenge as to Juror 14, the court stated that "we talked to him for some period of time," and observed that he was "very hesitant" about serving on the jury. Indeed, Juror 14 made it clear throughout jury selection that he was extremely reluctant to serve on a death penalty case. He explained that he would "have to do some soul searching" about imposing the death penalty and didn't know if he wanted a death sentence on his conscience. He also stated that it would be "difficult" for him to "decide . . . life or death" and he questioned whether he "should . . . be the one really making [the] decision." He agreed with the State that he should not be empaneled on the jury because of this issue and expressed that he may become "frozen and unable to make that decision." Later, Juror 14 spoke privately with the court and reiterated that he would have difficulty imposing a death sentence and would consider it a "last option." See *State v. Newell*, 212 Ariz. 389, 401-02 ¶¶ 55, 58 (2006) (affirming denial of *Batson* challenge where juror provided conflicting responses about the death penalty).

¶69 Similarly, the trial court did not err in denying Smith's *Batson* challenge as to Juror 211. The court concluded that the State struck Juror 211 based on "hardships with respect to her health." Specifically, during voir dire and in her written questionnaire, Juror 211 advised the court that she suffered from migraines, and that serving on the jury would create an "undue hardship" because she had two surgery follow-up appointments that conflicted with the trial schedule and could not be rescheduled.

¶70 Smith asserts that Juror 211 later advised the court that she could reschedule her surgical appointments. We disagree. It is unclear from the record whether Juror 211 was referring to rescheduling "four appointments" that she had for "injections" (appointments she consistently stated could be rescheduled) or her surgery follow-up appointments. Although the record is less than clear as to which appointments could be

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rescheduled, the trial court did not abuse its discretion in determining that Juror 211's medical hardships were the basis for the State's strike.

¶71 Smith argues this Court, for the first time on appeal, must conduct a comparative analysis of Jurors 14 and 211 vis-à-vis other jurors whom the State did not strike. We disagree. Because Smith did not raise this issue in the trial court, it is waived. See *Foster v. Chatman*, 136 S. Ct. 1737, 1749–50 (2016) (acknowledging that it made an “independent examination of the record,” but not requiring a comparative analysis where it was not raised before the trial court); *Snyder*, 552 U.S. at 483 (“[A] retrospective comparison of jurors based on a cold appellate record may be very misleading when alleged similarities were not raised at trial.”); *Medina*, 232 Ariz. at 404–05 ¶¶ 48–49 (finding comparative analysis not required where defendant did not raise it before the trial court); *Escalante-Orozco*, 241 Ariz. at 272 ¶ 37 (same). And although *Flowers* explained that a comparative analysis may be relevant in addressing a *Batson* challenge, it did not require such an analysis for the first time on appeal. 139 S. Ct. at 2247–49; see *State v. Curry*, 447 P.3d 7, 11 (Or. Ct. App. 2019) (explaining that assessment under *Flowers* should include a comparative juror analysis “when the record is adequate to do so”).

¶72 Citing *United States v. You*, Smith also argues that the trial court erred by failing to make specific findings regarding the “prosecutor’s credibility,” as well as the court’s “reason[s] for accepting” the State’s race-neutral explanations. Addressing a *Batson* challenge, *You* held that a trial court cannot simply deem a race-neutral explanation “plausible,” but must make a “clear record” and “deliberate decision” as to whether there was purposeful discrimination. 382 F.3d at 968 n.2, 969 (quoting *United States v. Alanis*, 335 F.3d 965, 967 (9th Cir. 2003)).

¶73 Smith’s argument is not persuasive. Unlike *You*, the trial court here did more than simply deem the State’s explanations “plausible.” Rather, the court made specific findings as to each juror, stating that “Juror 14 [was] very clearly being very hesitant about being able to serve,” and Juror 211 had “hardships with regard to her health.” Moreover, our precedent allows us to defer to an “implicit finding” that a “reason . . . was non-discriminatory” even when “the trial court did not expressly rule on [the third *Batson* factor].” *State v. Prasertphong*, 206 Ariz. 70, 87 ¶¶ 63–64, supplemented, 206 Ariz. 167 (2003); *State v. Canez*, 202 Ariz. 133, 147 ¶ 28 (2002) (affirming the court’s “implicit[] finding” under step three in

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denying the *Batson* challenge), *abrogated on other grounds by State v. Valenzuela*, 239 Ariz. 299 (2016).³

¶74 Accordingly, we affirm the trial court's order denying Smith's *Batson* challenges.

D.

¶75 At trial, the court admitted a PowerPoint and video demonstrating the location and movement of Smith's and K.L.'s cellphones on the day of the murder. Smith argues that the video was misleading because (1) CSLI can only show the general location of a cell phone (within one and a half miles of a cell tower) and (2) it cannot track the specific path a cell phone travels between cell towers. Thus, Smith argues that the trial court erred by admitting the video.

¶76 We review evidentiary rulings for an abuse of discretion. *State v. (Joe C.) Smith*, 215 Ariz. 221, 232 ¶ 48 (2007). Relevant evidence may be excluded "if its probative value is substantially outweighed" by a danger of misleading or confusing the jury. Ariz. R. Evid. 403. Additionally, "[t]he trial court has discretion to determine whether the probative value of evidence is outweighed by the danger of unfair prejudice or confusion of the issues; we will not disturb a trial court decision unless the court has clearly abused its discretion." *State v. Mauro*, 159 Ariz. 186, 199 (1988).

¶77 Inaccuracies in a video go to the weight of the evidence, not its admissibility, and may be clarified through witness testimony. *See State v. Steinle*, 239 Ariz. 415, 419 ¶ 15 (2016) (explaining that a video may be misleading, but "[s]uch dangers" may be "mitigated by testimony" or "cautionary instructions"); *State v. Doerr*, 193 Ariz. 56, 66 ¶¶ 46-48 (1998) (holding that the State's maps and diagrams of the crime scene were admissible even if not "absolutely correct," so long as they allowed the jury "to understand better the statements of the witness" and the inaccuracies

³ The court of appeals recently issued an opinion that the State contends does not follow our precedent on this issue. *See State v. Porter*, 248 Ariz. 392, 394 ¶ 1, 399 ¶ 20 (App. 2020) (holding that a trial court must expressly determine "that the racially disproportionate impact" of strikes is "justified by genuine, not pretextual, race-neutral reasons" whenever there is a pattern of strikes against minority jurors). The State's petition for review in *Porter* is currently pending before this Court, and we express no opinion on that case here.

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were clarified by witness testimony (quoting *Young Mines Co. v. Blackburn*, 22 Ariz. 199, 207 (1921))).

¶78 Here, any inaccuracies in the video were clarified by Balmir’s testimony. On at least sixteen occasions, Balmir testified that the video could not portray the path or exact locations of the phones. For example, she stated that the video did not “demonstrate the exact route that someone may have taken” and was “absolutely not a representation of how [the individuals] travel or which route they took.” The jury was also advised that CSLI does not provide the precise location of a cell phone, but rather tracks its location anywhere within a mile and a half radius of the nearest tower. The court, therefore, did not abuse its discretion.

¶79 Smith argues for the first time on appeal that the video was unfairly prejudicial because it showed K.L.’s phone fade away after her death. Specifically, after the time of K.L.’s death, the video shows a small circle surrounding her cell phone slowly fading away.

¶80 We find no error, much less fundamental error. Even if the depiction in the video suggests K.L.’s death, Smith does not explain how he was prejudiced. No one disputes that K.L. did, in fact, die near the location of her cell phone, and there is nothing about the “fading circle” that is unduly prejudicial or inflammatory.

¶81 Finally, Smith argues that the court abused its discretion by admitting the video without watching it. The court, however, viewed essentially the same material in the PowerPoint. And, based on Smith’s objections, the court was apprised of the inaccuracies in the video. Although it would have been better practice to view the video in its entirety, the trial court did not abuse its discretion.

E.

¶82 Smith argues the trial court violated the Confrontation Clause by restricting his cross-examination of the State’s former case agent, Detective Udd. “We review limitations on the scope of cross-examination for abuse of discretion.” *State v. Delahanty*, 226 Ariz. 502, 506 ¶ 17 (2011).

¶83 PPD investigated former case agent Detective Udd’s timekeeping practices from October 2015 through October 2016. PPD ultimately determined that Udd had logged ninety-six hours of unaccounted-for work time. Udd was demoted and PPD recommended he

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be charged with theft, a class three felony. But on September 1, 2017, the Maricopa County Attorney's Office ("MCAO") declined to charge Udd.

¶84 Before trial, Smith filed a motion in limine asking the court to allow him to question Udd about the circumstances of his demotion. Smith did not, however, request permission to ask Udd about MCAO's charging decision.⁴ The trial court granted Smith's motion in part, allowing him to question Udd about his unaccounted-for hours, PPD's inquiry into his hours, and his retirement. In its ruling, the court further stated that Udd could not be questioned about "the county attorney's office not charging him."

¶85 Smith now claims that Udd might have been motivated to testify unfavorably against him based on MCAO's charging decision. He argues that Udd "had every incentive to prove his value to the prosecution," suggesting that Udd testified against him to avoid being charged.

¶86 "The right to cross-examination must be kept within 'reasonable' bounds and the trial court has discretion to curtail its scope." *State v. Fleming*, 117 Ariz. 122, 125 (1977). "The test is whether the defendant has been denied the opportunity of presenting to the trier of fact information which bears either on the issues in the case or on the credibility of the witness." *Id.* Although a court cannot prohibit all questioning bearing on a witness's credibility, courts retain "wide latitude" to reasonably limit cross-examination based on, "among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

¶87 We find no Confrontation Clause violation. As an initial matter, the trial court gave Smith broad latitude in impeaching Udd's credibility. Specifically, the court allowed Smith to question Udd about several matters related to the PPD investigation, including his theft of time. *State v. Adams*, 155 Ariz. 117, 121-22 (App. 1987) (finding no Confrontation

⁴ Smith now claims that the State raised the issue of whether MCAO's charging decision was admissible for impeachment purposes. The record does not support this contention. Nevertheless, because we find no error, much less fundamental error, whether this claim was preserved for our review does not affect our decision.

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Clause violation in part because the defendant was able to attack the witness's credibility on several matters).

¶88 Further, Smith had no good-faith basis to support his claim that Udd altered his testimony in return for leniency from the State. Rather, he simply speculates that the State may have tried to elicit favorable testimony from Udd in exchange for leniency. Such speculation, however, does not give rise to a Confrontation Clause violation. *See State v. McElyea*, 130 Ariz. 185, 186–87 (1981) (finding no Confrontation Clause violation where defendant sought to question a witness about a subsequent criminal charge not subject to any plea agreement because there was no evidence it would have revealed that the witness had a bias or interest in testifying against a former codefendant); *Fleming*, 117 Ariz. at 126 (finding no abuse of discretion where the defendant could not show that further cross-examination regarding a witness's brief stay in a mental hospital four years prior bore on his credibility where there was no indication that the witness continued to have mental problems); *State v. Abdi*, 226 Ariz. 361, 366–67 ¶ 22–23 (App. 2011) (finding no violation in part because the record contained no evidence supporting the defendant's theory that a witness was motivated to lie).

¶89 Relying on *State v. Little*, Smith argues he had a right to cross-examine Udd to see what facts “might develop.” 87 Ariz. 295, 301 (1960). We are unpersuaded. *Little* did not address what kind of proof, if any, was submitted to support the defendant's attack on the witness's credibility. *Id.* Rather, the court simply stated that the offer of proof was within “the range of permissible cross-examination.” *Id.* Here, Smith gave no offer of proof that Udd agreed to testify against Smith in return for leniency from the State. *See State v. Cadena*, 9 Ariz. App. 369, 371 (1969) (finding reversible error where a defendant attached an offer of proof—that the officer was facing a departmental inquiry after a fatal shooting occurred during his investigation—with his request to question the officer to show that he was motivated to secure a conviction against the defendant).

¶90 Finally, Smith has failed to show that he suffered prejudice. He argues that the “entire case relied on the jury's faith in Udd's investigation” and impeaching Udd would have shown he had “every incentive to prove his value to the prosecution.” We disagree. Based on the evidence presented at trial, Udd's credibility was not a central issue in this case. *Cf. State v. Glissendorf*, 235 Ariz. 147, 149 ¶ 2, 152 ¶ 19 (2014) (explaining that a defendant was prejudiced by destruction of recordings that could have been used to impeach the State's only witness in a child

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molestation case). Rather, Udd testified about photos, video footage, CSLI, documents, texts, and Facebook messages he gathered during his investigation almost three years before MCAO's charging decision. Further, there is no evidence that Udd altered these exhibits to ensure a conviction, nor is there any evidence that the investigation was tainted by MCAO's charging decision. *See State v. Carreon*, 210 Ariz. 54, 63 ¶ 37, *supplemented*, 211 Ariz. 32 (2005) (finding no Confrontation Clause violation and explaining that unrelated information sought through cross-examination could have confused the jury).

¶91 Therefore, given the trial court's wide latitude to limit the scope of cross-examination on issues regarding a witness's bias, *see Van Arsdall*, 475 U.S. at 679, we conclude there was no error.

F.

¶92 Smith argues that the trial court erred by failing to reinstruct the jury at the end of the aggravation phase in violation of Smith's right to a fair trial under the Due Process Clause. Because Smith did not object, we review this claim for fundamental error. *Escalante*, 245 Ariz. at 138 ¶ 1.

¶93 At the beginning of the aggravation phase, the court read the final aggravation phase instructions to the jury. Following the instructions, counsel presented arguments highlighting the evidence that was already presented during the guilt phase. At the conclusion of the arguments, the judge did not reinstruct the jurors, but simply reminded them that their verdict had to be unanimous, the admonition was still in effect, and told them to take their copies of the jury instructions with them to deliberate. The entire aggravation phase, including instructions, lasted less than fifty minutes.

¶94 Arizona Rule of Criminal Procedure 19.1(a)(1),(b), which "generally applies to all trials," states that a court should instruct the jury after the presentation of evidence and closing arguments "unless the court directs otherwise." The comment to Rule 19.1 provides "[t]he court has discretion to give final instructions to the jury before closing arguments of counsel instead of after." Ariz. R. Crim. P. 19.1 cmt; *see State v. Nieto*, 186 Ariz. 449, 457 (App. 1996) (finding no error or prejudice where the court gave final jury instructions before closing arguments under Rule 19.1).

¶95 In contrast, Rule 19.1(d), which specifically applies to the "aggravation phase" of a capital case, does not expressly state that the court

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may “direct otherwise” with respect to the order of the trial. Rather, Rules 19.1(d) (4), (7)–(8) provide that during the aggravation phase, the State must first offer evidence in support of each aggravator, and the court must instruct the jury after the parties “present arguments.” In short, Rule 19.1(d), by its terms, indicates that the trial judge has less discretion to change the order of the trial during the aggravation phase than the guilt phase. As a result, we conclude that the trial court did not comply with Rule 19.1(d)(7)–(8) by instructing the jury at the beginning of the aggravation phase.

¶196 Nevertheless, even assuming the error was fundamental, Smith has not shown prejudice. *State v. Kinkade*, 140 Ariz. 91, 94–95 (1984) (finding no fundamental error where the court instructed the jury on reasonable doubt before the guilt phase, the court referred the jury to their copy of the instructions, and the attorneys reiterated the standard in their closing arguments); see *State v. Jackson*, 144 Ariz. 53, 55 (1985) (declining to reverse even under a harmless error standard where the failure to instruct at the end of the trial did not influence the verdict). Here, the trial court read the final instructions to the jury less than fifty minutes before they recessed to deliberate, referenced the instructions at the end of the aggravation phase, and provided the jury with written copies of the instructions.

¶197 Smith’s reliance on *State v. (Carl D.) Johnson*, 173 Ariz. 274 (1992), is misplaced. There, the jury listened to a full day of evidence after the court read the instructions. *Id.* at 276. Here, the entire aggravation phase lasted less than fifty minutes. And unlike *(Carl D.) Johnson*, where the trial court gave an improper reasonable doubt instruction that shifted the burden of proof to the defendant, here it is undisputed that the trial court’s instructions were proper. *Id.*

¶198 Therefore, even if the court erred by failing to reinstruct the jury at the close of the aggravation phase, it was not fundamental error.

G.

¶199 Smith argues there is insufficient evidence to show that he committed the murder “as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.” § 13-751(F)(5) (2012). We will uphold the jury’s verdict if it is supported by substantial evidence, and we “view[] the evidence in the light most favorable to sustaining the jury

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verdict.” *State v. Gunches*, 225 Ariz. 22, 25 ¶¶ 13–14 (2010) (quoting *Roque*, 213 Ariz. at 218 ¶ 93).

¶100 Pecuniary gain does not have to be the defendant’s only motive for a murder. See *State v. Acuna Valenzuela*, 245 Ariz. 197, 212 ¶ 42 (2018) (stating that “pecuniary gain need not be the only motive for the (F)(5) aggravator to apply”); *State v. Martinez*, 218 Ariz. 421, 435 ¶ 66 (2008) (“Pecuniary gain . . . need only be a motive for the murder, not the sole motive.”). Additionally, pecuniary gain may be proved by direct or circumstantial evidence. *State v. Rose*, 231 Ariz. 500, 515 ¶ 73, 516 ¶ 75 (2013); see also *Walker v. State*, 707 So. 2d 300, 304–05, 317 (Fla. 1997) (providing that substantial evidence supported pecuniary gain aggravator where the State showed that the defendant, who was convicted of murdering the victim, encouraged her to have an abortion before the murder, expressed concerns over paying child support, and admitted he was arguing with the victim before he killed her); *People v. Carasi*, 190 P.3d 616, 648 (Cal. 2008) (holding that the jury could reasonably “conclude that defendant sought to benefit financially” from the victim’s death by eliminating his monthly child support obligation, given the fact defendant had limited financial resources and he “perceived his child support obligation to [the victim] as a tremendous burden, calling her a ‘bitch’ and ‘whore’ who deserved to die, and saying that his financial future would be ‘fucked’ if nothing changed”).

¶101 Here, there was substantial circumstantial evidence showing that Smith murdered K.L. to avoid paying child support for K.S. The assault on K.L. at Kiwanis Park strongly suggests that Smith tried to end her pregnancy. *Supra* ¶¶ 5–6. Additionally, throughout the DES proceedings, Smith engaged in a course of conduct, as well as made several statements, showing that he did not want to pay child support to K.L.

¶102 During the child support proceedings, Smith made several statements to K.L. showing that he was focused on what his financial obligations would be if the paternity tests determined he was K.S.’s father. For example, on November 13, Smith contacted K.L. on Facebook and said, “We need to do a legal DNA test so we can get this situation handled. Since you need diapers and wipes *and money*, we need to do a DNA test through the courts to establish paternity legally because I’m done with all this drama.” (emphasis added). Smith also expressed his frustration with K.L.’s efforts to establish paternity so that she could collect support. On December 10, the day before the murder, Smith stated, “I know you only care because your benefits will get cut off without the test,” and said, “If you don’t want

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me to see the baby and you just want *money* then let me know.” (emphasis added).

¶103 Smith also failed to appear for a paternity test, effectively blocking K.L.’s efforts to collect support.⁵ As a result, on December 10, the day before the murder, K.L. brought the issue to a head. She told Smith to “stop talking to me and take your DNA test,” and warned that he “ha[d] till tomorrow till [a DES worker] sends everything off to the courts.” When Smith said he would come at noon on December 11, K.L. pressed him and asked why he could not come sooner and said “Don’t say you coming tomorrow then don’t come. Don’t tell me you are going to take the test and then don’t show.” She also asked if she could drive with him to the DES testing site, indicating she wanted to make sure that Smith appeared.

¶104 Smith knew that on December 11 he could no longer avoid paternity testing. As a result, substantial evidence demonstrates he murdered K.L. that day. Then, immediately after the murder, he drove to DES and submitted to DNA testing. Upon his arrival, Smith asked a DES employee what would happen if K.L. did not show up for her DNA test. He was told the matter would be closed. Smith secretly recorded the conversation on his cell phone, indicating he wanted to preserve a record of this statement.

¶105 Smith argues, however, that there is insufficient evidence to prove the pecuniary gain aggravator because the evidence showed that (1) he was uncertain about whether he was the father of K.S., and (2) as a legal

⁵ Defense counsel claimed at oral argument in this Court that Smith appeared for his December 4 appointment and suggested that he was sent away by DES for some reason, perhaps because he had a minor child with him. This argument was never raised in Smith’s briefs and is therefore waived. Moreover, the record shows that Smith either never arrived for the appointment or voluntarily left without providing a DNA sample. Kathy McGill, a DES caseworker, testified that although the DES file contained a code indicating that the “noncustodial parent” “showed for genetic tests,” there was no record that Smith signed the sign-in sheet on December 4. McGill also testified that in her experience, a DES employee would not turn away a person who showed up for DNA testing. Additionally, McGill stated that when Smith missed his appointment, she called him to reschedule. When Smith finally returned her call on December 8, he never told her that he made the December 4 appointment.

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matter, despite the death of K.L., as long as K.S. was alive he might have still been responsible for child support. We disagree.

¶106 Based on the Kiwanis Park incident, as well as Smith’s statements and behavior throughout the DES proceedings, the jury could well conclude that Smith knew he was the father of K.S. Additionally, the evidence supports the conclusion that Smith—even if he was legally mistaken—had an expectation that he could avoid paying child support if he murdered K.L. Indeed, on the day of the murder, the DES worker confirmed this expectation. In short, because § 13-751(F)(5)⁶ only requires evidence of an *expectation* of pecuniary gain, it is irrelevant whether Smith’s actions, as a matter of law, released him from paying child support. See *Carasi*, 190 P.3d at 647–48 (stating pecuniary gain aggravator did not require proof that the defendant “experience[d] any actual pecuniary benefit”); *People v. Edelbacher*, 766 P.2d 1, 26 (Cal. 1989) (rejecting a similar argument and reasoning that “[p]roof of actual pecuniary benefit” is unnecessary because “the relevant inquiry is whether the defendant committed the murder in the expectation” of financial gain (quoting *People v. Howard*, 749 P.2d 279, 298 (Cal. 1988))).

¶107 In sum, substantial evidence supports the jury’s finding that Smith killed K.L. for pecuniary gain.

H.

¶108 Smith argues that his conviction for child abuse of K.S. did not qualify as a serious offense aggravator under § 13-751(F)(2) because the trial court failed to instruct the jury that the crime of child abuse must be committed “against a child.” We review de novo “whether jury instructions properly state the law.” *State v. (Christopher M.) Payne*, 233 Ariz. 484, 505 ¶ 68 (2013).

¶109 The list of serious offenses under § 13-751(F)(2) includes Dangerous Crimes Against Children (“DCAC”) under A.R.S. § 13-705.

⁶ We note that although this version of the pecuniary gain statute applies here, in 2019 the legislature amended and renumbered the statute. As amended, § 13-751(F)(3) is more limited in its scope, stating that pecuniary gain requires proof the “defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value, or the defendant committed the offense as a result of payment, or a promise of payment, of anything of pecuniary value.”

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Child abuse committed pursuant to § 13-3623(A)(1) is a DCAC, and therefore qualifies as a serious offense aggravator, if it is “intentionally or knowingly” committed “against a minor who is under fifteen years of age.” §§ 13-705(Q)(1)(h); -3623(A)(1).

¶110 Here, the jury convicted Smith of intentional or knowing child abuse under § 13-3623(A)(1) and found that K.S. was under the age of fifteen. As a result, Smith’s conviction for child abuse was a DCAC and qualified as a serious offense aggravator. §§ 13-705(Q)(1)(h), -751(F)(2).

¶111 Smith argues, however, that because § 13-3623(A)(1) allows child abuse to be committed “knowingly,” to qualify as a serious offense the jury must determine whether the offense was committed against a child. Smith contends that the jury never made this finding and, as a result, it never determined whether he knowingly shot K.S. (a crime against a child), or whether he simply “pulled the trigger” with no intent to harm her (a crime committed fortuitously, but not knowingly against a child). *See State v. (Roger) Williams*, 175 Ariz. 98, 101, 102–04 (1993) (holding that the evidence did not show the defendant committed a crime against a child where the defendant, who was driving while intoxicated, struck and injured the occupants of a car, including a minor under the age of fifteen; under these specific circumstances, the court determined that the defendant could not be convicted of a DCAC because he had no way of knowing a child was in the car).

¶112 We disagree. The record shows that Smith’s conduct was directed against K.S. Smith fired one bullet into the back of K.L.’s head, and another bullet into K.S.’s thigh. Further, after K.S. was wounded, Smith knowingly left the scene while the infant was bleeding and lying face down on the ground. *See State v. Sepahi*, 206 Ariz. 321, 322–23 ¶¶ 10, 12, 324 ¶ 19 (2003) (holding that defendant committed a DCAC where he shot a fourteen-year-old in the stomach; the court concluded that such conduct was “directed, aimed at, and targeted . . . against a victim under the age of fifteen”). And here the State alluded to both theories—shooting K.S. in the thigh and abandoning her after she was wounded—as grounds for convicting Smith of child abuse. *See also State v. Herrera*, 176 Ariz. 9, 16 (1993) (explaining that the state must only prove the elements of the crime, and a defendant is not entitled to a unanimous verdict on the “precise manner in which the act was committed” (quoting *State v. Encinas*, 132 Ariz. 493, 496 (1982))).

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¶113 Additionally, none of Smith’s proffered cases suggests that child abuse under § 13-3623(A)(1) is not a crime committed “against” a child. See (*Christopher M.) Payne*, 233 Ariz. at 505–06 ¶¶ 69–72 (holding that, with respect to the crime of child abuse under § 13-3623(A)(1), the State need not establish any mental state regarding the circumstances of the offense, but emphasizing that the mental states of “intentionally or knowingly” applied to the defendant’s actions); *State v. Millis*, 242 Ariz. 33, 41 ¶ 26 n.7 (App. 2017) (to same effect); *State v. (Joe M.) Johnson*, 181 Ariz. 346 (App. 1995) (holding that under § 13-3623(B), which makes it illegal to place children in a physically dangerous environment, maintaining such a dangerous environment in an apartment was child abuse); *State v. Greene*, 168 Ariz. 104, 107–08 (App. 1991) (holding that unsanitary apartment was not necessarily “likely” to produce serious physical injury under § 13-3623(B)(1)); *State v. Cantua-Ramirez*, 149 Ariz. 377, 379–80 (App. 1986) (determining that a defendant who accidentally struck a baby could be guilty under transferred intent).

¶114 Smith also argues that he was entitled to a separate jury instruction in the aggravation phase stating that for child abuse to qualify as a serious offense under § 13-751(F)(2), the jury must determine the offense was committed against a child. We disagree. The trial court was not required to give this instruction because proof of the underlying crime necessarily included a finding that the offense was committed against a child. See *supra* ¶¶ 109–10, 112; *State v. Coghill*, 216 Ariz. 578, 590 ¶ 49 (App. 2007) (determining that defendant who knowingly possessed child pornography satisfied the DCAC statute because the jury “implicitly found that his conduct focused on the children”); cf. (*Bernard) Smith*, 146 Ariz. at 498–99 (explaining that a jury is not required to separately find dangerousness where an element of the offense charged requires proof of its dangerous nature); *State v. Gatliff*, 209 Ariz. 362, 365–66 ¶¶ 17–18 (App. 2004) (to same effect). *But see State v. Larin*, 233 Ariz. 202, 212–13 ¶¶ 38, 42 (App. 2013) (stating that even though a defendant’s armed robbery conviction was “inherently dangerous” because it involved possessing a deadly weapon during the course of a robbery, the jury could have found the dangerousness allegation not proven because it acquitted the defendant of the related possession of a deadly weapon charge).

¶115 We reject Smith’s claim that failure to give the subject instruction was structural error. The “relatively few instances in which we . . . regard error as structural” are those that “deprive defendants of basic protections and infect the entire trial process from beginning to end.” *State v. Bush*, 244 Ariz. 575, 591 ¶ 66 (2018) (internal quotation marks

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omitted) (quoting *State v. Ring*, 204 Ariz. 534, 552 ¶ 45 (2003)). Those instances include:

a biased trial judge, complete denial of criminal defense counsel, denial of access to criminal defense counsel during an overnight trial recess, denial of self-representation in criminal cases, defective reasonable doubt jury instructions, exclusion of jurors of the defendant's race from grand jury selection, excusing a juror because of his views on capital punishment, and denial of a public criminal trial.

Ring, 204 Ariz. at 552–53 ¶ 46. None of those instances are present here.

I.

¶116 Smith argues that the trial court violated the Eighth Amendment by instructing the jury that it could consider mitigation only “so long as” it related to Smith’s character, propensity, history or record, or circumstances of the offense. “‘We review a trial court’s refusal to give a jury instruction for abuse of discretion,’ but we assess the legal adequacy of the instructions de novo, viewing them in their entirety.” *State v. Miller*, 234 Ariz. 31, 43 ¶ 41 (2013) (quoting *Garcia*, 224 Ariz. at 18 ¶ 75).

¶117 The “Capital Case 2.3–Mitigation” instruction provides that mitigating circumstances “are any factors that are a basis for a life sentence instead of a death sentence *so long as* they relate to any sympathetic or other aspect of the defendant’s character, propensity, history or record or circumstances of the offense.” RAJI (Crim.) Capital Case 2.3, at 553 (3d ed. 2016) (emphasis added). Before the penalty phase, Smith requested that the court deviate from the RAJI and instead instruct the jury to consider “relevant factors . . . *including* any aspect of the defendant’s character, propensities or record and any other circumstances of the offense.” (emphasis added). Denying Smith’s request, the trial court followed the RAJI.

¶118 The court’s instructions were proper. A jury may only consider relevant mitigation factors, which “includ[e] any aspect of the defendant’s character, propensities or record and any of the circumstances of the offense.” § 13-751(G); *State v. Villalobos*, 225 Ariz. 74, 83 ¶ 40 (2010) (“Relevance . . . is the only statutory limitation on the jury’s ability to consider mitigation evidence.”); *see also Lockett v. Ohio*, 438 U.S. 586, 604 & n.12 (1978) (requiring a jury consider categories of relevant mitigation as “any aspect of a defendant’s character or record and any of the

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circumstances of the offense”); *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (adopting *Lockett*’s plurality opinion).

¶119 Smith first argues that the United States Supreme Court expanded the *Lockett/Eddings* mitigation categories in *Tennard v. Dretke*, 542 U.S. 274, 284–85 (2004) (citing *McKoy v. North Carolina*, 494 U.S. 433 (1990)). Smith is incorrect. In *Tennard*, the Court held that a jury must be allowed to consider factors without a causal connection to the crime if they “tend[] logically to prove or disprove” a fact that the jury could “reasonably deem to have mitigating value.” 542 U.S. at 284 (quoting *McKoy*, 494 U.S. at 440). Neither *Tennard* nor *McKoy* expanded or altered the categories provided by *Lockett/Eddings*. See *id.* at 285; *McKoy*, 494 U.S. at 438–39, 443; see also *State v. Burns*, 237 Ariz. 1, 31 ¶ 144 (2015) (holding that jury instructions restricting mitigation to the *Lockett/Eddings* categories were proper); *State v. Velazquez*, 216 Ariz. 300, 311 ¶ 44 (2007) (to same effect); *State v. Tucker*, 215 Ariz. 298, 317 ¶ 72 (2007) (providing that the “so long as” mitigation instruction allowed the jury to consider “all relevant evidence”).

¶120 Next, Smith argues that the instruction was invalid because it misstated § 13-751(G), which provides that the jury must consider relevant factors “including any aspect of the defendant’s character, propensities or record and any of the circumstances of the offense.” But we have consistently held that the “so long as” language in RAJI 2.3 complies with § 13-751(G). *Burns*, 237 Ariz. at 31 ¶ 144; *Velazquez*, 216 Ariz. at 311 ¶ 44; *Tucker*, 215 Ariz. at 317 ¶ 72.

¶121 Accordingly, we conclude that the jury was properly instructed, and no error occurred.

J.

¶122 Smith argues that the trial court and the State violated the Sixth and Eighth Amendments and article 2, section 24 of the Arizona Constitution by advising the jury that they could grant mercy only if the evidence supported it. We review de novo whether the trial court has properly instructed the jury in a capital case. *State v. Glassel*, 211 Ariz. 33, 53 ¶ 74 (2005). Where the error is not preserved, we will reverse if the error is structural or fundamental. *Valverde*, 220 Ariz. at 584–85 ¶¶ 10–12.

¶123 During the penalty phase, the trial court instructed the jury that “mitigating circumstances are not an excuse or justification for the offense but are factors that, in fairness and mercy, may reduce the

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Defendant’s moral culpability.” RAJI Capital Case 2.3. During its closing argument, the State told the jury that it could not base its decision on “just mere sympathy not related to the evidence It cannot be mercy for mercy’s sake” and “[y]ou’re not to be swayed by mere sympathy not related to the evidence You cannot have mercy for mercy’s sake. You cannot have sympathy for sympathy’s sake. It must be related to this case.”

¶124 We find no error, much less fundamental error. The court’s instruction and the State’s argument were legally accurate. “The Constitution does not require . . . that a jury ‘be able to dispense mercy on the basis of a sympathetic response to the defendant.’” *Carreon*, 210 Ariz. at 70 ¶ 83 (quoting *Johnson v. Texas*, 509 U.S. 350, 371 (1993)); *California v. Brown*, 479 U.S. 538, 542–43 (1987) (to same effect). “[M]ercy is not a mitigating circumstance” but is a “concept jurors may apply in evaluating the existence of mitigating circumstances.” *State v. Andriano*, 215 Ariz. 497, 507 ¶¶ 47–49 (2007), *abrogated on other grounds by State v. Ferrero*, 229 Ariz. 239 (2012).

¶125 Smith’s reliance on *Gregg v. Georgia*, 428 U.S. 153, 199 (1976), is misplaced. There, the Supreme Court upheld a statute allowing a jury to make a binding recommendation of mercy absent any mitigation. *Id.* at 197. The Court, however, did not suggest that juries *must* be permitted to consider mercy for mercy’s sake. *See id.*; *Johnson*, 509 U.S. at 371–72 (subsequently explaining that a jury need not be allowed to dispense mercy on the basis of sympathy).

¶126 Smith also cites article 2, section 24 of the Arizona Constitution, claiming it “requires that juries have an unfettered right to grant mercy in capital cases.” But article 2, section 24 requires only the right to a “speedy public trial by an impartial jury.” It does not suggest an “unfettered right” to mercy. *See Ariz. Const. art. 2, § 24.*

¶127 Finally, we reject Smith’s claim that the trial court’s instruction regarding mercy was structural error. None of the instances involving structural error are present here. *See Ring*, 204 Ariz. at 552–53 ¶ 46 (listing the “relatively few instances” of structural error and noting that in each the error infected “the entire trial process” from beginning to end).

K.

¶128 Smith argues the trial court abused its discretion by allowing inadmissible mitigation rebuttal by the State. We review a trial court’s

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admission of evidence during the penalty phase for abuse of discretion and give “deference to a trial judge’s determination of whether rebuttal evidence offered during the penalty phase is ‘relevant’ within the meaning of the statute.” *State v. Champagne*, 247 Ariz. 116, 142 ¶ 87 (2019) (quoting *State v. McGill*, 213 Ariz. 147, 156–57 ¶ 40 (2006)). “The threshold for relevance is a low one.” *State v. Leteve*, 237 Ariz. 516, 529 ¶ 48 (2015) (quoting *Roque*, 213 Ariz. at 221 ¶ 109). Because Smith failed to object at trial, we review this claim for fundamental error. *Escalante*, 245 Ariz. at 138 ¶ 1.

¶129 Smith first claims that the testimony of the State’s rebuttal expert, Dr. Pitt, was inadmissible because it was not relevant to his proffered mitigation. We disagree. Dr. Pitt, a forensic psychologist, testified about several matters relevant to whether Smith should be shown leniency, including Smith’s mental health, relationship with Ward, and actions leading up to K.L.’s murder. Moreover, under § 13-752(G), the State “may present any evidence” during the penalty phase “that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency.” Additionally, “regardless of whether the defendant presents evidence of mitigation, the state may present any evidence that demonstrates that the defendant should not be shown leniency including any evidence regarding the defendant’s character, propensities, criminal record or other acts.” *Id.*; see § 13-751(G) (providing that the jury “shall consider as mitigating circumstances any factors proffered by the defendant or the state that are relevant in determining whether to impose a sentence less than death”); *Champagne*, 247 Ariz. at 142 ¶¶ 89–90 (explaining that mitigation rebuttal may include any evidence that demonstrates the defendant should not be shown leniency, and need not be relevant to the defendant’s proffered mitigation); see also *State v. Guarino*, 238 Ariz. 437, 440 ¶ 13 (2015) (“Taken together, A.R.S. §§ 13-751(G) and -752(G) permit jurors to hear evidence relating to circumstances of the crime and the defendant’s character.”); *State v. Pandeli*, 215 Ariz. 514, 527 ¶¶ 41–42 (2007) (allowing any evidence demonstrating the defendant should not be shown leniency).

¶130 Smith next argues that four of Pitt’s comments were improper because they were more prejudicial than probative and violated due process by rendering the trial “fundamentally unfair.” *Guarino*, 238 Ariz. at 441 ¶ 15 (stating that due process is violated if rebuttal evidence “is so unduly prejudicial that it renders the trial fundamentally unfair” (quoting *Payne v. Tennessee*, 501 U.S. 808, 825 (1991))).

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1. Assault at Kiwanis Park

¶131 Pitt stated that Ward did not compel Smith to “set up what happened at Kiwanis Park” and it was “his opinion” that “Smith engaged in a significant amount of planning [for the murder] that date[d] back to at least that incident in Kiwanis Park in August.” Smith argues that these statements were unduly prejudicial and improperly implied that Smith was responsible for K.L.’s attack. We disagree. Although Smith was not charged for the Kiwanis Park incident, substantial evidence had been presented to the jury suggesting that Smith helped plan the attack. *Supra* ¶¶ 5–6. Thus, Pitt’s statements were not prejudicial to the extent they rendered the trial “fundamentally unfair.” *Guarino*, 238 Ariz. at 441 ¶ 15.

2. Attempted Murder of K.S.

¶132 Pitt implied that Smith attempted to kill K.S. For example, Pitt stated that not everyone involved in a dysfunctional relationship goes “out and commit[s] murder and attempted murder” and that Smith chose “to tak[e] another person’s life and attempt[] to take the life of his own baby.” Smith argues these statements were unduly prejudicial because Smith was not charged with attempting to murder K.S.

¶133 We conclude that these statements were not so prejudicial as to make the trial “fundamentally unfair.” *Id.* Pitt’s comments addressed whether Smith should be shown leniency. Further, any prejudice Smith may have suffered by Pitt referring to his crime against K.S. as attempted murder was minimal. Specifically, the jury had already convicted Smith of child abuse for shooting K.S., a two-month-old infant, and leaving her face down on the ground with a bullet wound. We find no error.

3. Dr. Lacey

¶134 Pitt also disagreed with Dr. Lacey, Smith’s mitigation witness, about the impact of Ward’s emotional abuse on Smith. Pitt testified that he “respectfully disagree[d]” with Dr. Lacey about blaming “solely . . . the relationship between [Smith] and [K.] Ward . . . for choices that [Smith] made.” Pitt also stated that, “my sense in looking at Dr. Lacey’s report—I didn’t know him—or I didn’t know of him and my sense is that he didn’t—my guess was he really didn’t have much forensic experience” and was “making this leap” between the dysfunctional relationship with Ward and Smith’s actions.

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¶135 Pitt's comments about Lacey's qualifications were not unduly prejudicial. As a general matter, an expert should not comment on the credibility of another witness. *See, e.g., State v. Lindsey*, 149 Ariz. 472, 475 (1986) (explaining that expert witnesses should not provide opinions about the credibility of another witness); *State v. Reimer*, 189 Ariz. 239, 240–41 (App. 1997) (to same effect). However, it was not improper for Pitt to question Lacey's conclusions or his expert qualifications. *See Ariz. R. Evid.* 702; *State v. Hummert*, 188 Ariz. 119, 126 (1997) (explaining that an expert's opinion and the extent of their knowledge is "fair game during cross-examination"); *Downs v. Scheffler*, 206 Ariz. 496, 501 ¶ 21 (App. 2003) ("Arizona has a long-favored practice of allowing full cross-examination of expert witnesses, including inquiry about the expert's sources, relations with the hiring party and counsel, possible bias, and prior opinions." (quoting *Ariz. Indep. Redistricting Comm'n v. Fields*, 206 Ariz. 130, 143 ¶ 43 (App. 2003))).

4. Premeditation

¶136 Finally, Pitt testified that there was "nothing rash or impulsive" about K.L.'s murder; it was "thought out, was executed," and there "were a series of behaviors engaged [in] after the offense to attempt to evade apprehension and avoid detection." Smith argues that Pitt's discussion of premeditation "improperly implied" that Smith did not deserve leniency because the murder was premeditated. We disagree. An expert may comment about a defendant's deliberate actions in planning a murder and avoiding detection. *See Champagne*, 247 Ariz. at 143 ¶¶ 92–93 (finding testimony not unduly prejudicial when it "simply explained facts" and gave "details . . . about [the defendant] fleeing the scene").

¶137 Thus, we conclude that none of Smith's claims regarding Pitt's testimony survive fundamental error review. *Escalante*, 245 Ariz. at 140–41 ¶ 16. Pitt's testimony, at most, offered opinions based on evidence already presented to the jury. As a result, there was no prejudice.

L.

¶138 Smith argues that the State engaged in prosecutorial error in violation of his due process rights. We will reverse Smith's conviction because of prosecutorial error if: "(1) misconduct is indeed present; and (2) a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying defendant a fair trial." *State v. Anderson*, 210 Ariz. 327, 340, *supplemented*, 211 Ariz. 59 (2005) (quoting *State v. Atwood*, 171

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Ariz. 576, 606 (1992)). Because Smith never objected, we review this claim for fundamental error. *State v. Prince*, 226 Ariz. 516, 537 ¶ 84 (2011). To establish prejudice, a defendant must show that absent the prosecutorial error, “a reasonable jury could have [plausibly and intelligently] reached a different verdict.” *Escalante*, 245 Ariz. at 144 ¶¶ 29, 31. Although a defendant must typically establish prejudice under prongs 1 or 2 of *Escalante*, *id.* at 142 ¶ 21, a “defendant claiming cumulative error based on prosecutorial misconduct need not separately assert prejudice since a successful claim necessarily establishes the unfairness of a trial.” *State v. Vargas*, 249 Ariz. 186, 190 ¶ 13 (2020).

1. Fraud on the Court

¶139 Smith argues that the State committed “fraud on the court” by obtaining the CSLI Order from the IA Court rather than the judge assigned to the case. Smith’s claim finds no support in the record. Neither § 13-3016(C) nor the Arizona Rules of Criminal Procedure require the State to obtain a court order from the trial judge assigned to the case. *Supra* ¶¶ 37-39. And here, the record shows that it was common practice for PPD to apply for such an order with the IA Court.

2. Serious Offense Aggravator

¶140 In the aggravation phase, the State argued that the (F)(2) “serious offense” aggravator had been proven when the jury found Smith guilty of child abuse. Specifically, the State argued “You have already found the Defendant guilty of child abuse of [K.S.] in this case. The Defendant shot [K.S.] in the leg.” Smith argues that the State misstated the law because the (F)(2) aggravator requires more than “bare child abuse”; rather, it requires a separate finding that the offense was “against a child.” As discussed *supra* ¶¶ 112-15, the trial court was not required to instruct the jury that the child abuse must be against K.S. Therefore, the State properly stated that Smith’s child abuse conviction was a serious offense.

3. Sentencing

¶141 At the end of the penalty phase, the State argued: “The question for you now is what is the appropriate punishment for the murder of [K.L.] and the shooting of a two-month-old child. Do these acts deserve the death penalty?” The State later argued, “[L]ook at the murder, look at the child abuse, the aggravating factors, and then decide for yourself is it enough?” Smith claims that by making this argument, the State improperly

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suggested that the jury could sentence Smith for his child abuse conviction, even though Smith's child abuse sentence was imposed by the trial court.

¶142 The State's argument was proper. The jury was required to consider the (F)(2) serious offense aggravator in making its sentencing determination. *See* § 13-751(F). The fact that the (F)(2) aggravator, child abuse, also carried a separate sentence did not prohibit the State from urging the jury to consider it as an aggravator for capital sentencing purposes.

4. Kiwanis Park

¶143 Finally, during closing argument, the State told the jury that Smith "probably" asked Marley to assault K.L. Smith argues that this statement amounts to prosecutorial error because it is speculative and unsupported by evidence.

¶144 We disagree. "[D]uring closing arguments counsel may summarize the evidence, make submittals to the jury, urge the jury to draw reasonable inferences from the evidence, and suggest ultimate conclusions." *Goudeau*, 239 Ariz. at 466 ¶ 196 (quoting *State v. Bible*, 175 Ariz. 549, 602 (1993)). In determining whether the State engaged in prosecutorial error during its closing, "we consider two factors: (1) whether the prosecutor's statements called to the jury's attention matters it should not have considered in reaching its decision and (2) the probability that the jurors were in fact influenced by the remarks." *Id.* (internal quotation marks omitted) (quoting *State v. Nelson*, 229 Ariz. 180, 189 ¶ 39 (2012)).

¶145 Smith has not shown error, much less fundamental error. The prosecutor's statements were based on reasonable inferences from the evidence, *supra* ¶¶ 5-6, and there is no evidence that they could have caused the jury to change its verdict. *Escalante*, 245 Ariz. at 144 ¶ 31. Additionally, any prejudice was cured by the court instructing the jury that closing arguments were not evidence. (*Christopher M.) Payne*, 233 Ariz. at 518 ¶ 151.

¶146 Finally, because none of these instances amount to prosecutorial error, we need not consider if the individual acts collectively amount to "persistent and pervasive misconduct." *Escalante-Orozco*, 241 Ariz. at 280 ¶ 91; *see State v. Bocharski*, 218 Ariz. 476, 492 ¶ 75 (2008) (holding that "[a]bsent any finding of [error], there can be no cumulative effect").

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M.

¶147 Smith argues that the trial court coerced a death verdict when it gave an impasse instruction after the jury claimed it could not reach a verdict. We review a court's decision to give an impasse instruction for an abuse of discretion. *State v. Kuhs*, 223 Ariz. 376, 384 ¶ 42 (2010). Coercing a verdict from the jury is reversible error. *State v. Cruz*, 218 Ariz. 149, 167 ¶ 112 (2008).

¶148 The jury deliberated for two and a half hours before telling the bailiff that they were unable to "come to an agreement." The court then conferred with counsel and stated that the jurors were at an impasse. The court decided "to explore" the issue with the foreperson:

THE COURT: All right. Madam foreperson, I've been informed that you've been unable to reach a decision at this point.

THE FOREPERSON: That's correct.

THE COURT: All right. In your view, do you think further deliberation could result in a verdict?

THE FOREPERSON: No.

THE COURT: All right. I note that you probably were deliberating about two and a half hours. That actually isn't that long of a period of time. You don't think there's any chance that you could reach a consensus?

THE FOREPERSON: It's possible. I guess we could.

THE COURT: All right. Let's go ahead and –

THE FOREPERSON: Is that not a long time?

THE COURT: I'm sorry?

THE FOREPERSON: Is that not a long time to deliberate? I mean –

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THE COURT: Well, it's however long that you feel that you need to deliberate. Let's go ahead and pass out - I'm going to give you one more instruction.

¶149 Following this exchange, the court referenced the previously read instruction, "Duty to Consult With One Another," which explains that jurors should deliberate to reach a just verdict but not change their "honest belief[s] . . . because of the opinions of . . . [other] jurors, or for the mere purpose of returning a verdict." RAJI (Crim.) Capital Case 2.4, at 554 (3d ed. 2016). Next, the court gave the standard impasse instruction. RAJI (Crim.) Standard Instruction 42, at 15.3 (3d ed. 2016). Immediately following the impasse instruction, the court stated:

All right. And having said that, there are no time limits. Whatever you think is appropriate. If you think that the amount of time that you've spent already is appropriate, that's fine. And we will accept that. And if you discuss this amongst yourselves and feel that you don't need to deliberate further, let us know that and we'll take the next step at that point. Okay. So just consider this instruction. Take it into consideration. Let us know how you want us to proceed.

The jury deliberated for another forty-nine minutes before returning a death sentence.

¶150 Arizona Rule of Criminal Procedure 22.4 provides:

If the jury advises the court that it has reached an impasse in its deliberations, the court may, in the parties' presence, ask the jury to determine whether and how the court and counsel can assist the jury's deliberations. After receiving the jurors' response, if any, the court may direct further proceedings as appropriate.

¶151 Here, we must "determine if the independent judgment of the jury was displaced." *State v. Huerstel*, 206 Ariz. 93, 97 ¶ 5 (2003). In conducting this analysis, we "view[] the actions of the judge and the comments made to the jury based on the totality of the circumstances." *Id.* One factor we consider is whether the court knew the numerical split among the jurors when it addressed the impasse. *Id.* at 99-100 ¶¶ 17-19, 100-01 ¶ 23 (finding coercion where the jury did not indicate a need for assistance and the court knew the numerical division of the jurors and twice suggested that a holdout juror reconsider); *State v. McCrimmon*, 187 Ariz.

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169, 172 (1996) (explaining that awareness of the numerical division was “an important factor”). Additionally, we also consider the length of deliberations prior to the jury’s impasse. See *Huerstel*, 206 Ariz. at 99 ¶ 17 (determining that three days of deliberations following a three-week trial “did not clearly signal that th[e] jury had reached an impasse”); *Cruz*, 218 Ariz. at 166–67 ¶¶ 108–09, 115 (2008) (finding no coercion where the jury indicated they were deadlocked but they had only been deliberating three hours); *Kuhs*, 223 Ariz. at 384 ¶ 44, 385–86 ¶¶ 59–60 (finding no coercion when impasse instruction was given after two days where jury did not ask for help).

¶152 We find no error. The court did not know the numerical split among jurors, and the jury deliberated for only two and a half hours before reaching an impasse. Additionally, the court reiterated several times that it was not trying to displace the jury’s judgment, explaining that the jury had “however long that you feel that you need to deliberate,” and “there are no time limits” and they should take “whatever [they] think is appropriate.” The standard impasse instruction provided to the jury also stated that it was not an attempt to “force . . . a verdict,” jurors “should not change [their] beliefs,” but should simply “discuss this instruction . . . [and] advise [the judge] in writing . . . whether [the court or lawyers] can attempt to assist” the jurors. RAJI Standard Instruction 42. The court also stated that it was “fine” if they thought the time already spent was sufficient.

¶153 Smith’s other arguments are unpersuasive. For example, Smith contends that the court improperly told the jurors that they had an “apparent need for help,” suggesting there was something wrong, e.g., in failing to reach a verdict. We disagree. A judge is not required to “blindly accept” an impasse, see *Kuhs*, 223 Ariz. at 384 ¶ 41, and here, it was not unreasonable for the judge to assist the jury.

¶154 Next, Smith argues that the court’s assurances—that it was not trying to coerce a verdict and the jury should take however long they need—were “hollow.” He relies on *Huerstel*, 206 Ariz. at 101 ¶ 24, but that case is distinguishable. There, the court’s impasse instruction effectively singled out one holdout juror. *Id.* at 98 ¶¶ 9, 11. In contrast, here, the court made a general statement—that two and half hours is not actually that long—to the entire jury and then immediately instructed them to take all the time they needed.

¶155 Smith also argues that the trial court erred by denying his request to include a non-unanimous option on the verdict form.

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Specifically, Smith requested a verdict form that included an option stating, “unable to reach a unanimous decision” or “unable to agree.” But the absence of this option does not establish coercion. The court informed the jury that if they could not unanimously agree, the foreperson should let the judge know. And the court informed the jury several times that a non-unanimous verdict was “perfectly acceptable.”

¶156 Finally, we note that although the jury returned its verdict shortly after the impasse instruction, *see Lowenfield v. Phelps*, 484 U.S. 231, 237, 240 (1988) (considering the length of time between reaching a verdict and receiving an impasse instruction), under the totality of the circumstances we conclude that the trial court did not coerce the jury.

N.

¶157 Because Smith committed the murder after August 1, 2002, this Court must review the jury’s findings of aggravating circumstances and the imposition of a death sentence for abuse of discretion, A.R.S. § 13-756(A), viewing the facts in the light most favorable to sustaining the verdict. *State v. Naranjo*, 234 Ariz. 233, 249 ¶ 81 (2014). “A finding of aggravating circumstances or the imposition of a death sentence is not an abuse of discretion if ‘there is any reasonable evidence in the record to sustain it.’” *Id.* (quoting *Delahanty*, 226 Ariz. at 508 ¶ 36).

1. Aggravating Circumstances

¶158 The State alleged, and the jury found beyond a reasonable doubt, two aggravating circumstances: (1) Smith was convicted of a serious offense (child abuse), § 13-751(F)(2); and (2) Smith killed K.L. for pecuniary gain, *id.* (F)(5). The (F)(2) aggravator involved the shooting of an infant, K.S., and, as a result, was a particularly strong aggravating circumstance. The record provides substantial evidence to support both aggravators, *supra* ¶¶ 101-07, 110-15. Therefore, the jury did not abuse its discretion in finding these aggravating circumstances.

2. Death Sentence

¶159 The jury also did not abuse its discretion in sentencing Smith to death. This Court must uphold a death sentence “if any reasonable juror could conclude that the mitigation presented was not sufficiently substantial to call for leniency.” *Naranjo*, 234 Ariz. at 250 ¶ 89 (internal

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quotation marks omitted) (quoting *State v. Gallardo*, 225 Ariz. 560, 570 ¶ 52 (2010)).

¶160 Smith presented twenty-nine non-statutory mitigators, asserting that he was driven to keep his family together and avoid negative stereotypes about African American fathers. He also argued that he provided for Ward though she emotionally abused, harassed, and emasculated him, threatened to take his son away from him, and displayed Borderline Personality Disorder symptoms. Smith argued that he did not live up to his family's expectations and that they were highly critical of his romantic relationships, had a history of failed relationship, and did not believe in therapy. Finally, he argued that he was sleep deprived, grieving a miscarriage suffered by Ward, lacked conflict resolution skills, had no criminal record, maintained employment, volunteered, played sports in high school, earned an academic scholarship, earned an associate degree, loves children, was a candidate to become a foster parent, and had been a model inmate. He presented no statutory mitigators.

¶161 The record supports the jury's determination. A reasonable juror could find many of these mitigators—sleep deprivation, grief, family pressure—unpersuasive. And Smith's positive background could have demonstrated his ability to handle conflict without murder. Therefore, the jury did not abuse its discretion in sentencing Smith to death.

III.

¶162 Smith raises seventeen other issues to avoid their preclusion. Because this Court has previously rejected each of these claims, we decline to revisit them here.

CONCLUSION

¶163 We affirm Smith's convictions and sentences.

APPENDIX B

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,)
) Arizona Supreme Court
) No. CR-18-0295-AP
 Appellee,)
) Maricopa County
 v.) Superior Court
) No. CR2015-106788-001
 ALLYN AKEEM SMITH,)
) **FILED 12/01/2020**
 Appellant.)
)
 _____)

O R D E R

On November 19, 2020, Appellant Smith filed a "Motion for Reconsideration." Upon consideration of the Court,

IT IS ORDERED denying the motion.

DATED this 1st day of December, 2020.

_____/s/_____
ANDREW W. GOULD
Duty Justice

TO:

Lacey Stover Gard

Nathan Curtisi

Vineet Mehta Shaw

David R Cole

Jim D Nielsen

Margaret M Green

Nicholaus Podsiadlik

Allyn Akeem Smith, ADOC 327565, Arizona State Prison, Florence -
Eyman Complex-Browning Unit (SMU II)

Dale A Baich

Timothy R Geiger

Amy Armstrong

kj

APPENDIX C

MICHAEL H. JEANES, CLERK
BY



DEP
FILED

15 MAY 26 PM 3:45

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Jessi Wade
Deputy County Attorney
Bar ID #: 021375
301 West Jefferson, 4th Floor
Phoenix, AZ 85003
Telephone: (602) 506-5780
mcaomod@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

DR 201402160266
DR 201402160266A - Phoenix Police Department
1541597

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

THE STATE OF ARIZONA,
Plaintiff,

vs.

ALLYN AKEEM SMITH,
aka ALLYN SMITH
Defendant.

REMAND

CR2015-106788-001

INDICTMENT
639 GJ 463

**COUNT 1: FIRST DEGREE MURDER, A
CLASS 1 FELONY DANGEROUS (ALLYN
AKEEM SMITH)
COUNT 2: CHILD ABUSE, A CLASS 2
FELONY DANGEROUS CRIME AGAINST
CHILDREN (ALLYN AKEEM SMITH)**

The Grand Jurors of Maricopa County, Arizona, accuse ALLYN AKEEM SMITH, on May 26, 2015, charging that in Maricopa County, Arizona:

COUNT 1:

ALLYN AKEEM SMITH, on or about December 11, 2014, intending or knowing that his conduct would cause death, with premeditation did cause the death of Khalli Okolo Lawrence, in violation of A.R.S. §§ 13-1101, 13-1105, 13-751, 13-701, 13-702, and 13-801.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a handgun, a deadly weapon or dangerous instrument and/or the intentional or knowing infliction of serious physical injury upon Khalli Okolo Lawrence, in violation of A.R.S. § 13-704.

COUNT 2:

ALLYN AKEEM SMITH, on or about December 11, 2014, under circumstances likely to produce death or serious physical injury, intentionally or knowingly did cause Confidential Victim A, a child, to suffer physical injury, in violation of A.R.S. §§ 13-3623(F)(A)(C), 13-701, 13-702, and 13-801.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a handgun, a deadly weapon or dangerous instrument and/or the intentional or knowing infliction of serious physical injury upon Confidential Victim A, in violation of A.R.S. § 13-704.

A True Bill
("A True Bill")

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

Jessi Wade
Jessi Wade
Deputy County Attorney

Date: May 26, 2015

Sharon A Boston
FOREPERSON OF THE GRAND JURY

jp

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)

APPENDIX D

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

3 SW2016 - 010274

4 IN RE:
5 WIRELESS CELL NUMBER:
6 480.468.8180 & 480.233.0526 & 480.430.5676
7 SUBSCRIBED THROUGH
8 AT&T or any other telecommunications
9 provider

) AFFIDAVIT IN SUPPORT OF COURT
) ORDER AUTHORIZING RELEASE OF
) SUBSCRIBER INFORMATION, CALL
) DETAIL/TOLL AND SMS RECORDS AND
) CELLULAR TOWER UTILIZATION
) INFORMATION

11 The Phoenix Police Department , hereby applies for an Order authorizing 1) the disclosure
12 of subscriber information for the period beginning 03/01/14 and ending on 12/14/14 on
13 telephone number 480.468.8180 & 480.233.0526 & 480.430.5676 (Target Telephones); 2) call
14 detail report to include all incoming and outgoing calls, and sms text messaging records with date,
15 time, direction, duration and content for the period beginning 03/01/14 and ending on 12/14/14
16 on Target Telephones; 3) cellular tower utilization information for the period beginning
17 03/01/14 and ending on 12/14/14 on Target Telephones; 4) subscriber information and call
18 detail reports for all telephone numbers contained in the call data records that are subscribed
19 through AT&T or any other telecommunications carrier for the same durations as the Target
20 Telephones upon oral or written demand by investigators of the Phoenix Police Department
21 and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) .

AFFIDAVIT

1
2
3
4
5
6
7 1. A "Call Detail Report" is the system by which a telephone utility automatically monitors cellular
8 telephone numbers and internal electronic numbers for billing and switching purposes, and
9 records the general geographic location of cell sites accessed by the Target Telephone. The
10 cellular tower utilization information contained in the call detail report provides numerical
11 parameters that would enable law enforcement to narrow down the location of the regularly
12 accessed cell sites and narrow the potential search area for the cell phone handset's physical
13 location.

14 2. I, **Helene Balmir** (affiant), being duly sworn, do hereby depose and state the following:

15 3. I am employed as a Detective for the Phoenix Police Department Violent Crimes Bureau and I
16 am cross-designated and sworn with the Bureau of Alcohol Tobacco and Firearms as a Task
17 Force Officer. On August 22, 2016, your affiant obtained the following information

18
19 4. ON THURSDAY, DECEMBER 11, 2014, AT 1800 HOURS, DETECTIVES
20 ATTENDED AN INCIDENT BRIEFING AT 1800 W. LIBERTY LANE. THE
21 BRIEFING WAS CONDUCTED BY SERGEANT SEXTON #5400 AND HE STATED
22 THE FOLLOWING.

23
24 5. ON THURSDAY, DECEMBER 11, 2014, AT 1502 HOURS, PHOENIX POLICE
25 RECEIVED A 911 CALL REGARDING A YOUNG BLACK FEMALE AND A 4

1 MONTH OLD INFANT WHO WERE BOTH SHOT. THE ADULT FEMALE WAS
2 UNRESPONSIVE AND THE BABY WAS ALIVE AND CRYING. THEY WERE
3 DISCOVERED ON A HIKING PATH/WALK WAY AT THE 1800 WEST BLOCK OF
4 LIBERTY LANE.

5 6. PHOENIX FIRE DEPARTMENT PARAMEDICS RESPONDED TO THE SCENE AND
6 TRANSPORTED BOTH TO MARICOPA COUNTY HOSPITAL. THE FEMALE
7 RECEIVED A SINGLE GUNSHOT WOUND TO THE BACK OF THE HEAD AND
8 WAS PRONOUNCED DECEASED AT 1555 HOURS. THE INFANT RECEIVED A
9 THROUGH AND THROUGH GUNSHOT WOUND TO THE LEFT LEG AND WAS IN
10 SURGERY DURING BRIEFING. DETECTIVES LATER LEARNED THE SURGERY
11 WAS SUCCESSFUL AND THE INFANT WAS EXPECTED TO SURVIVE.

12 7. A CANVASS OF THE SURROUNDING NEIGHBORHOOD REVEALED NO
13 WITNESSES. DUE TO RECENT CONSTRUCTION IN THE AREA, AND USE OF
14 NAIL GUNS, THE NEIGHBORHOOD WAS USE TO HEARING POPPING SOUNDS
15 THROUGHOUT EACH WEEKDAY.

16 8. LATENT PRINTS WERE TAKEN OF THE DECEASED FEMALE AND SHE WAS
17 LATER IDENTIFIED AS KHALLI OKOLLO LAWRENCE, A 19 YEAR OLD
18 BLACK FEMALE WITH AN ADDRESS IN THE CITY OF MESA. THE MOTHER
19 OF KHALLI LAWRENCE, MONICA NELSON, WAS CONTACTED AT HER
20 RESIDENCE OF RECORD AND NOTIFIED OF THE INCIDENT. DURING THE
21 COURSE OF NUMEROUS CONTACTS WITH FAMILY MEMBERS AND KHALLI'S
22 BOYFIREND, DETECTIVES LEARNED THAT KHALLI HAD GIVEN BIRTH TO
23 HER DAUGHTER, KHI'YAH SMITH, ON [REDACTED] [REDACTED]. THE BABY'S
24 FATHER WAS IDENTIFIED AS ALLYN A. SMITH, A BLACK MALE WHO WAS
25

1 INVOLVED IN A SEXUAL RELATIONSHIP WITH THE DECEDENT.
2 APPARENTLY, KHALLI MET ALLYN WHEN SHE WAS DETAINED AT THE
3 MARICOPA COUNTY JUVENILE DETENTION CENTER AND HE WAS AN INTAKE
4 OFFICER OR POSSIBLE JUVENILE PROBATION OFFICER.

5 9. KHALLI AND ALLYN CONTINUED TO SEE EACH OTHER AND IN MARCH SHE
6 ADVISED HIM SHE BECAME PREGNANT. ACCORDING TO THE KHALLI'S
7 FAMILY, KHALLI RECENTLY LEARNED ALLYN SMITH HAD A LONGTIME
8 LIVE IN GIRLFRIEND AND THAT GIRLFRIEND ALSO DISCOVERED ALLYN
9 WAS CHEATING ON HER AND HAD A CHILD WITH KHALLI. ALLYN WAS
10 APPARENTLY UPSET THAT KHALLI GOT PREGNANT IN THE FIRST PLACE
11 AND THERE WAS ANIMOSITY BETWEEN THEM.

12 10. ALTHOUGH FAMILY MEMBERS DID NOT HAVE ANY INFORMATION ON
13 ALLYN'S ADDRESS, PHONE NUMBER ETC..., THEY INFORMED DETECTIVES
14 THAT ON MONDAY OR TUESDAY OF THAT WEEK (12/08-12/9/14) ALLYN
15 WAS SUPPOSED TO MEET KHALLI AT A MESA MEDICAL FACILITY TO
16 CONDUCT A PATERNITY TEST. ALLYN DID NOT SHOW UP AND WAS
17 APPARENTLY UPSET AND DID NOT DESIRE TO PAY CHILD SUPPORT.

18 11. KHALLI HAD MOVED OUT OF HER MOTHER'S RESIDENCE ON SUNDAY,
19 DECEMBER 7, 2014, AND MOVED INTO A FRIENDS APARTMENT IN THE
20 CITY OF MESA. THEY DID NOT HAVE THE APARTMENT LOCATION OR
21 FRIEND'S NAME DUE TO THE STRAINED RELATIONSHIP BETWEEN KHALLI
22 AND HER MOTHER.

23 24 12. LATER IN THE EVENING OF THURSDAY, DECEMBER 11, 2014,
25 DETECTIVES SPOKE TO DEVANTE CLARKE, KHALLI'S ON AGAIN, OFF

1 AGAIN BOYFRIEND OF TWO YEARS. DEVANTE INFORMED DETECTIVES THAT
2 HE RECEIVED A TEXT FROM A FEMALE NAMED TASHAY JONES, KHALLI'S
3 NEW ROOMMATE. THE TEXT STATED THE BABY'S DADDY, (ALLYN SMITH)
4 PICKED UP KHALLI EARLIER IN THE AFTERNOON AND KHALLI HAS NOT
5 RETURNED ANY ATTEMPTS AT CONTACTING HER. ATTEMPTS TO CONTACT
6 TASHAY THROUGH THE NIGHT WERE UNSUCCESSFUL SINCE SHE WAS NOT
7 RESPONDING TO DETECTIVES CALLS AND SHE WAS NOT FULLY
8 IDENTIFIED.

9 13. ON THE MORNING OF FRIDAY, DECEMBER 12, 2014, DETECTIVES WERE
10 ABLE TO CONTACT TASHAY'S MOTHER WHO WAS ABLE TO EVENTUALLY
11 LOCATE HER DAUGHTER TASHAY SO SHE COULD BE INTERVIEWED.

12 14. DURING THE INTERVIEW WITH TASHAY JONES, SHE POSITIVELY
13 IDENTIFIED ALLYN A. SMITH AS KHALLI'S EX-BOYFRIEND AND FATHER
14 OF KHAI'YAH SMITH FROM ALLYN'S MVD PHOTOGRAPH. TASHAY STATED
15 THAT YESTERDAY, THURSDAY, DECEMBER 11, 2014, ALLYN SMITH DROVE
16 OVER TO HER APARTMENT COMPLEX LOCATED AT 1033 S. LONGMORE, IN
17 THE CITY OF MESA, AND TOLD TASHAY TO LEAVE BECAUSE HE DID NOT
18 WANT HER TO KNOW HIS BUSINESS. AT ABOUT 1315 HOURS, TASHAY
19 WALKED TO A NEARBY STORE AND LEFT KHALLI AND ALLYN WITH THE
20 INFANT. WHEN SHE RETURNED AT 1415 HOURS, SHE NOTICED THEY WERE
21 GONE. KHI'YAH'S BABY CARRIER WAS GONE ALONG WITH SOME BABY
22 CLOTHING AND KHALLI'S CLOTHING. LATER THAT AFTERNOON, TASHAY
23 STARTED TO TEXT KHALLI SINCE SHE HAD NOT HEARD BACK FROM HER
24 AND KHALLI'S PHONE WAS OFF. SHE DID NOT RECEIVE A RESPONSE.
25

1 TASHAY DID NOT LEARN OF KHALI'S DEATH UNTIL DETECTIVES'
2 INTERVIEW WITH HER.

3 15. DURING THE COURSE OF THE INVESTIGATION DETECTIVES LEARNED
4 ALLYN SMITH WAS UPSET THAT KHALLI GOT PREGNANT, DID NOT WANT
5 TO PAY FOR CHILD SUPPORT, AND DID NOT WANT A PATERNITY TEST TO
6 CONFIRM HE WAS THE FATHER OF HER CHILD. DETECTIVES ALSO
7 LEARNED THAT IN AUGUST 2014, KHALLI MET WITH ALLYN TO DISCUSS
8 THE PREGNANCY AND WHILE WALKING TOGETHER AROUND A PARK, KHALLI
9 WAS ATTACKED AND HIT IN THE STOMACH. ALLYN TOLD KHALLI THAT
10 HE CALLED THE POLICE BUT THEY NEVER CAME. THERE WERE NO
11 RECORDS OF ALLYN CALLING THE POLICE AROUND THE TIME OF THAT
12 INCIDENT

13 16. ON DECEMBER 11 2014, TASHAY JONES OBSERVED ALLYN SMITH PICK
14 UP KHALLI LAWRENCE 90 MINUTES PRIOR TO THE DISCOVERY OF HER
15 BODY. TASHAY DID NOT OBSERVE WHAT VEHICLE ALLYN ARRIVED IN.
16 THE LOCATION WHERE THE DECEDENT WAS FOUND WAS A REMOTE PATHWAY
17 A COUPLE BLOCKS SOUTH OF A SMALL NEIGHBORHOOD. KHALLI AND HER
18 INFANT HAD TO BE TRANSPORTED TO THAT LOCATION AND EITHER BY
19 FORCE OR DECEPTION, WALKED TO THE LOCATION OF DISCOVERY AND
20 SHOT. THE SUSPECT OR SUSPECTS HAD TO HAVE FLED THE REMOTE
21 LOCATION IN A VEHICLE DUE TO THE DISTANCE FROM THE ROADWAY.

22 17. ON DECEMBER 12, 2014, ALLYN A. SMITH WAS TAKEN INTO CUSTODY
23 AT HIS RESIDENCE AS HE WAS LEAVING WITH KYSHIA WARD AND THEIR
24 3 YEAR OLD CHILD.
25

1 18. DETECTIVES OBTAINED SEARCH WARRANTS FOR CELLULAR PHONE
2 CONTENT. THE EXAMINATION OF THE CELL PHONES CONFIRMED THE
3 RELATIONSHIP AND PRIOR CONTACTS BETWEEN ALLYN, KYSHIA, AND
4 KHALLI.

5 19. DURING THE COURSE OF THE INVESTIGATION, TWO PHONE NUMBERS
6 WERE IDENTIFIED FOR ALLYN (480.468.8180 AND 480.233.0526).
7 THOSE PHONE NUMBERS WERE USED AT VARIOUS TIMES OF ALLYN AND
8 KHALLI'S RELATIONSHIP SINCE JANUARY 2014.

9 20. TWO PHONE NUMBERS WERE IDENTIFIED FOR KHALLI WHICH WERE BOTH
10 USED BY KHALLI DURING THE MONTH OF DECEMBER 2014 (480.273.0691
11 AND 602.672.0630)

12 21. DURING THE CELLULAR PHONE EXAMINATION, DETECTIVES FOUND
13 CONVERSATIONS BETWEEN KYSHIA AND ALLYN WHERE KYSHIA WAS
14 OBVIOUSLY UPSET ABOUT THE PREGNANCY. THOSE WERE FROM KYSHIA'S
15 TELEPHONE NUMBER OF 480.430.5676.

16 22. DUE TO THE LIMITED CALL INFORMATION STORED ON THE DEVICES,
17 YOUR AFFIANT BELIEVES THAT OBTAINING HISTORICAL CALL DETAIL
18 RECORDS WITH CELL SITE INFORMATION WILL FURTHER THIS
19 INVESTIGATION AND ASSIST IN IDENTIFYING ALL PARTIES INVOLVED
20 IN THE BRUTAL MURDER OF KHKALLI LAWRENCE AND ATTEMPTED MURDER
21 OF 4 MONTH OLD KHI'YAH SMITH
22

23
24 23. On August 23, 2016 your affiant made inquiry with AT&T and confirmed that the Target
25 Telephones were subscribed through their company.

1
2 24. Based on your affiant's training and experience, individuals rely heavily in their day-to-day
3 activities and actions on their cellular telephones and their communications. These
4 communications, in the form of telephone calls, voice messages, sms text messages and other
5 like communications cause their cellular telephone to emit and receive electronic signals to and
6 from cellular telephone company cell towers. With the assistance of court-authorized
7 technological tracing devices and service, these electronic signals indicate the geographic
8 location of the individual in possession of the specific cellular telephone emanating and
9 receiving said electronic signals. By tracking the cellular telephone electronic signals between a
10 cellular telephone and the cell towers it relies on and communicates with, an individual's
11 location can be determined, finitely identified and tracked through surveillance. This court-
12 authorized surveillance technique is routinely successful in locating an individual relevant and
13 material to an on-going criminal investigation, when that individual is attempting to avoid law
14 enforcement contact, whether they be a victim, witness, suspect or an unwitting involved party.

15 25. Through training and experience the affiant knows that acquiring an extended period of call
16 detail records can assist in establishing a pattern of life, or use, of a target telephone. That is,
17 up to 6 months of records can assist investigators in establishing calling patterns of the target
18 telephone and prevalent cell sectors utilized by the target telephone. The establishment of this
19 pattern of life, or use, is critical in helping investigators determine if, and when, this calling
20 pattern changes, intensifies, or wanes during relevant time periods within the
21 investigation. Through training and experience, the affiant knows that changes within this
22 pattern occur with respect to calls to and from the victim(s) in, and around, the time of
23 criminal activity. These changes in the pattern of life can also assist investigators in identifying
24 any co-conspirator(s) who may have provided aid or counsel, during the relevant time period
25

1 surrounding the conception, planning, commission and/or cover-up of criminal activity.

2 26. Based on the foregoing facts and affiant's training and experience, affiant has probable cause
3 and reasonable belief that the information obtained from the subscriber information, call detail
4 records cell site activity and historical billing records for the **Target Telephones** will provide
5 evidence aiding in the identification, apprehension and prosecution of the suspect(s) in this
6 case. Probable cause exists that the disclosure of cell site activity and cell site locations is
7 material to this criminal investigation.

8 27. Because there is probable cause to believe that such information is relevant and material to the
9 ongoing investigation, I request that the wireless carrier listed in the proposed order, be
10 ordered to supply subscriber names and addresses, whether listed or unlisted, and periods of
11 telephone activation for numbers dialed otherwise transmitted from and dialed or otherwise
12 transmitted to the **Target Telephone** numbers, beginning on 03/01/14, and continuing
13 through 12/14/14, upon oral or written demand by investigators of the **Phoenix Police**
14 **Department** and the **ATF** also be ordered to disclose the location of cell site/sector (physical
15 address) at call origination and call termination for the **Target Telephone**.


16 28. It is further requested that the wireless carrier **AT&T** provide detectives of the **Phoenix Police**
17 **Department** and **ATF** this information upon their request.

18 29. Based on the probable cause information provided in this application, I believe that the
19 disclosure of the requested court order may result in the compromise of this active
20 investigation, may cause suspect[s] to flee again to another jurisdiction, or may otherwise
21 seriously jeopardize the investigation. Therefore, pursuant to Arizona Revised Statutes 13-3016
22 (C) (1) (D) (1), I further request that the court seal this record and direct the local, long
23 distance and wireless carriers listed in the proposed order, filed concurrently herewith, and their
24 representatives, agents and employees, not to disclose in any manner, to the listed subscriber for
25

1 the Target Telephone, or to any other person, the existence of this order, in full or redacted
2 form, or of this investigation unless otherwise ordered by this court.

3
4 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
5 and belief, and that this declaration was executed on the date listed below.

6
7
8 Executed at Phoenix, Arizona



9 Signature of Affiant

10
11 Subscribed and Sworn on this 13th day of Aug 2016.

12
13
14 _____
Honorable Judge of the Superior Court

15
16 PABLO SIGMUND POPKO
17 COUNTY SUPERIOR COURT

1
2 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR
3 THE COUNTY OF MARICOPA
4

5 IN RE:)

SW 2016-010274

6 WIRELESS TELEPHONE NUMBER:
7 480.468.8180 & 480.233.0526 & 480.430.5676)

) COURT ORDER AUTHORIZING
) RELEASE OF SUBSCRIBER
) INFORMATION, CALL DETAIL/TOLL
) AND SMS RECORDS AND CELLULAR
) TOWER UTILIZATION INFORMATION
)

8 SUBSCRIBED THROUGH)
9 AT&T or any other telecommunications)
10 provider)

11
12
13 ORDER UNDER SEAL
14
15

16 This Court finds that the investigators of the Phoenix Police Department and the Bureau of
17 Alcohol, Tobacco, Firearms and Explosives (ATF) have offered probable cause showing that there
18 are reasonable grounds to believe that the records and other information sought are relevant and
19 material to an ongoing criminal investigation. Pursuant to 18 United States Code Section 2703
20 (c)(d), 3122, 3123, and Arizona Revised Statutes 13-3017 it is hereby ordered that the telephone
21 provider(s) known as: AT&T, upon the request of investigators of the Phoenix Police Department
22 provide the following information and services without delay:
23
24
25

1 Subscriber information (to include ESN/IMSI), including subscriber name, address, identifying
2 information provided to account (date of birth, driver license number, social security number),
3 subscriber contact information (email addresses, contact phone or "can be reached at" numbers),
4 methods and dates of account payment (credit card numbers, electronic fund transfer information
5 or locations of cash payments), account set-up purchase and activation locations, types of services
6 for the account, additional phone numbers associated with the same account, make/model/serial
7 number of the phones associated with the account and account comments/notations (including
8 anytime the service provider has contact with a customer regarding the subscriber account billing
9 records to include historical billing records and credit information) for **Target Telephone**; call
10 detail report(s) to include all incoming and outgoing calls and short message service ("sms") "text"
11 messaging records with date, time, direction, and duration, and cellular tower / cell site utilization
12 information without geographical limitations to include applicable location identifier data and
13 relevant maps showing all cell-site and cell tower locations, sectors and orientations in the specified
14 market, for the period beginning 03/01/14 and ending on 12/14/14 relating to the cellular
15 telephone assigned telephone numbers 480.468.8180 & 480.233.0526 & 480.430.5676 (**Target**
16 **Telephones**).

17
18
19 IT IS FURTHER ORDERED, AT&T or any other telecommunications carrier upon the request
20 of investigators of the Phoenix Police Department provide subscriber information and call detail
21 reports for all telephone numbers in contact with the **Target Telephones** contained in the call
22 data records that are subscribed through AT&T or any other telecommunications carrier for the
23 same durations as the **Target Telephones**.

24
25 IT IS FURTHER ORDERED, that the records be provided in electronic format.

1
2 IT IS FURTHER ORDERED, that the local, long distance and wireless carriers be compensated by
3 the investigative agency for reasonable expenses incurred in providing technical assistance; and,

4 Good cause having been shown,

5
6 IT IS FURTHER ORDERED, pursuant to Arizona Revised Statute 13-3016 (C) (1) (D) (1), that
7 this order and application be sealed until otherwise ordered by the court, that the identity of any
8 target(s) of the underlying criminal investigation may be redacted from any copy of this order to be
9 ~~distributed or any service provided to other person, and that the local, long distance and wireless~~
10 carriers and their representatives, agents and employees shall not disclose in any manner, directly or
11 indirectly, by any action or inaction, the existence of this order or the existence of the above-
12 described investigation, to the listed subscriber for the Target Telephones, the occupant of said
13 premises, the subscribers of the incoming calls to or outgoing calls from the Target Telephones,
14 or to any other person, in full or redacted form, unless or until otherwise ordered by the court.
15

16
17 Given Under my Hand this 13th day of Sept ~~August~~, 2016 at _____ hours
18

19
20
21 _____
Honorable Judge of the Superior Court

22
23 HONORABLE SIGMUND POPKO
24 MICHIGANA COUNTY SUPERIOR COURT
25

APPENDIX E

1 accessed by that device?

2 A. Correct.

3 Q. The 12:16 and the 12:18 calls, do those calls
4 correlate to the exhibit that we were looking at, Exhibit
5 Number 299, a few minutes ago --

6 A. Yes.

7 Q. -- with the cell phone records?

8 A. Yes, ma'am.

9 Q. And it's the information that's in these cell
10 phone records that you're able to do your mapping with?

11 A. Yes, ma'am.

12 Q. And now we just have the cell towers; correct?

13 A. Yes. So this slide just represents all the AT&T
14 towers in that area. So the -- all the green things that
15 look like cell sites, those are all the AT&T towers in
16 that area.

17 Q. And so the ones with the orange dot, that's the
18 one that that device that's associated with Allyn Smith is
19 actually making contact with?

20 A. Correct.

21 Q. 12-11-2014 at 1329, where are we within the
22 valley?

23 A. So West Valley near South Mountain is -- yeah,
24 that's the location of the cell site that's accessed by
25 that telephone number at that time.

1 Q. And this orange dot, this is the cell site that's
2 being accessed at 12-11-2014 at 1329?

3 A. Yes, ma'am.

4 Q. And this is an incoming voice call from the
5 number that's associated with Kyshia Ward?

6 A. Yes, ma'am.

7 Q. And he is in the west -- this device is in the
8 West Valley and at the same time her device was somewhere
9 over here in the East Valley?

10 A. Correct.

11 Q. At 1332 is he still -- the device still at that
12 same cell tower?

13 A. Yes, ma'am.

14 Q. And there's another phone call coming in at
15 1:32:11, that was also from the phone associated with
16 Kyshia Ward?

17 A. Correct.

18 Q. December 11th at 1:29:52, another phone call. Is
19 that the number coming in or, excuse me, that's associated
20 from Kyshia Ward?

21 A. Yes, ma'am.

22 Q. That's an incoming voice?

23 A. Yes, ma'am.

24 Q. And the device is still hitting off of a tower
25 looks like near South Mountain?

1 A. Yes, ma'am.

2 Q. 1:30:28 still at the tower near South Mountain?

3 A. Yes, ma'am.

4 Q. And an incoming voice again from a number that's
5 associated with Kyshia Ward?

6 A. Correct.

7 Q. What are we seeing on this slide at 1:33 and
8 1:34?

9 A. Sure. So the top is an incoming text message at
10 0134.

11 Actually, start with the bottom.

12 1:34 p.m.. I apologize.

13 And so that is -- again, that device is again
14 accessing a cell site near South Mountain.

15 And then at 1:33 p.m. an incoming voice from the
16 device associated with Kyshia Ward again near the
17 mountain.

18 Q. And this is -- we're getting closer to what you
19 have marked as 1800 West Liberty?

20 A. Yes, ma'am.

21 Q. Allyn 12-11-2014 at 1:35 and 1:36. Let's start
22 with 1:35. That's the bottom number. Is that -- what are
23 we looking at here?

24 A. Yes, ma'am. So there's an incoming voice call
25 from the number associated with Kyshia Ward to the number

1 associated with Allyn Smith and the device associated with
2 Allyn Smith is communicating with that cell site you're
3 pointing at.

4 And the next one is a minute later at 1:36 p.m.
5 It's an incoming voice, again with that same number
6 associated with Kyshia Ward, and that cell site that the
7 Allyn Smith device connects with is at 1800 West Liberty.

8 Q. Looks like it's right at 1800 West Liberty?

9 A. Yes, ma'am.

10 Q. We had a little bit of a discussion with how the
11 cell towers are generally within up to a mile and a half;
12 correct?

13 A. Our device will communicate with them up to a
14 mile and a half, yes.

15 Q. Yes.

16 But just because it's up to a mile and a half,
17 does that mean that his device can't be right at 1800 West
18 Liberty?

19 A. No. Anywhere within a mile and a half, give or
20 take.

21 Q. Allyn 12-11-2014 at 1:37 p.m. Another incoming
22 voice call from Kyshia Ward?

23 A. Yes, ma'am.

24 Q. And where is that tower?

25 A. So the numbers associated with Allyn, again, is

1 communicating with the cell site that's at 1800 West
2 Liberty.

3 Q. 1339 which is 1:39 p.m.?

4 A. Yes, ma'am. Same incoming voice call and same
5 location of cell site accessed by the device associated
6 with Allyn.

7 Q. 1352?

8 A. Yes.

9 Q. One -- excuse me -- 1:52 p.m..

10 A. Yes, ma'am. Same information.

11 Q. Still an incoming voice call from a device
12 associated with Kyshia Ward?

13 A. Yes, ma'am.

14 Q. To a device that's been associated with Allyn
15 Smith through the investigation?

16 A. Yes, ma'am.

17 Q. 1359?

18 A. Yes, ma'am. Same information. It's an incoming
19 call from the device associated with Kyshia Ward to the
20 device associated with Allyn Smith and Allyn Smith's
21 device is accessing the cell site at 1800 West Liberty
22 Lane.

23 Q. So these calls are coming in pretty frequently.
24 We have one at 1:52, 1:59, all from Kyshia Ward?

25 A. Yes, ma'am.

1 Q. What about at 2:02 p.m.?

2 A. Yes, ma'am. Another incoming call from the
3 number associated with Kyshia Ward to the number
4 associated with Allyn Smith which is still communicating
5 with that same cell site.

6 Q. And that's the cell site right here that's right
7 at 1800 West Liberty?

8 A. Yes, ma'am.

9 Q. 1404. So 2:04 p.m.?

10 A. Yes, ma'am.

11 So at 2:04 p.m. it's an incoming voice call from
12 the device associated with Kyshia Ward to the device
13 associated with Allyn Smith which is now communicating
14 with a cell site that appears to basically be on the
15 mountain, still on the west side.

16 Q. So at South Mountain -- are there actually cell
17 towers on top of South Mountain?

18 A. Yes, ma'am.

19 Q. So that doesn't mean that his device is actually
20 on the top of South Mountain?

21 A. Correct.

22 Q. Or South Mountain?

23 A. Correct.

24 Q. And so what this indicates is there's a cell
25 tower that's located on South Mountain and that's the cell

1 tower that his device is making contact with?

2 A. Correct.

3 Q. 1405?

4 A. Correct. So at 1405 there is -- go in order.

5 So at 14:05:36 there is an incoming voice call
6 from the device associated with Kyshia Ward to the device
7 associated with Allyn Smith. And that is accessing a cell
8 site that is, again, near South Mountain, a little bit
9 more south of the mountain, like along -- I think -- is
10 that Liberty Lane? Along the road.

11 And then at 14:05:59, it's an outgoing voice call
12 to the number associated with Kyshia Ward. And the device
13 associated with Allyn Smith is communicating with the cell
14 site that's on top of the mountain.

15 Q. So around 2:05. So really 2:04 to 2:05 we're
16 starting to move away, right, from that cell tower that's
17 closest to 1800 West Liberty?

18 A. Right. At those times, the device to Allyn Smith
19 is connecting with cell sites that are a little bit more
20 east.

21 Q. And this phone call, this outgoing voice to
22 Kyshia Ward from the Allyn Smith device, this is the only
23 outgoing event that we have from those records during this
24 time frame?

25 A. Yes.

1 Q. If there had been other outgoing events, would
2 you have put them on these maps?

3 A. Yes, ma'am.

4 Q. Even if they weren't related to Kyshia Ward,
5 would you have put them on the maps?

6 A. Yes, ma'am.

7 Q. So the last outgoing -- or the only outgoing
8 information that we're seeing from the device associated
9 with Allyn Smith doesn't come until 2:05:59 p.m.?

10 A. For that time frame, yes.

11 Q. So essentially we have the phone calls that are
12 being made around 12:16, 12:18, right around Kay
13 Lawrence's apartment and then we don't have anything
14 outgoing that you are able to find until this call at
15 2:05:59?

16 A. Exactly.

17 Q. So a little less than two hours?

18 A. Yes.

19 Q. At 1501, so 3:01 p.m., what are we looking at?

20 A. So at 3:01 p.m. there's an incoming voice from a
21 number that is unknown to me to the device associated with
22 Allyn Smith and the device associated with Allyn Smith is
23 now communicating with a cell site back in the East
24 Valley.

25 Q. So we have 2:05 and then we move to 3:01?

1 A. Correct.

2 Q. And in that time frame, the information that you
3 gathered is we went from the west side of Phoenix near
4 1800 West Liberty, South Mountain, and now we move back to
5 the west side of the Valley -- excuse me --

6 A. East side.

7 Q. -- to the east side of the Valley?

8 A. Correct.

9 Q. And it's kind of hard to see. I'm not quite sure
10 you can.

11 But looking right here, does this, again, look
12 like AZ 87?

13 A. Yes, ma'am.

14 Q. Okay. So we've gone from the west side; now
15 we're back on the east side?

16 A. Yes, ma'am.

17 Q. And we have calls again coming in -- excuse me --
18 this was a text message that's coming in at 3:02, it's
19 again on the east side of the Valley?

20 A. Yes, ma'am.

21 Q. 3:02:56, another text message again on the east
22 side of the Valley?

23 A. Correct.

24 Q. At 3:16 and 3:24 the east side of the Valley?

25 A. Correct.

APPENDIX F

1 A. Yes, it was.

2 Q. Talk to me about December 11th of 2014. What do
3 you remember?

4 A. Well, I remember we were -- we had other
5 customers in the store and I was kind of in and out, going
6 back and forth. And I noticed a gentleman down at the end
7 of the store and I went down to assist him if he needed
8 assistance on what he was looking at. And he said yeah.
9 He asked me -- looking at a .22.

10 Well, what I do then is I say, well, what is your
11 price range, because they vary in prices. He said, "I
12 need something economic. Something cheap." And I says,
13 "Any particular reason why?" He said, "Yes." He says, I
14 want to get together with my wife or girlfriend at the
15 time that I remember and get her into the sport of
16 shooting. That's what I do.

17 I said, "Oh, okay."

18 I showed him some guns that were inexpensive and
19 we settled down for the Phoenix Arms .22 at the time.

20 Q. What kind of gun is a Phoenix Arms .22?

21 A. A Phoenix Arms .22 is a single-action .22. It
22 holds, I believe, eight rounds of .22 ammunition. Price
23 ranges about \$149 plus tax.

24 Q. What is a single-action?

25 A. Single-action is you have to cock -- literally

1 cock the hammer back to fire the first round.

2 Once you fire the first round, the slide comes
3 back. At that time it ejects the shell and picks up the
4 next shell so you can fire it again. Now, that is in the
5 single-action mode so...

6 You can also -- if you have to de-cock it, in
7 other words, let the hammer go forward, to start it again
8 you cannot pull the trigger. You have to physically cock
9 it.

10 That gun also has three safeties on it as well.

11 Q. And if you pull the hammer back and fire one
12 round --

13 A. Yes.

14 Q. -- will that round automatically -- will the
15 casing automatically eject?

16 A. Automatically ejects.

17 Q. Okay.

18 A. And then picks up the new round and enters it
19 into the chamber.

20 MS. WADE: Your Honor, this may be a good
21 time to stop.

22 THE COURT: All right. Ladies and
23 gentlemen, we'll take our 15-minute afternoon break.
24 Please remember the admonition.

25 (Court stood in recess.)

1 THE COURT: All right. We're back on the
2 record, State vs. Allyn Smith, 2015-106788.

3 Show the presence of counsel, the defendant,
4 and the jury.

5 Ms. Wade.

6 MS. WADE: Thank you.

7

8 DIRECT EXAMINATION (Continued)

9 BY MS. WADE:

10 Q. Before our break, Mr. Farko, we were talking
11 about a Phoenix .22 caliber handgun; correct?

12 A. A Phoenix Arms, yes, HP22A model handgun.

13 Q. How big is that specific gun?

14 A. Probably about the size of my palm of my hand.

15 Q. And what is that gun typically used for?

16 A. Just for every-day use of shooting and plinking
17 out in the desert or whatever. That's about all.

18 Q. Is it used for any type of long distance
19 shooting?

20 A. No.

21 Q. That specific weapon, the Phoenix Arms .22, does
22 that gun eject a casing after it's fired?

23 A. Yes, ma'am, it does.

24 Q. And are you familiar with the way the gun ejects
25 that casing?

1 A. Ejects out through the right.

2 Q. What type of ammunition would a Phoenix Arms .22
3 typically use?

4 A. Any type of .22 long rifle will work, but the
5 best one out there would probably -- in my opinion is the
6 CCI Mini-Mags. They have a higher velocity and a little
7 bit more power to operate the action of the gun.

8 Q. And what -- are you familiar enough with the CCI
9 Mini-Mags to know the headstamp on that ammunition?

10 A. It's a C.

11 Q. "C" as in cat?

12 A. "C" as in cat.

13 Q. Did Phoenix -- excuse me -- Arizona Firearms sell
14 the CCI Mini-Mag .22 long rifle ammunition on
15 December 11th of 2014?

16 A. Yes, we did.

17 Q. Was that potentially the only one that you
18 actually had in stock at the time?

19 A. At the time .22 ammunition was really, really
20 scarce. We were having a hard time getting .22
21 ammunition. So we used to keep certain rounds, especially
22 the CCI Mini-Mags in the back for customers who purchased
23 guns that would get a box of this and that's what we sold
24 him.

25 Q. What type of box did the ammunition come in?

1 A. It came in a hundred round box, clear, clear box,
2 100 rounds.

3 Q. Is there any option to buy ten rounds?

4 A. No.

5 Q. Just the hundred round box?

6 A. Hundred round box. We do not sell individual
7 rounds.

8 Q. What did the box itself look like?

9 A. It was a small box, about this big. And about
10 that high. That's all. With a sliding top.

11 Q. Can you use -- you demonstrated for us again with
12 your hands.

13 A. Yes.

14 Q. About how big, if you can estimate verbally,
15 would you say that box was?

16 A. Five inches in length, inch-and-a-half in height
17 and about inch-and-a-half in thickness.

18 Q. Was that type of ammunition stored anywhere
19 within your store back in December of 2014?

20 A. Yes. It was stored in the back room. We did not
21 have it on display.

22 Q. We were talking about a gentleman who had come
23 into your store to look for a gun. Do you see that man in
24 the courtroom today?

25 A. Yes, I do.

1 Q. Where do you see him?

2 A. Right here at the right.

3 Q. What is he wearing?

4 A. He's wearing a gray jacket right now with a light
5 blue shirt and a nice tie.

6 MS. WADE: Your Honor, may the record
7 reflect the witness has identified the defendant?

8 THE COURT: It shall.

9 BY MS. WADE:

10 Q. Back on December 11th of 2014, how did the
11 defendant seem to you when he came into your store?

12 A. Very nice. Very polite. He wasn't wearing any
13 type of raggedy clothes or anything. Dressed kind of
14 casual, you know, for street casual. Very nice. Very
15 polite. Nothing crazy about him or anything like that.

16 Q. Nothing set off your internal alarms as to maybe
17 this is someone we shouldn't sell a gun to?

18 A. No, nothing like that at all.

19 Q. How was his demeanor?

20 A. Fine. He just talked to me about shooting and
21 things like that. He didn't mention anything about doing
22 anything weird.

23 Q. Was he calm?

24 A. Very calm.

25 Q. Did he seem nervous at all?

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

STATE OF ARIZONA,
Plaintiff,
vs.
ALLYN AKEEM SMITH,
Defendant.

) CR-18-0295-AP
) CR 2015-106788-001
)

Phoenix, Arizona
April 9, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Trial)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 Q. And what time was that?

2 A. 12:40.

3 Q. Is that 12:40 p.m.?

4 A. Yes.

5 Q. Now, when you did this interview with the
6 detective, when -- was that the very next day,

7 December 12?

8 A. Yes.

9 Q. And was your memory on December 12th about the
10 time better than it is now in April of 2018?

11 A. Yes.

12 Q. When you left your bedroom around 12:40 p.m., did
13 you still have baby Khi'yah?

14 A. Yes.

15 Q. What happened when you came out of your bedroom
16 around 12:40?

17 A. Well, I had Khi'yah, then I gave her back to Kay
18 and then she was telling me that Allyn was here. He was
19 here. He came into the house. And then -- he came into
20 the house and then he saw me and went to the restroom.

21 Q. I'm going to stop you and we're going to kind of
22 walk through it a little bit.

23 Where did you see Kay when you came out of your
24 bedroom?

25 A. By the door.

1 Q. By which door?

2 A. Front door.

3 Q. The front door of your apartment?

4 A. Yes.

5 Q. And prior to you talking to Kay by the front door
6 of your apartment, did you see anybody in there?

7 A. No.

8 Q. What was your lighting like in your apartment
9 around 12:40 p.m. on December 11th of 2014?

10 A. It was bright. There was lights on.

11 Q. The lights were on?

12 A. Yes.

13 Q. Were you able to see clearly?

14 A. Yes.

15 Q. And then you said you saw a man inside of your
16 apartment. Where did you see him?

17 A. He was walking towards the rooms.

18 Q. Towards which rooms?

19 A. Well, I don't think he knew which room it was.
20 He was just walking towards Kay's room, my room.

21 Q. So when you are talking about the rooms, are you
22 talking about the two bedrooms?

23 A. Yes. Sorry.

24 Q. That's okay.

25 Still a little nervous?

1 A. Yes.

2 Q. All right. So what could you see about the man
3 who was inside your apartment around 12:40 walking towards
4 the bedrooms?

5 A. I just saw him and I -- the only thing that
6 really caught my attention was the black gloves that he
7 had on and as soon as he saw me, he went straight to the
8 restroom.

9 Q. He was wearing black gloves?

10 A. Yes.

11 Q. Could you describe those gloves?

12 A. They were like tight gloves. I believe they
13 covered the fingers so there were no fingers visible.

14 Q. And you're kind of low.

15 What was the last statement, the fingers weren't
16 visible?

17 A. Yes.

18 Q. So he was wearing tight black gloves. Were they
19 thick or were they thin?

20 A. They looked like they were about thick.

21 Q. Besides the black gloves, what else did you see
22 of him?

23 Could you see his face?

24 A. Yes.

25 Q. And when you saw his face, did you recognize him

1 as anybody?

2 A. Yes.

3 Q. Who did you recognize him as?

4 A. As Khi'yah's dad.

5 Q. As Khi'yah's dad?

6 A. Yes.

7 Q. And was that based on the photos that you had
8 seen on Facebook?

9 A. Yes.

10 Q. Were you able to see him clearly?

11 A. Yes.

12 Q. Was there anything blocking his way?

13 A. No.

14 Q. When you saw him, were you able to see his face
15 clearly?

16 A. I'm trying to remember.

17 I'm sorry.

18 Q. Do you need a moment?

19 A. Please.

20 Q. And there's some water up there if you need to
21 take a drink.

22 Are you okay to go on, Ms. Jones?

23 A. Yes.

24 Q. When you were looking at him, was there anything
25 blocking his face?

1 A. Not that I remember.

2 Q. Was he wearing a mask or anything?

3 A. No.

4 Q. Do you see the person who was in your apartment
5 on December 11th of 2014 here in the courtroom today?

6 A. Yes.

7 Q. Where do you see him?

8 A. Sitting right over there.

9 Q. You are saying "right over there." Is that --

10 A. To the right.

11 Q. I'm sorry?

12 A. To the right of me.

13 Q. What is he wearing?

14 A. A gray suit.

15 MS. WADE: May the record reflect the
16 witness has identified the defendant?

17 THE COURT: Well, which -- where is he
18 seated exactly?

19 THE WITNESS: To my far right.

20 THE COURT: Okay. At which table?

21 THE WITNESS: This right table.

22 THE COURT: All right. And which one is he
23 of the three gentlemen?

24 THE WITNESS: The third gentleman on the
25 right.

1 THE COURT: The far right?

2 THE WITNESS: Yes.

3 THE COURT: Record will reflect the
4 identification of the defendant.

5 BY MS. WADE:

6 Q. What drew your attention to the gloves he was
7 wearing?

8 A. I don't know. Just -- that just threw me off.
9 It was just gloves. Wearing gloves in the middle of the
10 day. I don't know.

11 Q. He was wearing gloves in the middle of the day?

12 A. Yeah.

13 Q. After you walked out of your bedroom, you saw the
14 defendant in the apartment, you saw the gloves, where did
15 he go?

16 A. To the restroom.

17 Q. Which restroom?

18 A. Kay's restroom.

19 Q. Is that the one outside of the bedroom?

20 A. Yes.

21 Q. What did you do then?

22 A. I walked towards the Christmas tree to talk to
23 Kay and then we were talking and then he walked out the
24 restroom and went outside the door, front door.

25 Q. When he walked outside from the restroom back out

1 to the front door, were you able to see his face again?

2 A. No.

3 Q. How were you not able to see his face?

4 A. He had his head down.

5 Q. And by "had his head down," do you mean just kind
6 of looking down at the ground?

7 A. Yes.

8 Q. Did he ever speak to you?

9 A. No.

10 Q. Did he ever acknowledge you?

11 A. No.

12 Q. Did you ever try to talk to him?

13 A. No.

14 Q. Why not?

15 A. I don't know. It was just weird that he had
16 gloves on and went to the restroom. Never said anything
17 to me, so I didn't think to say anything to him.

18 Q. About how long from the time that you came out of
19 your bedroom to when you saw him leave the apartment do
20 you think it was?

21 And obviously you weren't having a stopwatch. If
22 you can estimate.

23 A. Maybe not even five minutes.

24 Q. After he left the apartment, did he ever come
25 back inside while you were there?

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

STATE OF ARIZONA,)	
Plaintiff,	)	CR-18-0295-AP
vs.)	
ALLYN AKEEM SMITH,	)	CR 2015-106788-001
Defendant.)	

Phoenix, Arizona
April 11, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Trial)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 MS. WADE: Thank you.

2 BY MS. WADE:

3 Q. Now, the target number that you just read for
4 us -- the target number that ends in 6739, is that target
5 number also referenced on the certification that's the
6 first page that was provided by Facebook?

7 A. Yes, it is.

8 Q. And is that the same target number on the
9 certification as to the records in Number 267?

10 A. Yes.

11 Q. Could you turn to the next exhibit.

12 What's the next exhibit number, 182?

13 A. Yes.

14 Q. Looking at Exhibit 182, what's the target number
15 on Exhibit Number 182?

16 A. Target number is 100006157808048.

17 Q. And what is the name associated with that
18 account?

19 A. The name is, first, OG; last name, Triple.

20 Q. And what's the registered e-mail?

21 A. Tired, T-I-R-E-D, dot of it, o-f i-t,
22 .37@Facebook.com.

23 Q. And is there another e-mail on there?

24 A. There is.

25 Q. What is that e-mail?

1 A. Allyn, A-L-L-Y-N, _Smith01@Yahoo.com.

2 Q. And what's the vanity name?

3 A. Excuse me.

4 The vanity name is tired.ofit, o-f i-t, .37.

5 Q. And then this target number that ends in 8048, is
6 that the same target number that's referenced on the first
7 page of Exhibit Number 182 involving these documents from
8 Facebook?

9 A. Yes, it is.

10 Q. When was the account that's referenced in Exhibit
11 Number 182, OG Triple, deactivated?

12 MS. WADE: May I approach, Your Honor?

13 THE COURT: Yes.

14 THE WITNESS: I got it.

15 BY MS. WADE:

16 Q. When was it deactivated, Detective?

17 A. It was deactivated on 12 -- December 11th, 2014,
18 at 1758 hours which is 5:58 p.m.

19 Q. Now, it says UTC up there?

20 A. Yes.

21 Q. Since it says UTC, what do we have to do to
22 convert it to Arizona time?

23 A. Minus seven.

24 Q. So here is -- we're going to do some math. I'm
25 not trying to trick you. If it's 1758 UTC, what is it in

1 Arizona time?

2 A. Essentially that would be 11:58 Arizona time.

3 Q. 10:58?

4 A. It's 1800 minus -- oh, 10:58. Yeah.

5 Q. No one likes to do these conversions on the
6 stand. I'm sorry, Detective.

7 10:58 --

8 A. 10:58.

9 Q. -- a.m. on December 12th, 2014, is when the OG
10 Triple account was deactivated, according to these
11 records?

12 A. That's correct.

13 Q. Looking at Exhibit Number 267 now, Detective.

14 Are there some conversations that are documented
15 in Exhibit Number 267 involving Kay Lawrence with the
16 target number ending in 6739 and OG Triple and the target
17 number ending in 8048?

18 A. Yes.

19 Q. And looking down, 6739, the registered user on
20 that one is KayLawrence2@Facebook.com for the target
21 ending in 8048. The registered user is
22 Tiredofit37@Facebook.com and Allyn_Smith01@Yahoo.com; is
23 that correct?

24 A. Right.

25 Q. Would you please read to us who was the author,

1 according to the exhibit you have in front of you, on 267
2 for that first message?

3 A. The author is OG Triple.

4 Q. And who is the recipient?

5 A. The recipient is Kay Lawrence.

6 Q. What date was that sent on?

7 A. 12-8 of 2014.

8 Q. And what is the UTC time that is listed on that
9 document?

10 A. 03:26 hours.

11 Q. So if we do the conversion, what would the
12 conversion be?

13 A. Well, it would be minus seven hours from that, so
14 roughly 8:26 in the evening, the day before.

15 Q. So 8:26 p.m. on December 7th of 2014 is when that
16 message was sent to Kay Lawrence, according to the records
17 in front of you at -- in Exhibit Number 267?

18 A. On what date?

19 Q. On December 7th of 2014.

20 When you do the conversion --

21 A. Right.

22 I just -- maybe we're looking at a different
23 paper -- paperwork. I just want to verify.

24 Talking the first message?

25 Q. The first message.

1 A. Uh-huh.

2 Q. Came in at 03:26:47 UTC?

3 A. Right.

4 Q. On December 8th of 2014?

5 A. Yes.

6 Q. So when you do the conversion, we go back to
7 December 7th; correct?

8 A. Sorry.

9 Yes. Yep.

10 Q. I promise it's not a trick, Detective.

11 A. Yeah, I know.

12 Q. Could you read me what's in the body of this
13 first message?

14 A. Yes.

15 Before I take this DNA test, I would like to set
16 up a time for you, me, and the baby to meet so I can play
17 with her before all this happens. You should know who dis
18 is. The real one, not the other fake shit you have been
19 talking to. So hit me up here if u want to meet so I can
20 play with that baby.

21 Q. Let's go to the next message.

22 Who is the recipient of the next message?

23 A. Kay Lawrence.

24 Q. And who is the author of the next message?

25 A. OG Triple.

1 Q. And when was that message sent?

2 A. December 8th, 2014, at 07:28.

3 Q. And that's UTC time?

4 A. All of this is UTC, yes.

5 Q. So when we do the conversion, that would be about
6 12:28 a.m.?

7 A. That's correct.

8 Q. On December 8 of 2014?

9 A. Right.

10 Q. And what does the body of that message read?

11 A. If you don't want me to see the baby and you just
12 want money then let me know.

13 Q. Looking at Exhibit Number 267, Detective, are
14 those two messages essentially repeated and sent again
15 first on December 9th, 2014, at 09:01:21 and then on
16 December 9th, 2014, again at 09:01 UTC time?

17 A. Right.

18 Q. And the same -- and they're really essentially
19 the exact same message that we just read, the ones from
20 the 7th as well as the ones from the 8th?

21 A. That's correct.

22 Q. They're just repeated twice?

23 A. Right.

24 Q. Let's go to the next message that came in on
25 December 9th, 2014, at 09:07:41. Do you see that one,

1 Detective?

2 A. I do.

3 Q. Who is the recipient of that message?

4 A. Kay Lawrence.

5 Q. Who is the author?

6 A. OG Triple.

7 Q. What does the body of that -- so let's do the
8 conversion before we move on.

9 So it came in at 12:09 -- excuse me -- 12-9-2014
10 at 09:07 UTC. What's that conversion, Detective?

11 A. Again, minus seven hours from that point so it
12 would be 2:07 in the morning.

13 Q. And what is the body of that message, Detective?

14 A. Oh, I'm doing the test this week so maybe we can
15 meet up and go down there together or we can just meet up
16 in the morning before we go so I can play with the baby
17 and hold her and stuff. I don't want any types of drama
18 or nothing, just you, me, and the baby. That is all. Are
19 you okay with this?

20 Q. And the next message, that comes in on 12-9-2014
21 at 22:01:46 UTC time.

22 Who is the recipient of that message?

23 A. OG Triple.

24 Q. Who is the author of that message?

25 A. Kay Lawrence.

1 Q. And what does the body of that message read?

2 A. Yeah. That's fine. Well, you can just come over
3 my place or what you want to do?

4 Q. And, again, in order to get the actual time, you
5 would just subtract seven hours from that UTC time?

6 A. That's right.

7 Q. Let's move on to the next message that came in on
8 December 10th -- or that's listed December 10, 2014, at
9 1:44:26 UTC time.

10 Who is the author?

11 A. The author is OG Triple.

12 Q. And who's the recipient?

13 A. Kay Lawrence.

14 Q. What is the body of that message?

15 A. Is there a park near your place? We can just go
16 for a walk. You have a stroller, right?

17 Q. Let's go to the final message on this that we're
18 looking at here.

19 December 10th, 2014, at 01:53:28 UTC time.

20 Who is the author?

21 A. The author is OG Triple.

22 Q. And who is the recipient?

23 A. Kay Lawrence.

24 Q. What does the body of that message mean?

25 A. I mean, I can come over then we can go to the

1 park. It's up to you. Are you by yourself?

2 Q. The next message comes in at 12-10-2014 at
3 2:30:43 UTC time.

4 Who is the author of that message?

5 A. Kay Lawrence.

6 Q. Who's the recipient?

7 A. Again, OG Triple.

8 Q. And what does the body of that message read?

9 A. IDK -- meaning I don't know -- if there is one.
10 I just moved. IDK. Yeah, I have one. Yeah. When are
11 you planning on coming over?

12 Q. Let's go to the next message that comes in at
13 12-10-2014 at 3:10:42 UTC time.

14 Who is the author of this message?

15 A. OG Triple.

16 Q. Who is the recipient?

17 A. Kay Lawrence.

18 Q. What does that message read?

19 A. When you are available, I wanted to come during
20 the morning time before the DNA test. Oh, and only if you
21 are alone. If anyone else is there, I don't want to come.

22 Q. The next message that comes in at 12-10-2014 at
23 3:10 UTC time.

24 Who is the author?

25 A. The author is OG Triple.

1 Q. Who's the recipient?

2 A. Kay Lawrence.

3 Q. What does the body read?

4 A. The body reads: Especially after what you did.

5 Q. Let's go to the next message that comes in on
6 12-10-2014 at 3:23:42 UTC time.

7 Who is the author?

8 A. Again, the author is Kay Lawrence.

9 Q. Who's the recipient?

10 A. OG Triple.

11 Q. What does the body of the message read?

12 A. I'm not going to argue with you. If that's the
13 case, then don't come.

14 Q. The next message that comes in at 12-10-2014 at
15 3:24:14 UTC time.

16 Who is the author?

17 A. The author is Kay Lawrence.

18 Q. Who's the recipient?

19 A. OG Triple.

20 Q. And what's the body of the message say?

21 A. Are you coming tomorrow or Thursday?

22 Q. The next message on 12-10-2014 at 03:27:30 UTC
23 time.

24 Who is the author?

25 A. Kay Lawrence.

1 Q. Who's the recipient?

2 A. OG Triple.

3 Q. What does the body of that message read?

4 A. It's just us two.

5 Q. How about the next message that comes in on

6 12-10-2014 at 4:13:23 UTC time.

7 Who is the author?

8 A. OG Triple.

9 Q. Who's the recipient?

10 A. Kay Lawrence.

11 Q. What does the body of that message read?

12 A. I'm not going to argue at all. We don't even
13 have to talk if you don't want to. What day you want me
14 to come -- to come?

15 Q. The next message that comes in at 12-10-2014 at
16 4:14:05.

17 Who is the author?

18 A. OG Triple.

19 Q. Who's the recipient?

20 A. Kay Lawrence.

21 Q. What does the body of that message read?

22 A. What do you wanna do? You want to talk. Do you
23 want to just sit there while I play with the baby or what?

24 Q. The next message that comes in on 12-10-2014 at
25 4:20:12 UTC time. Who is the author?

1 A. The author is Kay Lawrence.

2 Q. Who's the recipient?

3 A. OG Triple.

4 Q. What's that message read?

5 A. Yeah. I want you to see her. That would be
6 nice.

7 Q. The next message comes in at -- on 12-10-2014 at
8 4:25:57 UTC time.

9 Who is the author?

10 A. Again, the author is OG Triple.

11 Q. Who is the recipient?

12 A. Kay Lawrence.

13 Q. And what does the body of that message read?

14 A. Okay. When and where? And what do you wanna do?

15 Q. Next message, 12-10-2014 at 4:34:45 UTC time.

16 Who is the author?

17 A. Kay Lawrence.

18 Q. Who is the recipient?

19 A. OG Triple.

20 Q. What does that body read?

21 A. Like at 8 or 9 so I can give her a bath and
22 stuff. It don't matter.

23 Q. And the next message, that is also from Kay
24 Lawrence?

25 A. Yes.

1 Q. And that's to OG Triple?

2 A. Yes.

3 Q. And that came in on 12-10-2014 at 4:36:21 UTC
4 time?

5 A. Correct.

6 Q. What does the body of that message read?

7 A. Longmore Southern.

8 Q. And Longmore and Southern, is that basically the
9 address of where Kay was living with Tashae Jones back on
10 December 11th of 2014?

11 A. Yes. That's correct.

12 Q. Go to the next message, Detective, that came in
13 on 12-10-2014.

14 Who is the author?

15 A. OG Triple.

16 Q. And this came in at 4:42:26.

17 Who's the recipient?

18 A. Kay Lawrence.

19 Q. What's the body of that message read?

20 A. 8 or 9 a.m., right?

21 Q. The next message that comes in at 12-10-2014 at
22 4:42:41 UCT -- UTC time, who is the author?

23 A. The author is OG Triple.

24 Q. Who is the recipient?

25 A. Kay Lawrence.

1 Q. And what does the body of that message read?

2 A. Okay. Where on Longmore and Southern?

3 Q. The next message that comes in on 12-10-2014 at
4 06:26:30 UTC time.

5 Who is the author?

6 A. Kay Lawrence.

7 Q. Who's the recipient?

8 A. OG Triple.

9 Q. And what does the body of that message read?

10 A. Yes. What time you want to come? And 1033 South
11 Longmore.

12 Q. And, again, 1033 South Longmore, that is where
13 Kay was living with the baby back on December 11 of 2014?

14 A. Yes, that was her address. Yes.

15 Q. Message that came in on 12-10-2014 at 06:28:03
16 UTC time.

17 Who is the author?

18 A. The author is OG Triple.

19 Q. Who's the recipient?

20 A. Kay Lawrence.

21 Q. And what does that message read?

22 A. I'll come at like 9 or 930.

23 Q. And, Detective, the next message, who is the
24 recipient of the next message?

25 A. OG Triple.

1 Q. Who is the author?

2 A. Kay Lawrence.

3 Q. This message came in at 12-10-2014 at 06:36:32.

4 What is the body of that message?

5 A. All right. I will be up.

6 Q. The following message coming in at 12-10-2014 at

7 7:24:46. So, again, if we're doing the math, it's

8 midnight so -- correct?

9 A. Yes.

10 Q. Midnight 12:24:46.

11 Who is the author?

12 A. The author is OG Triple.

13 Q. And who's the recipient?

14 A. Kay Lawrence.

15 Q. And what does the body of that message say?

16 A. Okay. And it'll only be you and the baby?

17 Q. The next message at 12-10-2014 at 15:19:28 UTC

18 time.

19 Who is the author?

20 A. Kay Lawrence.

21 Q. Who's the recipient?

22 A. OG Triple.

23 Q. What's the body of the message read?

24 A. Yes.

25 Q. 12-10-2014 at 15:52:58.

1 So 12-10-2014, that would have been Wednesday?

2 A. Yes, it would.

3 Q. Who is the author of that message?

4 A. The author is Kay Lawrence.

5 Q. Who's the recipient?

6 A. OG Triple.

7 Q. And what does that message read?

8 A. Are you still coming?

9 Q. The next message that comes in at 12-10-2014 at
10 17:34:09.

11 Who is the author?

12 A. The author is Kay Lawrence.

13 Q. Who's the recipient?

14 A. OG Triple.

15 Q. What does that message read?

16 A. I set shit aside so you may see her. You said
17 you would come, not I. Stop talking me and take your DNA
18 test. Why I U -- U O-B-L-Y -- you obviously have till
19 tomorrow till she sends everything off to the courts.
20 Like I said, I'm not going to argue with you. You wanted
21 to say she's not yours so the hell with it. Don't tell me
22 morning and not show. It won't happen again. Promise
23 you.

24 Q. You said the word obviously. Is the word
25 obviously in there?

1 A. No. As I stated, O-B-L-Y. I am paraphrasing
2 what it I believe to be.

3 Q. Okay. So you are making an assumption it's
4 obviously?

5 A. Yes.

6 Q. Okay. But that's not actually within the
7 document?

8 A. No. As I stated verbatim.

9 Q. Next message, 12-10-2014 at 22:30:27 UTC time.
10 Who is the author?

11 A. The author is Kay Lawrence.

12 Q. Who's the recipient?

13 A. OG Triple.

14 Q. What does the body of the message read?

15 A. Are you coming tomorrow?

16 Q. 12 -- the next message, 12-11-2014 at 1:55:50 UTC
17 time.

18 Who is the author?

19 A. The author, OG Triple.

20 Q. Who's the recipient?

21 A. Kay Lawrence.

22 Q. What does the body of that message read?

23 A. W-T-H? Yes, I'm coming tomorrow but at like noon
24 and then I-M-A do my test in the afternoon. Okay? No
25 need to get hostile with me. And first of all, I never

1 said she wasn't mine so don't go there. You never heard
2 that come out of my mouth!

3 Q. The next message that comes in at 1:56:52 UTC
4 time on December 11th of 2014.

5 Who is the author?

6 A. The author is OG Triple.

7 Q. Who's the recipient?

8 A. Kay Lawrence.

9 Q. What does the body of that message read?

10 A. What is your number so I can call you when I'm on
11 my way?

12 Q. Now, do -- using -- converting the UTC time,
13 we're still back on December 10th of 2014?

14 A. That's correct.

15 Q. The next message, December 11th, 2014, 1:57:27.

16 Who is the author?

17 A. OG Triple.

18 Q. Who's the recipient?

19 A. Kay Lawrence.

20 Q. And what does the body of that message read?

21 A. I told you Thursday not Wednesday.

22 Q. The next message that comes in December 11th,
23 2014. 2:01:08 UTC time.

24 Who is the author?

25 A. Kay Lawrence.

APPENDIX G

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

STATE OF ARIZONA, Plaintiff, vs. ALLYN AKEEM SMITH, Defendant.)))))	CR-18-0295-AP CR 2015-106788-001
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Phoenix, Arizona
April 10, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Trial)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 A. I tried to contact him again at the number that
2 custodial provided and I had another number for him, but
3 I -- I left a message at the second number.

4 Q. Okay. And did you get a response from Allyn
5 Smith to the second message that you left?

6 A. No.

7 Q. He did not call you back?

8 A. No.

9 Q. So on December the 11th of 2014, did Allyn Smith
10 have an appointment with you to appear for genetic
11 testing?

12 A. No.

13 Q. And I said genetic testing. Is genetic testing
14 and DNA testing -- are they the same thing?

15 A. They're the same thing.

16 Q. And it's just in order to establish paternity?

17 A. Yes.

18 Q. So it's now December the 11th of 2014. You're
19 working that day?

20 A. Yes.

21 Q. And there's a phlebotomist that's in the office
22 that day?

23 A. Yes.

24 Q. That's a day that you can do genetic testing or
25 DNA testing in the office?

1 A. Yes.

2 Q. At some point were you notified that an
3 individual by the name of Allyn Smith was in the office?

4 A. Yes.

5 Q. And did you go out to the -- well, let me back
6 up.

7 Were you busy with another client when you were
8 notified?

9 A. Yes, I was with a client.

10 Q. Did Allyn Smith fill out the DES paperwork, the
11 walk-in paperwork?

12 A. The walk-in sheet, yes.

13 MR. EISENBERG: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes.

16 BY MR. EISENBERG:

17 Q. Ms. McGill, showing you what's been marked as
18 Exhibit 169 for identification.

19 Let me ask if you recognize that document?

20 A. Yes, I do.

21 Q. What is that document?

22 A. It's a walk-in sheet that the client would fill
23 out when they come into the office.

24 Q. And is that walk-in sheet what's filled out by
25 every person, every client that walks into the office

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

STATE OF ARIZONA,	}	
Plaintiff,		CR-18-0295-AP
vs.		
ALLYN AKEEM SMITH,	}	CR 2015-106788-001
Defendant.		

Phoenix, Arizona
April 11, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Trial)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 (The jury entered the courtroom.)

2 THE COURT: Thank you. Please be seated.
3 All right. Show now the presence of the
4 jury.

5 Ms. Wade.

6 MS. WADE: Thank you, Judge.

7

8 DIRECT EXAMINATION (Continued)

9 BY MS. WADE:

10 Q. Detective Udd, before we broke, we were talking
11 about returning -- we had talked about Randy Raymond and
12 we were talking about going back at the scene at 1800 West
13 Liberty on December 11 of 2014.

14 While you were at the scene or during the course
15 of the night, were you able to get an update -- let me --
16 first, were you able to get an identification of the adult
17 woman who was found down on that pathway?

18 A. Yes.

19 Q. What was her name?

20 A. Khalli Lawrence.

21 Q. And she was 19 years old?

22 A. She was.

23 Q. During the course of that evening, did you find
24 out that she was, in fact, deceased?

25 A. Oh, yes. Yes, I did.

APPENDIX H

Steve McCarthy
AZ Bar No. 027105
Joel Brown
AZ Bar No. 007173
Law Office of the Public Defender
620 West Jackson Street, Suite 4015
Phoenix, Arizona 85003-2423
(602) 506-7711
Attorney for Defendant

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

STATE OF ARIZONA

Plaintiff,

v.

ALLYN SMITH

Defendant.

No. CR 2015-106788-001 DT

**MOTION TO SUPPRESS CELL
RECORDS OBTAINED BY
COURT ORDER**

(EVID. HEARING REQUESTED)

HON. MICHAEL KEMP

Defendant, through undersigned counsel, moves this Court to suppress Allyn Smith's AT&T cell phone records that Detective Helene Balmir of the Phoenix Police Department obtained with a court order. Detective Balmir's use of a court order to obtain Mr. Smith's cell records from AT&T constitutes a warrantless search in violation of the Fourth Amendment to the United States Constitution and Article II section 8 of the Arizona Constitution. Additionally, the use of a court order to obtain Mr. Smith's cell records from AT&T without notice to Mr. Smith violates Arizona Revised Statute section

13-3016. This motion is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The Defendant, Allyn Smith, is accused of murdering K.L. on December 11, 2014, and shooting K.L.'s baby, K.S., in the leg. Mr. Smith has been indicted on two counts: 1) first degree murder; and 2) child abuse. Mr. Smith has been in continual custody since February 10, 2015. On May 1, 2015, the State filed a Notice of Intent to Seek the Death Penalty and Notice of Aggravating Factors.

Helene Balmir, a detective with the Phoenix Police Department, submitted an affidavit and court order authorizing release of Mr. Smith's AT&T cell phone location records from March 1, 2014 to December 14, 2014, a 288 day period. The court order requested cell records for two of Mr. Smith's phone numbers: 480.468.8180 and 480.233.0526. The order was signed by The Honorable Sigmund Popko of Maricopa County Superior Court on September 13, 2016. The affidavit and order are attached to this motion.

The order under seal states the following: This Court finds that the investigators of the Phoenix Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have offered probable cause showing that there are reasonable grounds to believe that the records and other information sought are relevant and material to an ongoing criminal investigation (emphasis added).

The final paragraph of the court order states that pursuant to Arizona Revised Statute 13-3016 (C) (1) (D) (1), that this order be sealed and no notice be given to the subscriber, Mr. Smith, unless or until otherwise ordered by the court.

Upon receipt of the AT&T records, Detective Balmir used the records to track Mr. Smith's movements for a period of 288 days. The records contain latitude and longitude location data for every time Mr. Smith's phone was active during the 288 day period. Detective Balmir used this data to create a PowerPoint presentation that shows Mr. Smith's movements in detail on December 11, 2014, the date of the homicide.

II. ARGUMENT

A. The warrantless seizure and search of Mr. Smith's historical cell phone records revealing the location and movements of Mr. Smith over the course of 288 days is prohibited by the Fourth Amendment.

1. The Acquisition Of Long Term Cell Site Location Information Constitutes A Search.

Government agents engage in a Fourth Amendment search when they intrude on an expectation of privacy that society is prepared to recognize as reasonable. *Kyllo v. United States*, 533 U.S. 27, 33 (2001); *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The touchstone for determining when an expectation of privacy is reasonable is "the everyday expectations of privacy that we all share." *Minnesota v. Olson*, 495 U.S. 91, 98 (1990). For example, the United States Supreme Court held in *Katz* that the Fourth Amendment applies to conversations transmitted over telephone

lines because phones played a vital role in conducting the type of communication previously treated as private. 389 U.S. at 352-53.

As new technology has dramatically lowered the cost of government surveillance and increased the government's access to private information, the United States Supreme Court has stressed that the reasonable expectation of privacy inquiry must "assur[e] preservation of that degree of privacy against government that existed" prior to the advent of the new technology in question. *United States v. Jones*, 565 U.S. 400, 406 (2012) (Scalia, J.) (alteration in original); *id.* at 420 (Alito, J., concurring in the judgment); *Kyllo*, 533 U.S. at 34; *see also Riley v. California*, 134 S. Ct. 2473, 2490 (2014) (requiring a warrant to search contents of cell phones seized incident to arrest in order to preserve degree of privacy enjoyed before invention and pervasive use of cell phones).

In *United States v. Jones*, The Supreme Court held that the government's installation of a GPS device on a target's vehicle and use of that device to track the target's movements constitutes a search within the meaning of the Fourth Amendment. *Jones*, 565 U.S. at 404. Applying the framework above, in *Jones*, five Justices agreed that people have a reasonable expectation of privacy in "longer term GPS monitoring in investigations of most offenses." *Jones*, 565 U.S. at 430 (Alito, J., concurring in the judgment); *id.* at 415 (Sotomayor, J., concurring). Because GPS monitoring of a car tracks every movement a person makes in that vehicle, *id.* at 430 (Alito, J., concurring in the judgment), it generates extremely sensitive and private information that "enables the Government to ascertain, more or less at will, [people's] political and religious beliefs,

sexual habits, and so on,” *id.* at 416 (Sotomayor, J., concurring). Prior to the digital age, this information would have been largely immune from search. Although historically the government could have tasked a team of police officers with surreptitiously tailing a suspect, doing so “for any extended period of time was difficult and costly and therefore rarely undertaken.” *Id.* at 429 (Alito, J., concurring in the judgment). Therefore, “society’s expectation has been that law enforcement agents and others would not— and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual’s car for a very long period.” *Id.* at 430.

These principles dictate that government agents conduct a search when they obtain long term historical cell phone location records from a person’s cellular service provider. For the same reason that five Justices concluded that there is a reasonable expectation of privacy in longer-term GPS monitoring of a car, there is a reasonable expectation of privacy in longer-term cell phone location records. In fact, cell phone location records are an even greater intrusion on privacy as they can provide the whereabouts of the subscriber at all times. Any other conclusion would allow the government to circumvent the principle accepted by five Justices in *Jones* by obtaining cell phone location records.

Allowing law enforcement to obtain such records free and clear of any Fourth Amendment restriction would dramatically shrink the amount of privacy that people enjoyed from the time of the Framing through the dawn of the digital age. Prior to the widespread adoption of cell phones, the government simply could not have obtained a comprehensive record of a person’s past locations and movements over an extended period. Even “in the context of investigations involving extraordinary offenses,” *Jones*,

565 U.S. at 431 (Alito, J., concurring in the judgment), law enforcement agents could have retrieved at best only fragmentary historical location records: an employee's timecard from the start of a shift, a few scattered store receipts, or a bit of commercial surveillance camera footage. But never could the government have successfully assembled a minute-by-minute transcript of a person's movements over days, weeks, or months.

Accordingly, the power to "reconstruct someone's specific movements down to the minute, not only around town but also within a particular building," *Riley*, 134 S. Ct. at 2490 (citing *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)), gives police access to information that never would be available through traditional law enforcement investigation. *See Jones*, 565 U.S. at 415 (Sotomayor, J., concurring) (location information obtained through modern technologies triggers the Fourth Amendment because it offers a never before available "precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations").

Because Allyn had a reasonable expectation of privacy in his movements for a period of 288 days, Detective Balmir's acquisition of his cell phone location records constitutes a warrantless search.

2. Law Enforcement Access To Cell Site Location Information Interferes With The Security Of A Person's Private Papers.

A property-based analysis under the Fourth Amendment provides an independent ground for holding that the government conducts a search or seizure when it obtains a person's cell phone location records.

As this Court made clear in *Jones*, “the *Katz* reasonable-expectation-of-privacy test has been added to, not substituted for,” property-based conceptions of Fourth Amendment rights. *Jones*, 565 U.S. at 409; *see also Florida v. Jardines*, 133 S. Ct. 1409, 1415-16 (2013). Thus, a search necessarily occurs whenever the government intrudes without consent on a person's papers or effects through trespass or seizure for purposes of gathering information. *See Jones*, 565 U.S. at 406 (citing U.S. Const. amend. IV).

Here, the federal Telecommunications Act designates cell phone location information as “customer proprietary network information” (“CPNI”)—a category of records that the service provider cannot disclose absent “approval of the customer.” 47 U.S.C. § 222(c)(1)-(2), (h)(1)(A).

Originally enacted in 1996, the CPNI provision was amended in 1999 to explicitly protect cell phone location information by prohibiting service providers from using or disclosing it “without the express prior authorization of the customer.” 47 U.S.C. § 222(f); *see also* Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, § 5, 113 Stat. 1286, 1288.

The statute provides a mechanism for people to enforce their right to protect their location information against dissemination without consent, in the form of a civil remedy

against service providers. 47 U.S.C. § 207. Congress erected yet more protections for cell phone location data in 2007 when it made it a crime for any person to obtain or attempt to obtain that information by fraudulent means. 18 U.S.C. § 1039(a), (h)(1)(A); see also Telephone Records and Privacy Protection Act of 2006, Pub. L. No. 109-476, § 3(a), 120 Stat. 3568, 3569. Thus, as cell phone technology has become more advanced and more widely adopted, Congress has increasingly legislated safeguards against nonconsensual dissemination of cell phone location records.

The proprietary interest created by statute makes clear that cell phone location records are the papers or effects of the customer. By restricting the use and transfer of cell phone location records without consent of the customer, the Telecommunications Act grants that customer a right to exclude others from it. Accordingly, the government's obtaining of personal cell phone location records invades individuals' papers and effects, and constitutes a search pursuant to the Fourth Amendment.

3. Searching Cell Site Location Information Is Unreasonable Without A Warrant.

Though signed by The Honorable Sigmund Popko of Maricopa County Superior Court, the court order that enabled Detective Balmir to procure Allyn's cell phone location records was made upon an assertion of "probable cause showing that there are reasonable grounds to believe that the records and other information sought are relevant and material to an ongoing criminal investigation." Page 11 of the affidavit and order (emphasis added). That showing is not only well short of the probable cause required for

a warrant, it is also well short of reasonable grounds. Detective Balmir merely asserted probable cause of reasonable grounds, which is something less than reasonable grounds.

This Court should hold that a warrant is required for law enforcement requests for cell phone location records. Where an individual has a reasonable expectation of privacy in an item or location to be searched, the search is per se unreasonable under the Fourth Amendment unless conducted pursuant to a judicial warrant supported by probable cause. *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz*, 389 U.S. at 357). Only if one of the “few specifically established and well-delineated exceptions” to the warrant requirement applies may government officials conduct a warrantless search. *Gant*, 556 U.S. at 338 (internal quotation marks omitted). Because no exception applies here, search of Allyn’s historical cell phone location records pursuant to a court order issued on a showing well short of both probable cause and reasonable grounds is unreasonable.

B. The court order violates A.R.S. §§ 13-3016(C) and (D).

The first page of the court order (page 11 of the affidavit and order) cites to Arizona Revised Statute section 13-3017. Section 13-3017 pertains to an ex parte order for a pen register or trap and trace device and has no bearing on this case.

The final paragraph of the court order (page 13 of the affidavit and order) cites to Arizona Revised Statute 13-3016 (C) (1) and (D) (1) as authority to order that the subscriber, Allyn, not receive any notice of the court order directing AT&T to turn over his cell location records to the police.

A.R.S. § 13-3016(C) directs the manner in which an agency may obtain cell phone location records that have been in storage for more than 180 days. On the date that the

court order was signed, September 13, 2016, the requested records from 2014 were well over 180 days old. A.R.S § 13-3016(C)(3) states that records over 180 days old may be retrieved “With prior notice to the subscriber or party, by obtaining a court order on an application and certification that contains specific and articulable facts showing that there are reasonable grounds to believe that the communication content sought is relevant to an ongoing criminal investigation, except that notice may be delayed pursuant to subsection D of this section.” Emphasis added. Subsection D states when notice can be delayed for a period not to exceed 90 days.

As stated above, Detective Balmir’s court order asserted probable cause of reasonable grounds, something short of reasonable grounds. Additionally, Detective Balmir’s court order directly contravenes A.R.S. § 13-3016(C)(3) which states that if the records are over 180 days old, and a court order is used, then notice to the subscriber must be given. Here, the plain language of the court order expressly prohibited notice. Allyn was never provided with notice.

III. CONCLUSION

Based on the above, the defense respectfully requests that Allyn Smith’s AT&T cell phone records be suppressed. The acquisition of the records was a search done absent a warrant and a showing of probable cause in violation of the Fourth Amendment. Additionally, the court order was defective as it ordered that notice to Allyn be withheld in violation of Arizona law, and Detective Balmir asserted something less than reasonable grounds.

RESPECTFULLY SUBMITTED this 5th day of January 2018.

LAW OFFICE OF THE PUBLIC DEFENDER

By //s// Steve McCarthy
Steve McCarthy
Deputy Public Defender

By //s// Joel Brown
Joel Brown
Deputy Public Defender

Copy of the foregoing
e-filed this 5th day of
January 2018, to:

HON. MICHAEL KEMP
Judge of the Superior Court
Central Court Building
201 West Jefferson Street
Phoenix, Arizona 85003

JESSI WADE
Deputy County Attorney
301 West Jefferson
Phoenix, Arizona 85003

By //s// Steve McCarthy
Steve McCarthy
Deputy Public Defender

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

3 SW2016 - 010274

4 IN RE:
5 WIRELESS CELL NUMBER:
6 480.468.8180 & 480.233.0526 & 480.430.5676
7 SUBSCRIBED THROUGH
8 AT&T or any other telecommunications
9 provider

) AFFIDAVIT IN SUPPORT OF COURT
) ORDER AUTHORIZING RELEASE OF
) SUBSCRIBER INFORMATION, CALL
) DETAIL/TOLL AND SMS RECORDS AND
) CELLULAR TOWER UTILIZATION
) INFORMATION

11 The Phoenix Police Department , hereby applies for an Order authorizing 1) the disclosure
12 of subscriber information for the period beginning 03/01/14 and ending on 12/14/14 on
13 telephone number 480.468.8180 & 480.233.0526 & 480.430.5676 (Target Telephones); 2) call
14 detail report to include all incoming and outgoing calls, and sms text messaging records with date,
15 time, direction, duration and content for the period beginning 03/01/14 and ending on 12/14/14
16 on Target Telephones; 3) cellular tower utilization information for the period beginning
17 03/01/14 and ending on 12/14/14 on Target Telephones; 4) subscriber information and call
18 detail reports for all telephone numbers contained in the call data records that are subscribed
19 through AT&T or any other telecommunications carrier for the same durations as the Target
20 Telephones upon oral or written demand by investigators of the Phoenix Police Department
21 and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) .

AFFIDAVIT

1
2
3
4
5
6
7 1. A "Call Detail Report" is the system by which a telephone utility automatically monitors cellular
8 telephone numbers and internal electronic numbers for billing and switching purposes, and
9 records the general geographic location of cell sites accessed by the Target Telephone. The
10 cellular tower utilization information contained in the call detail report provides numerical
11 parameters that would enable law enforcement to narrow down the location of the regularly
12 accessed cell sites and narrow the potential search area for the cell phone handset's physical
13 location.

14 2. I, **Helene Balmir** (affiant), being duly sworn, do hereby depose and state the following:

15 3. I am employed as a Detective for the Phoenix Police Department Violent Crimes Bureau and I
16 am cross-designated and sworn with the Bureau of Alcohol Tobacco and Firearms as a Task
17 Force Officer. On August 22, 2016, your affiant obtained the following information

18
19 4. ON THURSDAY, DECEMBER 11, 2014, AT 1800 HOURS, DETECTIVES
20 ATTENDED AN INCIDENT BRIEFING AT 1800 W. LIBERTY LANE. THE
21 BRIEFING WAS CONDUCTED BY SERGEANT SEXTON #5400 AND HE STATED
22 THE FOLLOWING.

23
24 5. ON THURSDAY, DECEMBER 11, 2014, AT 1502 HOURS, PHOENIX POLICE
25 RECEIVED A 911 CALL REGARDING A YOUNG BLACK FEMALE AND A 4

1 MONTH OLD INFANT WHO WERE BOTH SHOT. THE ADULT FEMALE WAS
2 UNRESPONSIVE AND THE BABY WAS ALIVE AND CRYING. THEY WERE
3 DISCOVERED ON A HIKING PATH/WALK WAY AT THE 1800 WEST BLOCK OF
4 LIBERTY LANE.

5 6. PHOENIX FIRE DEPARTMENT PARAMEDICS RESPONDED TO THE SCENE AND
6 TRANSPORTED BOTH TO MARICOPA COUNTY HOSPITAL. THE FEMALE
7 RECEIVED A SINGLE GUNSHOT WOUND TO THE BACK OF THE HEAD AND
8 WAS PRONOUNCED DECEASED AT 1555 HOURS. THE INFANT RECEIVED A
9 THROUGH AND THROUGH GUNSHOT WOUND TO THE LEFT LEG AND WAS IN
10 SURGERY DURING BRIEFING. DETECTIVES LATER LEARNED THE SURGERY
11 WAS SUCCESSFUL AND THE INFANT WAS EXPECTED TO SURVIVE.

12 7. A CANVASS OF THE SURROUNDING NEIGHBORHOOD REVEALED NO
13 WITNESSES. DUE TO RECENT CONSTRUCTION IN THE AREA, AND USE OF
14 NAIL GUNS, THE NEIGHBORHOOD WAS USE TO HEARING POPPING SOUNDS
15 THROUGHOUT EACH WEEKDAY.

16 8. LATENT PRINTS WERE TAKEN OF THE DECEASED FEMALE AND SHE WAS
17 LATER IDENTIFIED AS KHALLI OKOLLO LAWRENCE, A 19 YEAR OLD
18 BLACK FEMALE WITH AN ADDRESS IN THE CITY OF MESA. THE MOTHER
19 OF KHALLI LAWRENCE, MONICA NELSON, WAS CONTACTED AT HER
20 RESIDENCE OF RECORD AND NOTIFIED OF THE INCIDENT. DURING THE
21 COURSE OF NUMEROUS CONTACTS WITH FAMILY MEMBERS AND KHALLI'S
22 BOYFIREND, DETECTIVES LEARNED THAT KHALLI HAD GIVEN BIRTH TO
23 HER DAUGHTER, KHI'YAH SMITH, ON [REDACTED] [REDACTED]. THE BABY'S
24 FATHER WAS IDENTIFIED AS ALLYN A. SMITH, A BLACK MALE WHO WAS
25

1 INVOLVED IN A SEXUAL RELATIONSHIP WITH THE DECEDENT.
2 APPARENTLY, KHALLI MET ALLYN WHEN SHE WAS DETAINED AT THE
3 MARICOPA COUNTY JUVENILE DETENTION CENTER AND HE WAS AN INTAKE
4 OFFICER OR POSSIBLE JUVENILE PROBATION OFFICER.

5 9. KHALLI AND ALLYN CONTINUED TO SEE EACH OTHER AND IN MARCH SHE
6 ADVISED HIM SHE BECAME PREGNANT. ACCORDING TO THE KHALLI'S
7 FAMILY, KHALLI RECENTLY LEARNED ALLYN SMITH HAD A LONGTIME
8 LIVE IN GIRLFRIEND AND THAT GIRLFRIEND ALSO DISCOVERED ALLYN
9 WAS CHEATING ON HER AND HAD A CHILD WITH KHALLI. ALLYN WAS
10 APPARENTLY UPSET THAT KHALLI GOT PREGNANT IN THE FIRST PLACE
11 AND THERE WAS ANIMOSITY BETWEEN THEM.

12 10. ALTHOUGH FAMILY MEMBERS DID NOT HAVE ANY INFORMATION ON
13 ALLYN'S ADDRESS, PHONE NUMBER ETC..., THEY INFORMED DETECTIVES
14 THAT ON MONDAY OR TUESDAY OF THAT WEEK (12/08-12/9/14) ALLYN
15 WAS SUPPOSED TO MEET KHALLI AT A MESA MEDICAL FACILITY TO
16 CONDUCT A PATERNITY TEST. ALLYN DID NOT SHOW UP AND WAS
17 APPARENTLY UPSET AND DID NOT DESIRE TO PAY CHILD SUPPORT.

18 11. KHALLI HAD MOVED OUT OF HER MOTHER'S RESIDENCE ON SUNDAY,
19 DECEMBER 7, 2014, AND MOVED INTO A FRIENDS APARTMENT IN THE
20 CITY OF MESA. THEY DID NOT HAVE THE APARTMENT LOCATION OR
21 FRIEND'S NAME DUE TO THE STRAINED RELATIONSHIP BETWEEN KHALLI
22 AND HER MOTHER.

23 12. LATER IN THE EVENING OF THURSDAY, DECEMBER 11, 2014,
24 DETECTIVES SPOKE TO DEVANTE CLARKE, KHALLI'S ON AGAIN, OFF
25

1 AGAIN BOYFRIEND OF TWO YEARS. DEVANTE INFORMED DETECTIVES THAT
2 HE RECEIVED A TEXT FROM A FEMALE NAMED TASHAY JONES, KHALLI'S
3 NEW ROOMMATE. THE TEXT STATED THE BABY'S DADDY, (ALLYN SMITH)
4 PICKED UP KHALLI EARLIER IN THE AFTERNOON AND KHALLI HAS NOT
5 RETURNED ANY ATTEMPTS AT CONTACTING HER. ATTEMPTS TO CONTACT
6 TASHAY THROUGH THE NIGHT WERE UNSUCCESSFUL SINCE SHE WAS NOT
7 RESPONDING TO DETECTIVES CALLS AND SHE WAS NOT FULLY
8 IDENTIFIED.

9 13. ON THE MORNING OF FRIDAY, DECEMBER 12, 2014, DETECTIVES WERE
10 ABLE TO CONTACT TASHAY'S MOTHER WHO WAS ABLE TO EVENTUALLY
11 LOCATE HER DAUGHTER TASHAY SO SHE COULD BE INTERVIEWED.

12 14. DURING THE INTERVIEW WITH TASHAY JONES, SHE POSITIVELY
13 IDENTIFIED ALLYN A. SMITH AS KHALLI'S EX-BOYFRIEND AND FATHER
14 OF KHAI'YAH SMITH FROM ALLYN'S MVD PHOTOGRAPH. TASHAY STATED
15 THAT YESTERDAY, THURSDAY, DECEMBER 11, 2014, ALLYN SMITH DROVE
16 OVER TO HER APARTMENT COMPLEX LOCATED AT 1033 S. LONGMORE, IN
17 THE CITY OF MESA, AND TOLD TASHAY TO LEAVE BECAUSE HE DID NOT
18 WANT HER TO KNOW HIS BUSINESS. AT ABOUT 1315 HOURS, TASHAY
19 WALKED TO A NEARBY STORE AND LEFT KHALLI AND ALLYN WITH THE
20 INFANT. WHEN SHE RETURNED AT 1415 HOURS, SHE NOTICED THEY WERE
21 GONE. KHI'YAH'S BABY CARRIER WAS GONE ALONG WITH SOME BABY
22 CLOTHING AND KHALLI'S CLOTHING. LATER THAT AFTERNOON, TASHAY
23 STARTED TO TEXT KHALLI SINCE SHE HAD NOT HEARD BACK FROM HER
24 AND KHALLI'S PHONE WAS OFF. SHE DID NOT RECEIVE A RESPONSE.
25

1 TASHAY DID NOT LEARN OF KHALI'S DEATH UNTIL DETECTIVES'
2 INTERVIEW WITH HER.

3 15. DURING THE COURSE OF THE INVESTIGATION DETECTIVES LEARNED
4 ALLYN SMITH WAS UPSET THAT KHALLI GOT PREGNANT, DID NOT WANT
5 TO PAY FOR CHILD SUPPORT, AND DID NOT WANT A PATERNITY TEST TO
6 CONFIRM HE WAS THE FATHER OF HER CHILD. DETECTIVES ALSO
7 LEARNED THAT IN AUGUST 2014, KHALLI MET WITH ALLYN TO DISCUSS
8 THE PREGNANCY AND WHILE WALKING TOGETHER AROUND A PARK, KHALLI
9 WAS ATTACKED AND HIT IN THE STOMACH. ALLYN TOLD KHALLI THAT
10 HE CALLED THE POLICE BUT THEY NEVER CAME. THERE WERE NO
11 RECORDS OF ALLYN CALLING THE POLICE AROUND THE TIME OF THAT
12 INCIDENT

13 16. ON DECEMBER 11 2014, TASHAY JONES OBSERVED ALLYN SMITH PICK
14 UP KHALLI LAWRENCE 90 MINUTES PRIOR TO THE DISCOVERY OF HER
15 BODY. TASHAY DID NOT OBSERVE WHAT VEHICLE ALLYN ARRIVED IN.
16 THE LOCATION WHERE THE DECEDENT WAS FOUND WAS A REMOTE PATHWAY
17 A COUPLE BLOCKS SOUTH OF A SMALL NEIGHBORHOOD. KHALLI AND HER
18 INFANT HAD TO BE TRANSPORTED TO THAT LOCATION AND EITHER BY
19 FORCE OR DECEPTION, WALKED TO THE LOCATION OF DISCOVERY AND
20 SHOT. THE SUSPECT OR SUSPECTS HAD TO HAVE FLED THE REMOTE
21 LOCATION IN A VEHICLE DUE TO THE DISTANCE FROM THE ROADWAY.

22 17. ON DECEMBER 12, 2014, ALLYN A. SMITH WAS TAKEN INTO CUSTODY
23 AT HIS RESIDENCE AS HE WAS LEAVING WITH KYSHIA WARD AND THEIR
24 3 YEAR OLD CHILD.
25

1 18. DETECTIVES OBTAINED SEARCH WARRANTS FOR CELLULAR PHONE
2 CONTENT. THE EXAMINATION OF THE CELL PHONES CONFIRMED THE
3 RELATIONSHIP AND PRIOR CONTACTS BETWEEN ALLYN, KYSHIA, AND
4 KHALLI.

5 19. DURING THE COURSE OF THE INVESTIGATION, TWO PHONE NUMBERS
6 WERE IDENTIFIED FOR ALLYN (480.468.8180 AND 480.233.0526).
7 THOSE PHONE NUMBERS WERE USED AT VARIOUS TIMES OF ALLYN AND
8 KHALLI'S RELATIONSHIP SINCE JANUARY 2014.

9 20. TWO PHONE NUMBERS WERE IDENTIFIED FOR KHALLI WHICH WERE BOTH
10 USED BY KHALLI DURING THE MONTH OF DECEMBER 2014 (480.273.0691
11 AND 602.672.0630)

12 21. DURING THE CELLULAR PHONE EXAMINATION, DETECTIVES FOUND
13 CONVERSATIONS BETWEEN KYSHIA AND ALLYN WHERE KYSHIA WAS
14 OBVIOUSLY UPSET ABOUT THE PREGNANCY. THOSE WERE FROM KYSHIA'S
15 TELEPHONE NUMBER OF 480.430.5676.

16 22. DUE TO THE LIMITED CALL INFORMATION STORED ON THE DEVICES,
17 YOUR AFFIANT BELIEVES THAT OBTAINING HISTORICAL CALL DETAIL
18 RECORDS WITH CELL SITE INFORMATION WILL FURTHER THIS
19 INVESTIGATION AND ASSIST IN IDENTIFYING ALL PARTIES INVOLVED
20 IN THE BRUTAL MURDER OF KHKALLI LAWRENCE AND ATTEMPTED MURDER
21 OF 4 MONTH OLD KHI'YAH SMITH
22

23
24 23. On August 23, 2016 your affiant made inquiry with AT&T and confirmed that the Target
25 Telephones were subscribed through their company.

1
2 24. Based on your affiant's training and experience, individuals rely heavily in their day-to-day
3 activities and actions on their cellular telephones and their communications. These
4 communications, in the form of telephone calls, voice messages, sms text messages and other
5 like communications cause their cellular telephone to emit and receive electronic signals to and
6 from cellular telephone company cell towers. With the assistance of court-authorized
7 technological tracing devices and service, these electronic signals indicate the geographic
8 location of the individual in possession of the specific cellular telephone emanating and
9 receiving said electronic signals. By tracking the cellular telephone electronic signals between a
10 cellular telephone and the cell towers it relies on and communicates with, an individual's
11 location can be determined, finitely identified and tracked through surveillance. This court-
12 authorized surveillance technique is routinely successful in locating an individual relevant and
13 material to an on-going criminal investigation, when that individual is attempting to avoid law
14 enforcement contact, whether they be a victim, witness, suspect or an unwitting involved party.

15 25. Through training and experience the affiant knows that acquiring an extended period of call
16 detail records can assist in establishing a pattern of life, or use, of a target telephone. That is,
17 up to 6 months of records can assist investigators in establishing calling patterns of the target
18 telephone and prevalent cell sectors utilized by the target telephone. The establishment of this
19 pattern of life, or use, is critical in helping investigators determine if, and when, this calling
20 pattern changes, intensifies, or wanes during relevant time periods within the
21 investigation. Through training and experience, the affiant knows that changes within this
22 pattern occur with respect to calls to and from the victim(s) in, and around, the time of
23 criminal activity. These changes in the pattern of life can also assist investigators in identifying
24 any co-conspirator(s) who may have provided aid or counsel, during the relevant time period
25

1 surrounding the conception, planning, commission and/or cover-up of criminal activity.

2 26. Based on the foregoing facts and affiant's training and experience, affiant has probable cause
3 and reasonable belief that the information obtained from the subscriber information, call detail
4 records cell site activity and historical billing records for the **Target Telephones** will provide
5 evidence aiding in the identification, apprehension and prosecution of the suspect(s) in this
6 case. Probable cause exists that the disclosure of cell site activity and cell site locations is
7 material to this criminal investigation.

8 27. Because there is probable cause to believe that such information is relevant and material to the
9 ongoing investigation, I request that the wireless carrier listed in the proposed order, be
10 ordered to supply subscriber names and addresses, whether listed or unlisted, and periods of
11 telephone activation for numbers dialed otherwise transmitted from and dialed or otherwise
12 transmitted to the **Target Telephone** numbers, beginning on 03/01/14, and continuing
13 through 12/14/14, upon oral or written demand by investigators of the **Phoenix Police**
14 **Department** and the **ATF** also be ordered to disclose the location of cell site/sector (physical
15 address) at call origination and call termination for the **Target Telephone**.

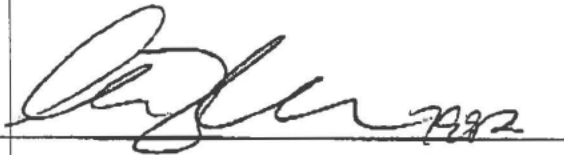
16 28. It is further requested that the wireless carrier **AT&T** provide detectives of the **Phoenix Police**
17 **Department** and **ATF** this information upon their request.

18 29. Based on the probable cause information provided in this application, I believe that the
19 disclosure of the requested court order may result in the compromise of this active
20 investigation, may cause suspect[s] to flee again to another jurisdiction, or may otherwise
21 seriously jeopardize the investigation. Therefore, pursuant to Arizona Revised Statutes 13-3016
22 (C) (1) (D) (1), I further request that the court seal this record and direct the local, long
23 distance and wireless carriers listed in the proposed order, filed concurrently herewith, and their
24 representatives, agents and employees, not to disclose in any manner, to the listed subscriber for
25

1 the Target Telephone, or to any other person, the existence of this order, in full or redacted
2 form, or of this investigation unless otherwise ordered by this court.

3
4 I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge
5 and belief, and that this declaration was executed on the date listed below.

6
7
8 Executed at Phoenix, Arizona



9 Signature of Affiant

10
11 Subscribed and Sworn on this 13th day of Aug 2016.

12
13
14 _____
Honorable Judge of the Superior Court

15
16 PABLO SIGMUND POPKO
17 COUNTY SUPERIOR COURT

1
2 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR
3 THE COUNTY OF MARICOPA
4

5 IN RE:)

SW 2016-010274

6 WIRELESS TELEPHONE NUMBER:
7 480.468.8180 & 480.233.0526 & 480.430.5676)

) COURT ORDER AUTHORIZING
) RELEASE OF SUBSCRIBER
) INFORMATION, CALL DETAIL/TOLL
) AND SMS RECORDS AND CELLULAR
) TOWER UTILIZATION INFORMATION
)

8 SUBSCRIBED THROUGH)
9 AT&T or any other telecommunications)
10 provider)

11
12
13 ORDER UNDER SEAL
14
15

16 This Court finds that the investigators of the Phoenix Police Department and the Bureau of
17 Alcohol, Tobacco, Firearms and Explosives (ATF) have offered probable cause showing that there
18 are reasonable grounds to believe that the records and other information sought are relevant and
19 material to an ongoing criminal investigation. Pursuant to 18 United States Code Section 2703
20 (c)(d), 3122, 3123, and Arizona Revised Statutes 13-3017 it is hereby ordered that the telephone
21 provider(s) known as: AT&T, upon the request of investigators of the Phoenix Police Department
22 provide the following information and services without delay:
23
24
25

1 Subscriber information (to include ESN/IMSI), including subscriber name, address, identifying
2 information provided to account (date of birth, driver license number, social security number),
3 subscriber contact information (email addresses, contact phone or "can be reached at" numbers),
4 methods and dates of account payment (credit card numbers, electronic fund transfer information
5 or locations of cash payments), account set-up purchase and activation locations, types of services
6 for the account, additional phone numbers associated with the same account, make/model/serial
7 number of the phones associated with the account and account comments/notations (including
8 anytime the service provider has contact with a customer regarding the subscriber account billing
9 records to include historical billing records and credit information) for **Target Telephone**; call
10 detail report(s) to include all incoming and outgoing calls and short message service ("sms") "text"
11 messaging records with date, time, direction, and duration, and cellular tower / cell site utilization
12 information without geographical limitations to include applicable location identifier data and
13 relevant maps showing all cell-site and cell tower locations, sectors and orientations in the specified
14 market, for the period beginning 03/01/14 and ending on 12/14/14 relating to the cellular
15 telephone assigned telephone numbers 480.468.8180 & 480.233.0526 & 480.430.5676 (**Target**
16 **Telephones**).

17
18
19 IT IS FURTHER ORDERED, AT&T or any other telecommunications carrier upon the request
20 of investigators of the Phoenix Police Department provide subscriber information and call detail
21 reports for all telephone numbers in contact with the **Target Telephones** contained in the call
22 data records that are subscribed through AT&T or any other telecommunications carrier for the
23 same durations as the **Target Telephones**.

24
25 IT IS FURTHER ORDERED, that the records be provided in electronic format.

1
2 IT IS FURTHER ORDERED, that the local, long distance and wireless carriers be compensated by
3 the investigative agency for reasonable expenses incurred in providing technical assistance; and,

4 Good cause having been shown,
5

6 IT IS FURTHER ORDERED, pursuant to Arizona Revised Statute 13-3016 (C) (1) (D) (1), that
7 this order and application be sealed until otherwise ordered by the court, that the identity of any
8 target(s) of the underlying criminal investigation may be redacted from any copy of this order to be
9 ~~made available to any service provider or other person, and that the local, long distance and wireless~~
10 carriers and their representatives, agents and employees shall not disclose in any manner, directly or
11 indirectly, by any action or inaction, the existence of this order or the existence of the above-
12 described investigation, to the listed subscriber for the Target Telephones, the occupant of said
13 premises, the subscribers of the incoming calls to or outgoing calls from the Target Telephones,
14 or to any other person, in full or redacted form, unless or until otherwise ordered by the court.
15
16

17 Given Under my Hand this 13th day of Sept ~~August~~, 2016 at _____ hours
18
19
20

21 _____
Honorable Judge of the Superior Court

22
23 HONORABLE SIGMUND POPKO
24 MICHIGANA COUNTY SUPERIOR COURT
25

APPENDIX I

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

STATE OF ARIZONA,)
)
Plaintiff,) CR2015-106788-001
)
v.)
)
ALLYN AKEEM SMITH,)
)
Defendant.)
_____)

Phoenix, Arizona
February 23, 2018
1:32 p.m.

BEFORE: The Honorable Michael Kemp

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(ORIGINAL) Prepared by:
April M. Hunt, RPR, CRR
Certified Reporter
Certificate No. 50337

SUPERIOR COURT

1 MS. WADE: Your Honor, I think I placed
2 everything within my response. I'm happy to answer questions
3 the Court may have. I would point out that in 13-3016(c)(1)
4 it specifically allows for no notice. And regardless of
5 whether or not notice was given, Your Honor, there is no
6 suppression remedy provided for in that statute. I do believe
7 I placed all of that in my response. If the Court has
8 particular questions, I'm happy to answer them.

9 THE COURT: That's fine.

10 MR. MCCARTHY: Your Honor, I would ask for the
11 Court to read the Statute 13-3016 as it relates to court
12 orders, which is what Detective Balmir used in this case.
13 That's what she testified she used.

14 Your Honor, notice can be suspended, but it
15 eventually has to be provided. And the way the court order
16 was written here was that notice was not to be provided,
17 period. And, Your Honor, that is in violation of the law.

18 THE COURT: All right. I'll consider the
19 pleadings and the testimony from Detective Balmir who
20 testified that the court order was based upon probable cause.
21 For the record, I reviewed the affidavit earlier. There was
22 probable cause. So I made an independent finding that there
23 was probable cause regardless of the language that is used on
24 Page 1 of the order with regard to probable cause, that there
25 are reasonable grounds.

SUPERIOR COURT

1 I independently find there is probable cause.
2 These are business records. And the information is the
3 subscriber's name, address, all the detailed record, cell site
4 location and GPS information. There is no content that was
5 revealed in these records, no text message content or no phone
6 actual conversations that occurred; just contact between that
7 phone and other phones and the location of that phone.

8 I do think that the GPS tracker does give more
9 precise information. The detective testified about the range
10 for these phone records is within one and a half miles. GPS
11 is much more precise. Gives exact locations. Regardless of
12 GPS issue, I think that the Jones and Carpenter cases are
13 distinguishable and I do not find that this was a search.

14 Although there was no disclosure, given there
15 was no notice, I don't believe suppression is the remedy. The
16 remedy is some type of civil remedy, and suppression is not
17 warranted. The court order that was obtained in this matter
18 was very similar in content and format as a search warrant.
19 And I think the information that was detailed there was more
20 than sufficient for a probable cause finding.

21 So they are very similar in both format and
22 content. There was some template language contained therein
23 with regard to the probable cause showing there were
24 reasonable grounds, and also the statute. But even if the
25 notice provision in 3016, even if that was violated, I don't

SUPERIOR COURT

1 think I believe suppression is the remedy. So I'm going to
2 deny the motion.

3 And for the record, the State is only
4 introducing the location of the phone and in context with the
5 phone on the date in question, December 11, 2014, in their
6 case in chief. So for those reasons, I'm going to deny the
7 Motion to Suppress. There are a number of other things we
8 need to go through.

9 MS. WADE: Your Honor, may I excuse Detective
10 Balmir?

11 THE COURT: Sure.

12 MR. MCCARTHY: Judge, can I invite the excluded
13 people back?

14 THE COURT: Yeah, I think at this point. I was
15 going to -- I guess maybe we could resolve the motion to
16 preclude Al McClure. I guess we should do that before. We
17 can do that before the break. And then we'll take a break and
18 get into the jury questionnaire and the time frames.

19 And I've got some calendars here that I wanted
20 to go through. And we'll talk about the voir dire process.
21 And I think that's it.

22 Do you want to be heard -- I don't know. Mr.
23 Brown or Mr. McCarthy wrote the Motion to Preclude.

24 MR. MCCARTHY: Judge, I have no additional
25 argument.

SUPERIOR COURT

APPENDIX J

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

STATE OF ARIZONA,
Plaintiff,
vs.
ALLYN AKEEM SMITH,
Defendant.

} CR-18-0295-AP
} CR 2015-106788-001

Phoenix, Arizona
April 3, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Selection)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 MR. MCCARTHY: No, Your Honor.

2 THE COURT: Does that look right?

3 MR. MCCARTHY: Yes.

4 THE COURT: Okay. You each get 11 strikes.
5 Hopefully we can do this in about 45
6 minutes, do you think?

7 MR. BROWN: I think so. I think so.

8 THE COURT: Okay. All right.

9 Let me know when you are ready and we will
10 call them in. I'll read the preliminary instructions and
11 we'll be done for the day.

12 (Court stood in recess.)

13 THE COURT: We're back on the record, State
14 v. Allyn Smith, 2015-106788.

15 Show the presence of counsel and the
16 defendant.

17 Jurors are not present.

18 There was an issue you want to discuss?

19 MR. MCCARTHY: Judge, I'd like to make a
20 Batson challenge for jurors number 14 and juror number
21 211, jurors were struck by the State.

22 If you look at their questionnaires and
23 their answers during voir dire, they're both very much
24 middle-of-the-road jurors.

25 Juror number 14 answered in response to

1 question number 63 on the questionnaire, "No good person
2 would want to have a life taken but there's justice."

3 During voir dire, juror number 14 indicated
4 that death is the last option but she could impose it.

5 Your Honor, for juror number 211, again,
6 this is a middle-of-the-road juror who stated that she'd
7 have to look at all the evidence presented.

8 Thank you.

9 THE COURT: All right. What are the --

10 MR. MCCARTHY: Oh. I'm sorry. And, Judge,
11 they are both African-American, our client is
12 African-American and right now it does not look like there
13 will be a single African-American on this panel.

14 THE COURT: All right. I don't remember 211
15 but I remember 14.

16 So what are the nonracial reasons that the
17 State struck them?

18 MS. WADE: And, Your Honor, I would point
19 out that we struck juror number 14 first.

20 We also struck juror number 211 eighth.

21 I believe it's proper that if the defense is
22 going to raise a Batson challenge that it be raised at the
23 time in which the strike is actually made, not at the end.
24 However, I will respond with race-neutral reasons.

25 If you look at juror number 14, it is a

1 male, not a female.

2 THE COURT: Right.

3 MS. WADE: And when he actually spoke during
4 voir dire, he was in that first panel, he actually asked
5 to speak in privately and he raised several issues. He
6 said he had to do a lot of soul searching. He couldn't
7 make a decision. He did not want that weight. He would
8 hesitate and say that he could. He said, I lean towards
9 life. I could. I think so. Soul searching. Can't make
10 a decision. The evidence would be difficult.

11 So, Your Honor, we believe that all of those
12 are race-neutral reasons for juror number 14.

13 With regards to juror number 211, juror
14 number 211 actually checked "other" on her racial form on
15 the biographical information. She has a masters in
16 theology. She is a human services counselor. Human
17 services counselors typically believe in redemption. She
18 does counseling for domestic violence and she does
19 counseling for addiction. All of those things are about
20 forgiveness and all of those things are about the
21 redemption of a human.

22 And in addition, Your Honor, she also had
23 some medical issues that she was concerned about. She
24 raised them in both, I believe, her questionnaire, the
25 initial screening. And I believe she may still have some

APPENDIX K

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
	)	CR 2015-106788-001 DT
vs.)	
	)	1 CA-CR 18-0295-AP
ALLYN AKEEM SMITH,)	
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 27, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 5

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 that and thought about it, is there anyone here this
2 morning that feels like this is just not the kind of case
3 for me? If could I see cards, please.

4 Juror Number 2, what is your situation?

5 PROSPECTIVE JUROR: Just being able to
6 impose that on somebody, I don't think I could do it if I
7 gave it time, like you said, to think about the questions.

8 MR. EISENBERG: Okay. And we are going to
9 get a little more into specifics with that. So we'll
10 follow up with that and find out if you still feel that
11 same way, all right? And Juror Number 4.

12 PROSPECTIVE JUROR: Just the graphic
13 details, the emotion, I don't think I'm ready to handle
14 that now.

15 MR. EISENBERG: Okay.

16 PROSPECTIVE JUROR: I got my reasons for
17 that.

18 MR. EISENBERG: I understand, and I don't
19 need to go into that with you right now. So I appreciate
20 that. Juror Number 5.

21 PROSPECTIVE JUROR: I'll just say as a
22 mother and a woman and a wife, I'm not sure I can handle
23 the stress and going through the details and not be biased
24 toward, in this case probably the victim, and then impose
25 impartially.

1 THE COURT: What was the last part?

2 PROSPECTIVE JUROR: And then impose
3 impartially.

4 THE COURT: What was the last part?

5 PROSPECTIVE JUROR: Impose impartially the
6 death penalty on someone.

7 MR. EISENBERG: Okay. Next. Juror
8 Number 14, yes, sir.

9 PROSPECTIVE JUROR: I'm pretty much the same
10 way. I just have to do some soul searching.

11 THE COURT: 14, you need to speak up too.
12 The court reporter and I can't hear you.

13 PROSPECTIVE JUROR: I'm sorry. Just doing
14 some soul searching and then actually making that decision
15 for someone's life, I don't know want that on my
16 conscious.

17 MR. EISENBERG: Okay. All right. Thank
18 you, sir. Anyone else? Juror Number 39.

19 PROSPECTIVE JUROR: As Juror Number 4, I
20 have my reasons.

21 MR. EISENBERG: That's okay. If that's
22 something that you need to discuss outside the presence of
23 the rest of the jurors, that's fine. Thank you, sir.
24 Anyone else? All right.

25 So let me follow up then with that and let

1 clear? Anybody have a problem with that? I see no cards.

2 Thank you.

3 Also, if you are one of the folks that are
4 picked to be on the jury, you will have a duty to
5 deliberate with everyone else. That's part of jury duty.
6 You go back in the jury room. You sit down. You discuss.
7 You deliberate. All right? And the Judge will so
8 instruct you that that is your job, all right?

9 Are any of you unwilling or unable to
10 discuss your opinions with your fellow jurors if you get
11 to that point? Everyone is willing to sit down and talk
12 about the case and talk about the law and the evidence? I
13 see no cards.

14 I want to ask about who thinks they're
15 detailed-oriented versus big-picture people. So first, if
16 I could, with a show of cards, who would call themselves
17 detail-oriented? Juror Number 2, Juror Number 5. Juror
18 Number 15, Juror 16, Juror 19, Juror 29, Juror 49, and
19 Juror 51.

20 Okay. Who then would call themselves
21 big-picture people? Juror 4, Juror 12, Juror 14,
22 Juror 39. Thank you all. Is there anyone here who would
23 call themselves a risk taker? And by that, I mean this.
24 For example, I have a friend that went to Australia and he
25 bungee-jumped off a bridge. I don't personally think

1 want to be engaged to this person, and then you kind of
2 waffle about things. Anybody like that? I see no cards.

3 Is there anyone here who would rely upon
4 their spouse, significant other, or close family member to
5 help make decisions? Juror Number 15.

6 PROSPECTIVE JUROR: Can I ask a question?
7 Pertaining to this trial? No.

8 MR. EISENBERG: No, just in general terms.
9 Juror Number 4. Kind of everybody, huh? I will tell you
10 what. Rather than that, I will just say, if you would
11 just raise your cards again, please. Juror Numbers 2, 4,
12 5, 12, 14, 15, 19, 29. Okay.

13 And I would expect that those of you who
14 have a spouse or significant other or are involved in a
15 relationship would ask their spouse or significant other.
16 Understanding that, can you make a decision without their
17 help?

18 So is there anyone who couldn't? And if I
19 ask a question that's confusing -- because sometimes I
20 confuse myself -- so if I ask a question that's confusing,
21 please stop me and say, I'm confused. Because chances
22 are, if you are, I am as well.

23 Is there anyone again -- and I understand
24 that there are some of you that want to speak with the
25 Judge -- but is there anyone who would be unable to follow

1 the law and make a decision in this case? I show no
2 cards, with the understanding that there are some that
3 would like to speak later.

4 Is there anyone here who would describe
5 themselves as more skeptical than trusting? I show no
6 cards. Oops. Juror Number 2. Juror Number 39. All
7 right.

8 And Juror 19, if you would do me one favor,
9 if you have your card up. So thank you.

10 Is there anyone here conversely who would
11 describe themselves as more trusting than skeptical?
12 Okay. We have Juror Number 5, 12, 14, 15, 16, 19, 29, 49,
13 and 51. Thank you.

14 Would anyone here consider themselves to be
15 gullible? I show no cards.

16 Now, I'm going to ask about a little more
17 personal questions again. We are not intending to pry in
18 any way. We're just trying to determine whether or not
19 any of these things may impact your ability to be fair and
20 impartial in this case, okay?

21 Again, for those you who have already
22 indicated that you do want to speak with the Judge in
23 private, you don't have to worry about raising your card
24 because we'll get to you when we have that opportunity,
25 okay; but for those of you who haven't, let me ask, are

1 classes. I don't have a degree in that.

2 MR. EISENBERG: So was it a concentration of
3 yours?

4 PROSPECTIVE JUROR: No.

5 MR. EISENBERG: Is that something that you
6 took an interest in or was that something that everyone
7 who is in your field of study --

8 PROSPECTIVE JUROR: Well, you got to pick
9 and choose your classes, so...

10 MR. EISENBERG: Do you feel like you have
11 more expertise in the area of domestic violence than say
12 any of the other jurors because of the experience you've
13 had? No? Okay. Juror Number 14, yes, sir.

14 PROSPECTIVE JUROR: Yes. As far as work is
15 participating in domestic violence month. I think it's
16 something like October or something like that. Really
17 advertise a lot about participating.

18 MR. EISENBERG: And was there any training
19 that went along with it, or was it where you wear I think
20 purple?

21 PROSPECTIVE JUROR: Yes, purple.

22 MR. EISENBERG: And so that was the type of
23 thing where you wear purple to show support for victims of
24 domestic violence?

25 PROSPECTIVE JUROR: Yes. They would have

1 mind at the end of the guilt phase. That is the reason I
2 asked that question, which is being asked all over this
3 country in courtrooms in capital cases.

4 THE COURT: You can ask them if they have an
5 open mind, but that's all you can ask.

6 MR. CANBY: Fine.

7 (Whereupon, the proceedings returned to open
8 court.)

9 MR. CANBY: Juror Number 14. Do you think
10 you could maintain an open mind regarding penalty in a
11 case like that?

12 PROSPECTIVE JUROR: In making a decision as
13 far as guilty or not guilty?

14 MR. CANBY: No. Actually, whether you are
15 leaning one way or the other as to the death sentence. In
16 other words, whether you can keep an open mind in
17 considering a life sentence in a scenario like that, in a
18 case like that.

19 PROSPECTIVE JUROR: Yes, I can keep an open
20 mind for a case like that.

21 MR. CANBY: Why do you say that?

22 PROSPECTIVE JUROR: Hearing all the facts is
23 one thing, and understanding the circumstances, I can keep
24 an open mind to that. The piece that I have a difficult
25 part is, is really just making that decision of life or

1 death.

2 MR. CANBY: You think that's a decision that
3 you would have difficulty making?

4 PROSPECTIVE JUROR: Yeah. Yes, sir. Yes, I
5 do.

6 MR. CANBY: And is it because of the nature
7 of the case?

8 PROSPECTIVE JUROR: Not just this case in
9 particular. I think it's just, we have our laws, right?
10 And you have to have the, I don't know, the evidence to
11 prove a person is guilty without a reasonable doubt. At
12 the same time, that's the law, but my feeling is, there is
13 times when we really say, yeah, you know, guilty. Death,
14 but then there's times, well, maybe not. Should I be the
15 one really making that decision?

16 MR. CANBY: You question in your mind
17 whether you could consider both penalties and make that
18 decision between the two penalties? Is that what you are
19 telling me?

20 PROSPECTIVE JUROR: Correct. Should that be
21 a decision that I really should make for someone's life?

22 MR. CANBY: Do you think that you shouldn't
23 be on this jury because of that? Is that a concern of
24 yours?

25 PROSPECTIVE JUROR: Yeah, if it comes down

1 to that, then that would be difficult for me.

2 MR. CANBY: That you might be frozen and
3 unable to make that decision; is that fair to say?

4 PROSPECTIVE JUROR: Yeah.

5 MR. CANBY: Number 5, I think what you've
6 told us is that you would have difficulty -- I don't want
7 to put words in your mouth, but you would have difficulty
8 keeping an open mind to a life sentence in a case like
9 this that I just described in the hypothetical.

10 PROSPECTIVE JUROR: Yes, I would.

11 MR. CANBY: You know, I appreciate that.
12 Because it's one thing for us to tell you the way you
13 should be. It's another -- you know, under the law, but
14 we are not trying to tell you there is anything wrong with
15 the way you feel. A lot of people feel that way. It
16 would be an extraordinary person that could keep an open
17 mind through a scenario like that. So I'm asking people
18 honestly.

19 Does anybody else feel that they may feel
20 the same way as Number 5? Let me get a drink of water
21 here.

22 Number 15. What do you think about the
23 question?

24 PROSPECTIVE JUROR: I do. I believe that,
25 you know, when it comes to the death penalty, you know, as

1 Mr. Eisenberg was questioning her.

2 (Prospective juror enters courtroom.)

3 THE COURT: Actually, if he could just come
4 up to the end of the jury. All right. You wanted to
5 speak with us, Number 14.

6 PROSPECTIVE JUROR: Yes. Just basically,
7 some of the questions were already asked and then I
8 responded to them. And it was mainly around just even on
9 the guilty verdict -- not the guilty verdict, but the
10 death sentence. That's the one that I would really have
11 difficulty with, but as we were kind of going through the
12 process, I guess it's not so much as far as the death
13 penalty versus also the life option. I think I would lean
14 more towards a life option. And then, you know, because
15 the whole death part would be something that would be
16 difficult for me.

17 The other piece is, too, as I was kind of,
18 you know, thinking about this since coming in last week is
19 really just dealing with the evidence, the graphic details
20 and things like that. It just -- I guess it just really
21 depends on how graphic that will be, if that's something
22 that I could deal with or even just stomach.

23 THE COURT: Have you had exposure to that
24 type of thing before and it's upsetting?

25 PROSPECTIVE JUROR: Not, I would say, from a

1 like a murder or anything, but dealing with like severe
2 traffic accidents and things like that, being on scene.
3 And that just kind of kept a lot of things in my head, I
4 guess you could say.

5 THE COURT: You said you would lean towards
6 life. Could you impose life or death if you were
7 persuaded? After you heard my instructions and heard all
8 the evidence, could you vote for either way, or is there
9 one way you just could not?

10 PROSPECTIVE JUROR: As the other jurors are
11 saying, I guess it's a case-by-case thing. That's why
12 you -- I'm not just saying that, you know, there is no
13 opportunity for a death sentence, but that would be, I
14 would think, my last option is what I would lean towards.

15 THE COURT: So you would lean against death
16 but you could impose it under the right circumstances?

17 PROSPECTIVE JUROR: Yeah. Could is the
18 word.

19 THE COURT: Any follow-up, Mr. Eisenberg or
20 Mr. Canby?

21 MR. EISENBERG: Yes, Your Honor, just
22 briefly. Juror Number 14, you talked about the evidence,
23 that it would be difficult to view the evidence and
24 consider the evidence. The fact that you've told us about
25 that, would that make it difficult then for you to be fair

1 and impartial in reaching a decision?

2 PROSPECTIVE JUROR: No. It wouldn't make
3 that difficult. It would just be mentally stressful, I
4 guess you could say for me.

5 MR. EISENBERG: Well, and that's kind of the
6 point. When you say it would be mentally stressful, would
7 it rise to a level that you don't want to be at, or is it
8 something that you can deal with?

9 PROSPECTIVE JUROR: I would say it could.
10 It just depends on what the evidence that I'm looking at,
11 I guess you could say.

12 MR. EISENBERG: Okay. And then you also, I
13 think the Judge asked you about life versus death and that
14 option, and you said that imposing a death sentence would
15 be a last option for you, correct, sir?

16 PROSPECTIVE JUROR: Correct.

17 MR. EISENBERG: And is that just based on
18 your life experiences and your feelings toward the death
19 penalty?

20 PROSPECTIVE JUROR: Yes. Yes. I believe
21 so. I do understand, based on the law, based on the
22 question that was asked, that there is a death sentence,
23 right, and there is a criteria that fits that, but when it
24 comes to making that decision, that wouldn't necessarily
25 be something that, from a death standpoint, that I would

1 really feel comfortable with making, but could I listen to
2 the facts and come to a conclusion? I guess that would
3 depend on what comes out in the case.

4 MR. EISENBERG: So based on the entire case,
5 could you make a decision, either life or death, depending
6 on facts and depending on what all comes out?

7 PROSPECTIVE JUROR: Yeah. Could is the
8 word.

9 MR. EISENBERG: If it comes to that point,
10 would you be able to do one or the other?

11 PROSPECTIVE JUROR: I think so. As what was
12 described, it's a moral decision also.

13 MR. EISENBERG: Okay. Thank you, sir.

14 THE COURT: Mr. Canby?

15 MR. CANBY: You understand that there's no
16 mandatory death penalty in every penalty case, right? In
17 other words --

18 PROSPECTIVE JUROR: That, I didn't know,
19 but --

20 MR. CANBY: In other words, nobody has to --
21 ever has to vote for death in any case. It's up to their
22 own personal moral decision.

23 PROSPECTIVE JUROR: Understood.

24 MR. CANBY: So the issue really is, if
25 you're saying you have difficulty with a death decision.

1 And probably anybody probably should, right? It's a
2 pretty heavy thing.

3 PROSPECTIVE JUROR: I would think so.

4 MR. CANBY: If a case was right for you --
5 in other words, could you, in some scenario or some case
6 that met your standards, consider a death penalty? Not
7 even have to give it, but consider it, meaningfully
8 consider death penalty in a case that met your criteria,
9 met all your criteria?

10 PROSPECTIVE JUROR: I could.

11 MR. CANBY: Thank you.

12 THE COURT: Thank you, sir. If you could
13 step out. Bring 19 in.

14 (Prospective juror exits courtroom.)

15 (Prospective juror enters courtroom.)

16 THE COURT: Ma'am, if you could come forward
17 and go to the end of the jury box there. All right.

18 19, you wanted to speak with us privately.
19 You can stay there. You don't have to walk all the way
20 down. You're good.

21 PROSPECTIVE JUROR: Just I'm a special
22 education teacher, so missing would be kind of hard on my
23 kiddos if it's that long.

24 THE COURT: Okay. I think you said that in
25 your questionnaire, if I remember right.

1 we on the same page?

2 PROSPECTIVE JUROR: Yes.

3 MR. MCCARTHY: All right. Juror Number 57,
4 can I get you to tell us what are your thoughts.

5 PROSPECTIVE JUROR: I think I feel the same
6 way as Juror 56. I'm more fact-based, that it would be my
7 decision --

8 THE COURT: 57, you need to speak up a
9 little bit. Everybody needs to speak up a little bit.

10 PROSPECTIVE JUROR: I'm not for or against
11 the death penalty. I feel like facts would maybe help me
12 to make a decision.

13 MR. MCCARTHY: All right. Thank you very
14 much for sharing. I skipped you. Can I ask you the same
15 question?

16 THE COURT: This is Number 54.

17 PROSPECTIVE JUROR: I believe the same way
18 that I would want to hear everything before I could make a
19 decision. I can't say I would say one way or the other.
20 It would just depend on how everything was laid out.

21 MR. MCCARTHY: Okay. And I believe you
22 mentioned in your questionnaire that the decision whether
23 or not to impose the death penalty is something that
24 should be based on facts, not emotions. So again, you
25 understand that there is never going to be that formula.

1 defendant who committed this murder of an innocent victim?

2 PROSPECTIVE JUROR: Sure, but only, only if
3 the punishment fits the crime. If it's -- if a death
4 penalty would be considered too harsh, you know, sometimes
5 there is that circumstance where people will still be
6 found guilty even though they're innocent and could be
7 like wrongfully sent to a death penalty. Whereas, they
8 would still have a chance to overturn their case if they
9 were given a life sentence, possibly like some kind of
10 parole hearing or something like that.

11 MR. MCCARTHY: And you understand that if
12 the punishment fits the crime, that's something that you
13 and you alone get to decide?

14 PROSPECTIVE JUROR: Yeah.

15 MR. MCCARTHY: All right. Sir, Juror
16 Number 83, can I ask you for your thoughts, please.

17 PROSPECTIVE JUROR: I think the death
18 penalty should be used for very extreme cases. It's not
19 something to take lightly and only used when you have, you
20 know, all the circumstances of a case. In the
21 hypothetical that you laid out, it was -- I mean, it has
22 to be very basic. So I couldn't say yes or no
23 specifically with just that knowledge on the death
24 penalty.

25 MR. MCCARTHY: Okay. What would be

APPENDIX L

JUROR NUMBER: 131

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: Matthew Kura Juror Number (assigned by the Court): 131

2. Age: 41 Gender: Male

3. Area in which you live (not a specific address): Litchfield Park

4. Place of Birth: Grant Lakes, IL

5. Marital status: Please check all that apply:

Single, never married Married Divorced Widowed

Remarried

6. What is your educational background?

Some high school High school graduate

Some college Community college Degree earned: _____

Technical school College graduate Degree earned: _____

Post-graduate degree Major area of study: _____

If a college graduate, what was your major? _____

Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: Naval Nuclear, Reactor Op. License

7. Current employment status:

Employed full-time Unemployed - looking for work

Employed part-time Unemployed - not looking for work

Self-employed Retired

Homemaker Other

Student

8. a. What is your occupation (or what was it, if retired or unemployed?)

Regulatory Affairs M Dept. Leader

b. By whom are (were) you employed? APS

c. What are (were) your specific duties and responsibilities on the job? _____

Manage Compliance and Environmental depts.

d. How long have (did) you work(ed) there? 13 yr.

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? Student @ Posenia College, Homemaker

11. Do you have any children? If yes, how many? 2

Natural Step-children Adopted Foster

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
Daughter	12	F	7 th	N/A	Y
Son	10	M	4 th	N/A	Y

12. Have you or your current spouse/partner ever served in the military?

Yes No

If yes, please list:

Branch of Service: US Navy

Duty Assignment: VSS George Washington, MM2ND Class

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? None

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: N/A

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

b. Any private firm involved in the investigation of civil or criminal matters?

c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- _____ e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- _____ f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- _____ g. A psychologist, psychiatrist, mental health center?
- _____ h. A social work or social service agency, or counselling service?
- _____ i. A treatment program for alcohol, drug or any other substance abuse?
- _____ j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: N/A

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? _____ Yes No

If "Yes", please explain: N/A

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? _____ Yes No

If "Yes", please explain: N/A

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case? _____ Yes No

If "Yes", please explain: N/A

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes No

If "Yes", please explain: N/A

20. Where do you get your news? (i.e., television, newspaper, internet) _____
Internet, Radio

21. Do you recall hearing or reading anything about this case? Yes _____ No
If yes, what do you recall about the case? N/A

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: N/A

If yes, can you set aside any knowledge you have about this case and base you decision solely on the evidence presented in court? Yes No _____

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? _____ Yes No
If yes, please explain: N/A

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
<p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p>	<p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p>	
<p>Tempe Police Department Edward Hache Michelle Solmen</p>	<p>Office of the Medical Examiner Dr. John Hu</p>	
<p>Maricopa County Attorney's Office Barry Giesemann</p>	<p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	

Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

N/A

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

Yes No

If yes, was the incident reported to the police? Yes No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

Car Broken into

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: N/A

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

Yes No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: N/A

27. Have you ever personally known anyone who was murdered or killed other than by accident?

Yes No

If your answer is "Yes," please explain:

Wife's cousin → Suicide

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

N/A

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : N/A

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes _____ No

If yes, which trial or trials have you followed? N/A

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? Yes _____ No

If yes, please describe: Course on psychology in college, 1996

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

Mostly insightful, seem to use rational scientific facts to form opinions!

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? _____ Yes No

If yes, please explain: N/A

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? _____ Yes _____ No

Please explain: N/A

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

_____ Yes _____ No

If yes, please explain: N/A

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? _____ Yes _____ No

If yes, please explain: N/A

38. Please state the number of times you have served on a jury, if any:

one

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? Assault against a Police

officer, plea deal was reached the morning the trial began.

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: NO

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. Do you agree with this law? Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: N/A

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: N/A

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: N/A

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison *without the possibility of release*.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment *without the possibility of release*.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? Conflicted, society shouldn't have to support someone that commits such serious crimes, but taking a life is a decision you can't take back.

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)? Very little, can't recall any details

47. Have you ever felt differently about the death penalty than you do now?

Yes No

If yes, please explain: Feelings change as you age and start a family of your own.

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes No

If yes, please describe the group and the extent of your participation:

N/A

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: N/A

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: N/A

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: N/A

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain:

Seems to be the basis for why it was placed into the Constitution.

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence. Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

N/A

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please, explain: N/A

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: N/A

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?

Yes No

Please explain: I don't believe in absolutes.

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: N/A

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: N/A

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? ____ Yes No

Please explain: Again, absolutes. There is always a grey area to every situation

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? Yes ____ No

If no, please explain: N/A

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? ____ Yes No

If your answer is yes, please explain: N/A

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? Yes No

If your answer is yes, please explain: N/A

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial?

Yes No
Please explain: I'm able to review facts to draw a conclusion.

64. Please circle the letter(s) of any statement(s) that describe you:

- a. I like assuming a leadership role in a group of people.
- b. I tend to step in and take an active role in solving disagreements between people.
- c. I tend to "speak my mind" in group discussions.
- d. I prefer to listen rather than speak in group discussions.
- e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them?

Yes No

If no, please explain: N/A

66. Is there any question in this questionnaire that you did not understand?

Yes No

If yes, which question or questions would you like clarified? N/A

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? Yes No

If yes, what would you like to discuss? N/A

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3-20-18
Date

[Signature] 131
Signature of Juror and Juror number

APPENDIX M

JUROR NUMBER: 2

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: MATT BALLESTERO Juror Number (assigned by the Court): #2
2. Age: 32 Gender: MALE
3. Area in which you live (not a specific address): 40TH ST AND THUNDERBOLT
4. Place of Birth: PHOENIX, AZ
5. Marital status: Please check **all** that apply:
 Single, never married Married Divorced Widowed
 Remarried
6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: A.A., A.G.S.
 Post-graduate degree Major area of study: CRIMINAL JUSTICE
If a college graduate, what was your major? _____
Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____
7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student
8. a. What is your occupation (or what was it, if retired or unemployed?)
BUILDING EQUIPMENT OPERATOR II - BUILDING AUTOMATION
b. By whom are (were) you employed? CITY OF PHOENIX
c. What are (were) your specific duties and responsibilities on the job? REPAIRING BUILDING AUTOMATION CONTROLS
d. How long have (did) you work(ed) there? 2 YEARS IN JUNE

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? _____

11. Do you have any children? NO If yes, how many? _____

Natural _____ Step-children _____ Adopted _____ Foster _____

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
N/A					

12. Have you or your current spouse/partner ever served in the military?

_____ Yes No

If yes, please list:

Branch of Service: _____

Duty Assignment: _____

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? N/A

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

_____ Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

_____ b. Any private firm involved in the investigation of civil or criminal matters?

c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- g. A psychologist, psychiatrist, mental health center?
- h. A social work or social service agency, or counselling service?
- i. A treatment program for alcohol, drug or any other substance abuse?
- j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: I WAS GOING TO WORK FOR AZ DEPT OF CORRECTIONS - STARTED TRAINING AND DECIDED IT WASNT FOR ME. I HAVE AN EMT-B CERT - NOT CURRENT

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? Yes No

If "Yes", please explain:

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain:

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) TV. And
INTERNET

21. Do you recall hearing or reading anything about this case? Yes _____ No
If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base you decision solely on the evidence presented in court? Yes _____ No _____

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? _____ Yes No

If yes, please explain: _____

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
<p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p>	<p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p>	
<p>Tempe Police Department Edward Hache Michelle Solmen</p>	<p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	
<p>Maricopa County Attorney's Office Barry Giesemann</p>		

Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

_____ Yes No

If yes, was the incident reported to the police? _____ Yes _____ No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

_____ Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

_____ Yes No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

27. Have you ever personally known anyone who was murdered or killed other than by accident?

_____ Yes No

If your answer is "Yes," please explain:

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes _____ No

If yes, which trial or trials have you followed? _____

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? Yes _____ No

If yes, please describe: CRIMINAL JUSTICE

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

I THINK ~~IS~~ A LARGE MAJORITY OF THE TIME THEY ARE ABLE TO.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? _____ Yes No

If yes, please explain:

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? _____ Yes _____ No

Please explain:

N/A

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

_____ Yes No

If yes, please explain: _____

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? _____ Yes No

If yes, please explain: _____

38. Please state the number of times you have served on a jury, if any:

NONE 0

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? _____

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: no

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witnesses is a law enforcement officer. Do you agree with this law? Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror?
 Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? I AM KIND OF INDIFFERENT,
I GUESS IT IS NECESSARY.

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
I HAVEN'T HEARD MUCH ABOUT IT

47. Have you ever felt differently about the death penalty than you do now?
 Yes X No

If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes X No

If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?
X Yes No

Can you follow this law even if you disagree with it? Yes No
If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain: _____

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence. Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please, explain: _____

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: _____

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?

Yes No

Please explain: _____

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? ____ Yes No

Please explain: DEPENDS ON CIRCUMSTANCES

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? Yes ____ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? ____ Yes No

If your answer is yes, please explain: _____

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? _____ Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial?

_____ Yes No

Please explain: DEPENDS ON THE EVIDENCE

64. Please circle the letter(s) of any statement(s) that describe you:

a. I like assuming a leadership role in a group of people.

b. I tend to step in and take an active role in solving disagreements between people.

c. I tend to "speak my mind" in group discussions.

d. I prefer to listen rather than speak in group discussions.

e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them?

Yes _____ No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

~~Yes~~ ^{Yes} Yes No


If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? _____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3/19/18
Date

 12
Signature of Juror and Juror number

JUROR NUMBER: 14

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded *Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence.* The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: KWAN MITCHELL Juror Number (assigned by the Court): 14
2. Age: 49 Gender: M
3. Area in which you live (not a specific address): WEST VALLEY
4. Place of Birth: INDIANA
5. Marital status: Please check all that apply:
 Single, never married Married Divorced Widowed
 Remarried
6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: _____
 Post-graduate degree Major area of study: COMPUTER INFO SYSTEMS
If a college graduate, what was your major? _____
Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____
7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student
8. a. What is your occupation (or what was it, if retired or unemployed?)
INFORMATION TECHNOLOGY
b. By whom are (were) you employed? CITY OF PHOENIX
c. What are (were) your specific duties and responsibilities on the job?
TECHNOLOGY MANAGER
d. How long have (did) you work(ed) there? 16 yrs

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? HOMEMAKER

11. Do you have any children? Y If yes, how many? 2

Natural Step-children Adopted Foster

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
DAUGHTER	23	F	16 yrs	COMMUNICATION PIO	Y
SON	19	M	14 yrs	STUDENT	Y

12. Have you or your current spouse/partner ever served in the military?

_____ Yes No

If yes, please list:

Branch of Service: _____

Duty Assignment: _____

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? NON DOMINANTIAL CHURCH -

SERVED IN SECURITY ROLE

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

_____ Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

_____ b. Any private firm involved in the investigation of civil or criminal matters?

_____ c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- g. A psychologist, psychiatrist, mental health center?
- h. A social work or social service agency, or counselling service?
- i. A treatment program for alcohol, drug or any other substance abuse?
- j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: MOTHER, SISTERS, NIECE
WORK(ED) IN THE MEDICAL FIELD AS SNA'S AND BACKOFFICE

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? Yes No

If "Yes", please explain:

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) TV, INTERNET

21. Do you recall hearing or reading anything about this case? Yes ___ No

If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base you decision solely on the evidence presented in court? Yes ___ No ___

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? ___ Yes No

If yes, please explain: _____

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p> <p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p> <p>Tempe Police Department Edward Hache Michelle Solmen</p> <p>Maricopa County Attorney's Office Barry Giesemann</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p> <p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p> <p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
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Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

Yes No

If yes, was the incident reported to the police? Yes No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

VEHICLE BROKEN INTO AND STOLE ITEMS

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

Yes No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: BROTHER - CONVICTED OF NARCOTIC POSSESSION

BROTHER - DUI, NIECE - DUI

27. Have you ever personally known anyone who was murdered or killed other than by accident?

Yes No

If your answer is "Yes," please explain:

FRIENDS - STABBED TO DEATH

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes No _____

If yes, which trial or trials have you followed? HIGH VISIBLE CASES SUCH AS OJ TRIAL, CHSEY ANTHONY

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? _____ Yes No

If yes, please describe: _____

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

IN MOST CASES IN MY OPINION I BELIEVE THEY CAN IDENTIFY AND EXPLAIN REASON OF HUMAN BEHAVIOR. THEY ARE TRAINED TO DO SO.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? Yes _____ No

If yes, please explain:

WIFE AND SON SUFFER WITH MENTAL ILLNESS

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? Yes No

Please explain:

PRESCRIPTIONS AND COUNSELING HAS HELPED GREATLY

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

Yes No

If yes, please explain: _____

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? Yes No

If yes, please explain: _____

38. Please state the number of times you have served on a jury, if any:

0

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? _____

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: _____

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. Do you agree with this law? Yes No _____
Can you follow this law even if you disagree with it? Yes No _____
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
_____ Yes No
Can you follow this law even if you disagree with it? Yes _____ No
If no to either question, please explain: I FEEL THAT THE DEFENDANT
MUST PRESENT EVIDENCE TO DEFEND HIS/HER POSITION
EITHER THEMSELVES OR REPRESENTATION OF ATTY

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
_____ Yes No
Can you follow this law even if you disagree with it? Yes _____ No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? _____ Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? I SUPPORT THE DEATH PENALTY
WHEN IT IS PROVEN BEYOND REASONABLE DOUBT.
IF NOT THE DAY OF JUDGEMENT WILL HAVE THE LAST WORD

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
BESIDES WHATS TALKED ABOUT IN THE NEWS OR WORK
I DONT NO MUCH ABOUT AZ DEATH PENALTY

47. Have you ever felt differently about the death penalty than you do now?
 Yes X No

If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes X No

If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?
X Yes No

Can you follow this law even if you disagree with it? X Yes No
If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain: _____

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence. Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please explain: _____

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: _____

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?
 Yes No

Please explain: DEPENDS ON WHY THIS HAPPENED - COULD

BE IN SELF DEFENSE

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

___ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

___ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? ___ Yes No

Please explain: MUST HEAR THE EVIDENCE - SELF DEFENSE

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? Yes ___ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? ___ Yes No

If your answer is yes, please explain: _____

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? _____ Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial? Yes No

Please explain: NO GOOD PERSON WOULD WANT TO HAVE A
LIFE TAKEN. BUT THERE'S JUSTICE.

64. Please circle the letter(s) of any statement(s) that describe you:
- a. I like assuming a leadership role in a group of people.
 - b. I tend to step in and take an active role in solving disagreements between people.
 - c. I tend to "speak my mind" in group discussions.
 - d. I prefer to listen rather than speak in group discussions.
 - e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them? Yes _____ No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

____ Yes No

If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? ____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3-19-18

Date

[Signature] 14
Signature of Juror and Juror number

APPENDIX N

JUROR NUMBER: 83

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: Jacob Miller Juror Number (assigned by the Court): 83
2. Age: 26 Gender: Male
3. Area in which you live (not a specific address): Wittmann, Arizona
4. Place of Birth: Phoenix, Arizona
5. Marital status: Please check all that apply:
 Single, never married Married Divorced Widowed
 Remarried
6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: Bachelor's
 Post-graduate degree Major area of study: _____
If a college graduate, what was your major? Civil Engineering
Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____
7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student
8. a. What is your occupation (or what was it, if retired or unemployed?)
Project Engineer
b. By whom are (were) you employed? Salmons PC
c. What are (were) your specific duties and responsibilities on the job? Designing Precast concrete structures
d. How long have (did) you work(ed) there? 4 years

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? Homemaker

11. Do you have any children? Yes If yes, how many? 2

Natural Step-children Adopted Foster

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
Daughter	3	Female	N/A	N/A	Yes
Daughter	2	Female	N/A	N/A	Yes

12. Have you or your current spouse/partner ever served in the military?

_____ Yes No

If yes, please list:

Branch of Service: _____

Duty Assignment: _____

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? I am Christian

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

_____ Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

Grand father

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

_____ b. Any private firm involved in the investigation of civil or criminal matters?

_____ c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- _____ e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- _____ f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- _____ g. A psychologist, psychiatrist, mental health center?
- _____ h. A social work or social service agency, or counselling service?
- _____ i. A treatment program for alcohol, drug or any other substance abuse?
- _____ j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: _____

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? Yes No

If "Yes", please explain:
 If I am not working, I will lose out on the
 experience that comes with working under a
 professional engineer.

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case?
 Yes No

If "Yes", please explain: _____

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) Internet

21. Do you recall hearing or reading anything about this case? Yes _____ No

If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base your decision solely on the evidence presented in court? Yes _____ No _____

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? _____ Yes No

If yes, please explain: _____

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
<p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p>	<p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p>	
<p>Tempe Police Department Edward Hache Michelle Solmen</p>	<p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	
<p>Maricopa County Attorney's Office Barry Giesemann</p>		

Do you know any of these people or recognize their name? Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

_____ Yes No

If yes, was the incident reported to the police? _____ Yes _____ No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

_____ Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

_____ Yes No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

27. Have you ever personally known anyone who was murdered or killed other than by accident?

_____ Yes No

If your answer is "Yes," please explain:

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes _____ No

If yes, which trial or trials have you followed? _____

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? _____ Yes No

If yes, please describe: _____

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

I think that their ~~my~~ early opinion can sometimes be over
simplified, but after they get to know the person being
evaluated, their opinion is usually very valuable.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? _____ Yes No

If yes, please explain:

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? Yes No

Please explain:

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

Yes No

If yes, please explain: _____

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? Yes No

If yes, please explain: _____

38. Please state the number of times you have served on a jury, if any:

0

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? N/A

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: N/A

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witnesses is a law enforcement officer. Do you agree with this law? Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? If the person is proven
~~guilty~~ ~~convicted~~ beyond a reasonable doubt that the
death penalty is what they deserve, ~~then~~ then that
is the penalty they should receive.

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
N/A

47. Have you ever felt differently about the death penalty than you do now?
 Yes No
If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes No
If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain: _____

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence. Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please, explain: _____

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: _____

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?
 Yes No

Please explain: If a person who kills another will never be

Sentenced to death, it could lead to the killer not learning from jail sentence and continue killing others (if they get out). The death sentence is a sentence for a reason and should be used if needed.

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

___ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

___ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? ___ Yes No

Please explain: The killer could have had a lapse of judgement and could be rehabilitated ~~the~~ and become a thriving member of society once again.

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? Yes ___ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? ___ Yes No

If your answer is yes, please explain: _____

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial?

Yes No

Please explain: It could affect me possibly. I would like to say no, but I am not making that decision now so I am not thinking in the same way if I were sentencing someone to death.

64. Please circle the letter(s) of any statement(s) that describe you:

a. I like assuming a leadership role in a group of people.

b. I tend to step in and take an active role in solving disagreements between people.

c. I tend to "speak my mind" in group discussions.

d. I prefer to listen rather than speak in group discussions.

e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them?

Yes No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

____ Yes No

If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? ____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3/19/18

Date

Jacal Miller 83

Signature of Juror and Juror number

APPENDIX O

JUROR NUMBER: 190

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: Melanie Hill Juror Number (assigned by the Court): 190
2. Age: 35 Gender: Female
3. Area in which you live (not a specific address): Scottsdale

4. Place of Birth: Edmond, Oklahoma

5. Marital status: Please check all that apply:
 Single, never married Married Divorced Widowed
 Remarried

6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: B.S.
 Post-graduate degree Major area of study: Earth Science
If a college graduate, what was your major? Earth Science

Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____

7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student

8. a. What is your occupation (or what was it, if retired or unemployed?)
Environmental Health and Safety Eng / Facilities Maintenance Manager
b. By whom are (were) you employed? MD Helicopters, Inc.
c. What are (were) your specific duties and responsibilities on the job? _____
Health and safety of employees, environmental compliance, maintenance of
d. How long have (did) you work(ed) there? 8 years the facility

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time _____ Unemployed - looking for work
 _____ Employed part-time _____ Unemployed - not looking for work
 _____ Self-employed _____ Retired
 _____ Homemaker _____ Other
 _____ Student

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? Business sales for T-Mobile

11. Do you have any children? yes If yes, how many? 1

Natural 1 Step-children _____ Adopted _____ Foster _____

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
Son	2	Male	N/A	N/A	yes

12. Have you or your current spouse/partner ever served in the military?

_____ Yes No

If yes, please list:

Branch of Service: _____

Duty Assignment: _____

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? none

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

_____ Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

_____ b. Any private firm involved in the investigation of civil or criminal matters?

_____ c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- g. A psychologist, psychiatrist, mental health center?
- h. A social work or social service agency, or counselling service?
- i. A treatment program for alcohol, drug or any other substance abuse?
- j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: Mother is a nurse at
~~the~~ Valley Hospital specializing in substance abuse

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? Yes No

If "Yes", please explain:

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes ___ No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) television
and internet

21. Do you recall hearing or reading anything about this case? Yes ___ No
If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base you decision solely on the evidence presented in court? Yes ___ No ___

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? ___ Yes ___ No

If yes, please explain: I am a mother so hearing of abuse of a
child may be difficult

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p> <p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p> <p>Tempe Police Department Edward Hache Michelle Solmen</p> <p>Maricopa County Attorney's Office Barry Giesemann</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p> <p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p> <p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
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Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

_____ Yes No

If yes, was the incident reported to the police? _____ Yes _____ No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

_____ Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

Yes _____ No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: DUI (in 2006)

27. Have you ever personally known anyone who was murdered or killed other than by accident?

_____ Yes No

If your answer is "Yes," please explain:

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes _____ No

If yes, which trial or trials have you followed? _____

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? _____ Yes No

If yes, please describe: _____

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

I believe they are educated and understand how a person can act or feel especially during times of duress or stress.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? _____ Yes No

If yes, please explain:

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? Yes No

Please explain:

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

Yes No

If yes, please explain: Mother has a master's in counseling and is
A current RN at Valley Hospital

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? Yes No

If yes, please explain:

38. Please state the number of times you have served on a jury, if any:

0

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict?

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: _____

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witnesses is a law enforcement officer. Do you agree with this law? Yes No _____
Can you follow this law even if you disagree with it? Yes No _____
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? I agree that in certain
cases it should be used. It should always be used
but only when necessary

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
I know Arizona has the death penalty but I do not know
anything about the process

47. Have you ever felt differently about the death penalty than you do now?
 Yes X No

If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes X No

If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?
X Yes No

Can you follow this law even if you disagree with it? X Yes No

If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain:

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence.

Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please explain: _____

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: _____

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?

Yes No

Please explain: Circumstantial. Depends on the case.

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

_____ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

_____ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? _____ Yes No

Please explain: again, depends on the case. It's not always black and white.

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? _____ Yes _____ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? _____ Yes No

If your answer is yes, please explain: _____

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial?

Yes No

Please explain: If the facts are presented, I as a juror should be able to make a fair and impartial decision.

64. Please circle the letter(s) of any statement(s) that describe you:

a. I like assuming a leadership role in a group of people.

b. I tend to step in and take an active role in solving disagreements between people.

c. I tend to "speak my mind" in group discussions.

d. I prefer to listen rather than speak in group discussions.

e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them?

Yes No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

_____ Yes No

If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? _____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3/20/18
Date

Michael A. H. 101 1910
Signature of Juror and Juror number

JUROR NUMBER: 211

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: Lora Bagley Juror Number (assigned by the Court): 211
2. Age: 57 Gender: Female
3. Area in which you live (not a specific address): Avondale
4. Place of Birth: Phoenix, AZ
5. Marital status: Please check all that apply:
 Single, never married Married Divorced Widowed
 Remarried
6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: Masters
 Post-graduate degree Major area of study: Human Svcs & Theology
If a college graduate, what was your major? Human Svcs & Theology, SA
Counselor
Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____
7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student
8. a. What is your occupation (or what was it, if retired or unemployed?)
Disability Svcs. Advisor
- b. By whom are (were) you employed? Univ. of Phx
- c. What are (were) your specific duties and responsibilities on the job? Assist college svcs w/ or needing academic accommodations
- d. How long have (did) you work(ed) there? 11 years

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- Employed full-time _____ Unemployed - looking for work
 _____ Employed part-time _____ Unemployed - not looking for work
 _____ Self-employed _____ Retired
 _____ Homemaker _____ Other
 _____ Student

10. If married, what is your spouse's occupation (or what was it, if retired, or unemployed?) and who is/was their employer? Safety Representative for the VA

11. Do you have any children? yes If yes, how many? 2

Natural Step-children _____ Adopted _____ Foster _____

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?
son	39	Male	Masters	Disabled	Yes
Daughter	37	Female	BS	office mgr	NO

12. Have you or your current spouse/partner ever served in the military?

Yes No

If yes, please list:

Branch of Service: US Air Force

Duty Assignment: Retired

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? N/A, I frequently

visit or attend church.

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

b. Any private firm involved in the investigation of civil or criminal matters?

c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- g. A psychologist, psychiatrist, mental health center?
- h. A social work or social service agency, or counselling service?
- i. A treatment program for alcohol, drug or any other substance abuse?
- j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: c- my daughter works for the dept. of corrections as an office mgr in the IT dept.
h- Western Judicial SWS- I've worked there to provide substance abuse, anger mgmt & DV prog for offenders. I- I worked for the Dept of health developing HIV, mental health & substance abuse initiatives for the state.

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? Yes No

If "Yes", please explain:

I have 4 doctor appts that cannot be rescheduled on 4/17 & 4/15 @ 3:15 pm. (part of my summary follow-ups). The other 4 appts for consecutive week. I can see if I can get an early appt.

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case?

Yes No

If "Yes", please explain: There are times I have migraines but I
take medication daily

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? ___ Yes No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) television,

21. Do you recall hearing or reading anything about this case? Yes ___ No
If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base you decision solely on the evidence presented in court? Yes ___ No ___

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? ___ Yes No
If yes, please explain: _____

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
<p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p>	<p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p>	
<p>Tempe Police Department Edward Hache Michelle Solmen</p>	<p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	
<p>Maricopa County Attorney's Office Barry Giesemann</p>		

Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

_____ Yes No

If yes, was the incident reported to the police? _____ Yes _____ No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

_____ Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

Yes _____ No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: I believe my nephew was convicted for a crime.

27. Have you ever personally known anyone who was murdered or killed other than by accident?

_____ Yes No

If your answer is "Yes," please explain:

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial?

Yes No _____

If yes, which trial or trials have you followed? I was a juror in a trial
I served as the foreman

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? Yes _____ No

If yes, please describe: Human svs degree and substance abuse
counseling.

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

I believe they can provide information about human behaviour
that is interesting and may be relevant to a case, but each
person is different & you have to listen to the facts & then
decide.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? Yes _____ No

If yes, please explain:
Marriage counseling

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? Yes No

Please explain:
provided resources

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

Yes No

If yes, please explain: _____

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? Yes No

If yes, please explain: _____

38. Please state the number of times you have served on a jury, if any:
twice

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? Not sure, I think I served 10 yrs ago for a ~~criminal~~ case as the foreman and the person was found guilty.

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: NO

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witnesses is a law enforcement officer. Do you agree with this law? Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes No
Can you follow this law even if you disagree with it? Yes No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a *preponderance of the evidence*. *Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not.* A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? I'm really not sure. If
a person is found guilty by law, then it is the law.

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
I haven't heard anything.

47. Have you ever felt differently about the death penalty than you do now?

Yes No

If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes No

If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain:

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence.

Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please, explain:

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain:

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?

Yes No

Please explain: *I've never really thought deeply about this but I just don't agree w/ this statement*

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

_____ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

_____ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? _____ Yes No

Please explain: There are instances where mercy is applicable.

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? _____ Yes _____ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? _____ Yes No

If your answer is yes, please explain: _____

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? _____ Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial? _____ Yes No

Please explain: _____

64. Please circle the letter(s) of any statement(s) that describe you:
- a. I like assuming a leadership role in a group of people.
 - b. I tend to step in and take an active role in solving disagreements between people.
 - c. I tend to "speak my mind" in group discussions.
 - d. I prefer to listen rather than speak in group discussions.
 - e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them? Yes _____ No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

____ Yes No

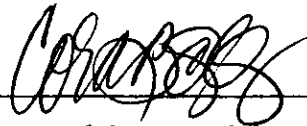
If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? ____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3/21/18
Date

 211
Signature of Juror and Juror number

APPENDIX P

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.	)	CR 2015-106788-001 DT
)	
ALLYN AKEEM SMITH,	)	1 CA-CR 18-0295-AP
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 28, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 6

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 murder. First degree conviction and aggravator proven.
2 Is there a real possibility in that situation that you
3 could give a life sentence?

4 PROSPECTIVE JUROR: Yes.

5 MR. BROWN: Thank you, 165.

6 Juror 182. Okay. Same general question.
7 You've reached the third phase. You are in the jury room.
8 You are considering life or death. You have heard what's
9 happened in the first two phases. Is a life sentence a
10 real as opposed to a theoretical possibility?

11 PROSPECTIVE JUROR: Yes.

12 MR. BROWN: All right. And you understand
13 in your questionnaire you said that you believed in the
14 death penalty only when justified?

15 PROSPECTIVE JUROR: Correct.

16 MR. BROWN: And you understand that you are
17 the person who is going to determine whether it's
18 justified.

19 PROSPECTIVE JUROR: Correct.

20 MR. BROWN: And you can make that
21 determination?

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. BROWN: All right. Thank you, 182.

24 Juror 190. You indicated that there are some issues with
25 the facts of the case that you were told about.

1 PROSPECTIVE JUROR: Uh-huh.

2 MR. BROWN: But you feel that you could
3 fairly assess this matter?

4 PROSPECTIVE JUROR: Yes.

5 MR. BROWN: You could consider the facts in
6 Phase 1, no problem?

7 PROSPECTIVE JUROR: Uh-huh.

8 MR. BROWN: You could consider the facts in
9 Phase 2, no problem?

10 PROSPECTIVE JUROR: (Prospective juror nods
11 head.)

12 MR. BROWN: And if you got to the third
13 phase you could consider everything you have heard,
14 consider the mitigation and the aggravation and make a
15 fair assessment for both sides?

16 PROSPECTIVE JUROR: Yes.

17 MR. BROWN: And your issues with the nature
18 of the facts wouldn't dominate your --

19 PROSPECTIVE JUROR: No.

20 MR. BROWN: -- consideration of Phase 3?

21 PROSPECTIVE JUROR: No.

22 MR. BROWN: Thank you, 190. Okay.

23 Juror 191. All right. I would like to talk to you about
24 the photos. There's like two sentences -- I don't know
25 how many sentences. There was like a paragraph about the

APPENDIX Q

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
	)	CR 2015-106788-001 DT
vs.)	
	)	1 CA-CR 18-0295-AP
ALLYN AKEEM SMITH,)	
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 28, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 6

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 you know, I think everybody has -- everybody would have
2 some type of issues with being gone that long.

3 MS. WADE: So it's an issue, but it's not an
4 end-all for you?

5 PROSPECTIVE JUROR: Right.

6 MS. WADE: Juror Number 111, have you had a
7 chance to look at Page 12?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 MS. WADE: And what would your answers be on
10 Page 12?

11 PROSPECTIVE JUROR: Pardon me?

12 MS. WADE: What would your answers be on
13 Page 12? You can read them out loud.

14 PROSPECTIVE JUROR: Number 40, no. 41, yes
15 and no. 42, yes and yes. 43, yes and yes. 44, no.

16 MS. WADE: All right. I believe you said
17 on 41, you said yes and no, or was I wrong?

18 PROSPECTIVE JUROR: No. I said yes and yes.

19 MS. WADE: Okay. Perfect. Thank you for
20 answering those for us.

21 Juror Number 131. Sorry, I always have to
22 take a look to make sure. Your wife is a student. What
23 is your wife studying?

24 PROSPECTIVE JUROR: She goes to Phoenix
25 College for sign language interpreting.

1 MS. WADE: What does she plan on doing with
2 that?

3 PROSPECTIVE JUROR: Become an interpreter.
4 She's going to be an educational interpreter will be her
5 first goal.

6 MS. WADE: On Page 14 of your questionnaire,
7 Question 45.

8 PROSPECTIVE JUROR: Okay.

9 MS. WADE: For the question of how do you
10 feel about the death penalty, you said conflicted. What
11 do you mean by that?

12 PROSPECTIVE JUROR: Just the moral act of
13 condemning another person to death is -- I think it would
14 be difficult for anybody. That's all I was trying to
15 express there.

16 MS. WADE: Are you willing to listen to the
17 facts and the evidence in all three -- and the law -- in
18 all three phases and make a decision?

19 PROSPECTIVE JUROR: I am, yeah.

20 MS. WADE: Number 47, Question Number 47 as
21 well. You checked that you once used to feel differently.
22 How did you feel? And you said your feelings change as
23 you age. Can you give us a little more explanation.

24 PROSPECTIVE JUROR: I think that was more,
25 when I was young I didn't give it much thought. You know,

APPENDIX R

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
	)	CR 2015-106788-001 DT
vs.)	
	)	1 CA-CR 18-0295-AP
ALLYN AKEEM SMITH,)	
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 28, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 6

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 PROSPECTIVE JUROR: No, ma'am.

2 MS. WADE: On our questionnaire on Question
3 Number 59 -- you guys didn't know this was going to be a
4 test, right? What do you think we've been doing all those
5 days? We have been reading. Question Number 59. Are you
6 willing to consider mitigation in this case?

7 PROSPECTIVE JUROR: Yes. When I wrote that,
8 I was thinking about the actual, like the conviction
9 itself. I wasn't really thinking about the mitigation.
10 So that was just something that I kind of put on there.
11 The first thought that came into my head so --

12 MS. WADE: And it near the end of the
13 questionnaire too, absolutely. So having a little bit
14 more understanding of the entire process, do you think you
15 would be willing to meaningfully consider mitigation if we
16 got to that phase of the trial?

17 PROSPECTIVE JUROR: Yes, ma'am, I would.

18 MS. WADE: Juror Number 143, you mentioned
19 that you have some health issues in your questionnaire.
20 Have you been able to address those with the schedule that
21 we are going to be keeping?

22 PROSPECTIVE JUROR: I'm working on it.

23 MS. WADE: You are working on it. Are you
24 concerned about weighing your medical needs versus the
25 schedule?

1 PROSPECTIVE JUROR: I got my first injection
2 last week and it went better than I thought. And so I
3 talked to the doctor that if I were to get chosen, if with
4 my second shot, I would have to forego any type of
5 sedation. And she said that I could go through it without
6 the sedation to get the injections, and I could just get
7 an early appointment so I could get here on time. So I'm
8 trying to make it work, yeah.

9 MS. WADE: Are you comfortable trying to
10 make it work, or are you feeling like you are just having
11 to rearrange everything?

12 PROSPECTIVE JUROR: No. I'm somewhat
13 comfortable. The good news is the first shot actually did
14 alleviate some pain. I'm in some pain still, but it kind
15 of took the edge off. And in talking to the doctor, she's
16 thinking that the second injection will be better for me.
17 So I'm working towards that.

18 MS. WADE: Okay.

19 PROSPECTIVE JUROR: So it's a work in
20 progress.

21 MS. WADE: Thank you. Thank you for trying
22 to get that to work. I know that's frustrating. You also
23 mentioned that your sister had a DUI at some point.

24 PROSPECTIVE JUROR: Yes.

25 MS. WADE: Is there anything about that --

1 do you think she was treated fairly?

2 PROSPECTIVE JUROR: Yes.

3 MS. WADE: When did that happen?

4 PROSPECTIVE JUROR: Like 15 years ago.

5 MS. WADE: Anything about what your sister
6 had to go through that might make it difficult for you to
7 be fair and impartial in this case?

8 PROSPECTIVE JUROR: No.

9 MS. WADE: Juror Number 134, you have been
10 able to sit silently for a while. There is always one
11 that can escape that. Is there anything about what we
12 talked about, what Mr. Canby has talked about, what is in
13 the questionnaire, that you think would be important for
14 us to know? No? We've covered it all? And you are kind
15 of quiet.

16 PROSPECTIVE JUROR: Sorry. I'm comfortable
17 with it.

18 MS. WADE: My last catchall after I check
19 with my co-counsel to make sure I haven't forgotten
20 anything. If you can just give me one moment, please.

21 Some people are more believing. We go back
22 to that Nigerian prince. None of you said you're
23 gullible. Is there anybody here who would call themselves
24 a skeptic? Someone who is going to question everything,
25 who is never going to believe anything unless you see with

APPENDIX S

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
	)	CR 2015-106788-001 DT
vs.)	
	)	1 CA-CR 18-0295-AP
ALLYN AKEEM SMITH,)	
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 29, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 7

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 PROSPECTIVE JUROR: Yes.

2 MR. EISENBERG: Correct? In your
3 questionnaire. That was Question 59. Are you able, with
4 everything we've talked about, able to consider a death
5 sentence?

6 PROSPECTIVE JUROR: Yes.

7 MR. EISENBERG: Okay. All right. Anyone
8 else that we haven't spoken to about that?

9 All right. Again, if you are selected to
10 sit on the jury, you have a duty to deliberate. Are any
11 of you unwilling to discuss your opinions with your fellow
12 jurors?

13 Let me ask. Detail-oriented versus big
14 picture. Who would consider themselves detail-oriented?
15 If you would hold up your cards. 205, 211, 213, 214, 200,
16 228, 229, 244, 252. How about big picture? You're kind
17 of both?

18 PROSPECTIVE JUROR: Your details support the
19 big picture.

20 PROSPECTIVE JUROR: Yeah.

21 MR. EISENBERG: 211, the same? 213, 214,
22 all the same? 222, are you big picture, detail-oriented,
23 or both?

24 PROSPECTIVE JUROR: Well, I agree with what
25 the gentlemen behind me just said. Details certainly

1 paint the big picture. They're part of the pieces for the
2 big picture, but I think I'm a more big-picture thinker
3 than focusing on --

4 MR. EISENBERG: Than on the minute details?
5 Okay. Same for you, 226? Same with 248 and 252.

6 Yesterday one of the jurors we spoke with
7 used to jump out of airplanes with a parachute. I would
8 consider that person to be a risk taker. Realizing that
9 that is kind of an extreme, anyone here consider
10 themselves to be a risk taker? I realize -- 228, you want
11 to give me an example?

12 PROSPECTIVE JUROR: I haven't jumped out of
13 a plane, but, yeah, I do, you know, a lot of stuff, you
14 know, all types of different types of training. I do, you
15 know, everything. I'm out and about. Heights is not my
16 thing, but yeah.

17 MR. EISENBERG: Okay. And I think another
18 person said they considered themselves a risk taker
19 because they like to gamble, okay? Anybody like that?
20 No? Okay.

21 Does anyone here have trouble making
22 decisions? Because certainly if you are picked to be on
23 the jury, one of the things that we are going to ask you
24 to do is make a decision. Everyone can make a decision.

25 Anyone here would consider themselves to be

1 indecisive? And by indecisive, we are talking about big
2 things, you know, buying a house, buying a car. Even
3 where you may have backed out on an occasion or a wedding
4 because you are just not sure. Anybody like that? I see
5 no cards.

6 Is there -- and I realize if you are in a
7 marriage or committed relationship, you want to involve
8 your spouse or significant other in the decision-making
9 process, but is there anyone that can't make a decision
10 without either talking to their spouse or significant
11 other? I show no cards.

12 This is a two-part flip question, okay?
13 First, is there anyone who would describe themselves as
14 more skeptical than trusting?

15 PROSPECTIVE JUROR: I would be kind of both
16 on this one.

17 MR. EISENBERG: Kind of both ways?

18 PROSPECTIVE JUROR: Yes.

19 MR. EISENBERG: 228. Anybody else? How
20 about more trusting than skeptical? 205, 222, 226, 213,
21 214, 252. You have a question?

22 PROSPECTIVE JUROR: A little of both.

23 MR. EISENBERG: A little of both?

24 PROSPECTIVE JUROR: Yes.

25 MR. EISENBERG: That's kind of some of the

1 comments we've gotten, where it's, I'm trusting to a
2 point, but I want to see what all there is. And most of
3 you are nodding your heads affirmatively.

4 PROSPECTIVE JUROR: To follow up with that,
5 I'm trusting until you give me a reason not to be.

6 MR. EISENBERG: So don't lie to me. Again,
7 people nodding their heads. Anybody here would consider
8 themselves to be gullible? No.

9 All right. A couple of questions I want to
10 ask you that may be a little more personal than the
11 general ones that I just asked about. We are not trying
12 to pry. We just want to ask some general questions
13 because of the case that we are going to be dealing with.

14 So first, have you or anyone close to you
15 been involved in a committed relationship that did not end
16 well? For example, it was a messy breakup. There might
17 have been child custody or child support issues. Anybody
18 like that? 205, what was your situation, sir?

19 PROSPECTIVE JUROR: I was married and
20 divorced. My wife just came home one day and said she was
21 going to go live with her boyfriend. Obviously, we had
22 some custody issues over time. And it's been a lot of
23 years, over a decade, but to be honest, I'm still bitter
24 about it at times.

25 MR. EISENBERG: Would you be able to set

1 that aside in the course of this trial and make a decision
2 based --

3 PROSPECTIVE JUROR: Absolutely. My problems
4 are my problems.

5 MR. EISENBERG: Thank you, sir. I
6 appreciate it. In the back row, no one else? Front
7 Row, 226, yes, ma'am.

8 PROSPECTIVE JUROR: Divorced.

9 MR. EISENBERG: Problems with the divorce?

10 PROSPECTIVE JUROR: The divorce went well.
11 It was later there were some custody issues and taking him
12 back to court.

13 MR. EISENBERG: Was it a situation where you
14 had to go back to court?

15 PROSPECTIVE JUROR: He took me back to
16 court. He wanted lower child support.

17 MR. EISENBERG: And as you sit here today,
18 are you able to divorce -- are you able to separate
19 yourself from that situation?

20 PROSPECTIVE JUROR: Yes.

21 MR. EISENBERG: Thank you, ma'am. Anyone
22 else? 244.

23 PROSPECTIVE JUROR: I had some custody
24 issues with my ex, but --

25 MR. EISENBERG: No issues today?

1 PROSPECTIVE JUROR: No.

2 MR. EISENBERG: Okay. Thank you.

3 Anyone, either yourself or someone close to
4 you, been involved in a committed relationship where there
5 have been allegations of infidelity? Okay. 226.

6 PROSPECTIVE JUROR: My first marriage.

7 MR. EISENBERG: Okay. What you were talking
8 about before?

9 PROSPECTIVE JUROR: Yes, yes.

10 MR. EISENBERG: Again, any issues?

11 PROSPECTIVE JUROR: It's behind me.

12 MR. EISENBERG: Okay. 205, you were talking
13 about --

14 PROSPECTIVE JUROR: Yeah. I was going to
15 say it's the same situation. There was obviously
16 infidelity at the end part of my marriage, but that's just
17 how it is.

18 MR. EISENBERG: Okay. All right. Thank
19 you, sir. 222, yes, sir.

20 PROSPECTIVE JUROR: Yes. Several years ago
21 there was -- 25-plus years ago there was an incident.

22 MR. EISENBERG: Okay. You've moved beyond
23 that?

24 PROSPECTIVE JUROR: Way beyond that.

25 MR. EISENBERG: Any issues at this point in

1 time?

2 PROSPECTIVE JUROR: No.

3 MR. EISENBERG: Thank you, sir.

4 Have you or anyone close to you ever
5 submitted to or been asked to submit to a paternity test?
6 I see no cards.

7 Have you or anyone close to you had negative
8 feelings about paying child support? I show no cards.

9 How about anyone, either yourself or close
10 to you, ever took any type of step to avoid paying child
11 support, like quitting a job, moving out of town, being
12 paid under the table, or anything like that? I show no
13 cards.

14 Now, have you or anyone close to you ever
15 been involved in a relationship where there's been
16 domestic violence? 226, is that dealing with your
17 first --

18 PROSPECTIVE JUROR: No. It was my daughter
19 and her marriage.

20 MR. EISENBERG: Okay. And was she the
21 victim?

22 PROSPECTIVE JUROR: She was the victim, and
23 the baby was the victim.

24 MR. EISENBERG: Okay. Did things work out
25 in a positive way for them?

1 PROSPECTIVE JUROR: Yes.

2 MR. EISENBERG: Anyone else?

3 How about have you been in a relationship
4 where there was emotional abuse? Same? 226, same?

5 PROSPECTIVE JUROR: First marriage.

6 MR. EISENBERG: Okay. All right. You were
7 able to get past that?

8 PROSPECTIVE JUROR: Yes.

9 MR. EISENBERG: And the abuse was against
10 yourself?

11 PROSPECTIVE JUROR: Yes, and the children.

12 MR. EISENBERG: And the children. Okay.

13 Thank you, ma'am. 222, yes, sir.

14 PROSPECTIVE JUROR: This goes way, way back.
15 I'm 63 years old, and my father and mother were divorced
16 when I was 18 months old. I don't remember. I have no
17 recollection of any of that, but from what I understand it
18 was because of the abuse, but --

19 MR. EISENBERG: That's not anything you had
20 to deal with?

21 PROSPECTIVE JUROR: It's not anything I had
22 to deal with that I have a memory of.

23 MR. EISENBERG: And after you began to grow
24 up and all, it's not something that was prevalent?

25 PROSPECTIVE JUROR: No.

1 MR. EISENBERG: Thank you, sir.

2 Let me ask you this. You see TV and movies
3 and all, and people watch, you know, criminal trials on TV
4 and in movies. Is there anyone here that would
5 automatically vote not guilty if the State did not bring
6 in a confession? I show no cards.

7 Do you have a question?

8 PROSPECTIVE JUROR: Huh-uh.

9 MR. EISENBERG: How about, is there anyone
10 who would automatically vote not guilty if the State
11 didn't provide an eyewitness to the crime? I show no
12 cards.

13 How about, would anyone automatically vote
14 not guilty if the State didn't provide you with DNA or
15 fingerprints? I show no cards.

16 As I told you previously, the law sets forth
17 very specific factors that make a person eligible for the
18 death penalty. Are each of you willing to consider the
19 aggravating factors that the Judge will give you in order
20 to make a decision as to life or death? Is there anyone
21 that wouldn't be able to do that? I show no cards.

22 And you understand that that goes to the law
23 as to every phase of the trial, the guilt phase, the
24 aggravation phase, and the penalty phase. Anyone who
25 would have an issue with that? I show no cards.

1 Do I have a couple of minutes, Judge?

2 THE COURT: Yes, you have about 10 minutes.

3 MR. EISENBERG: Okay. All right. Let me I
4 quickly ask, Juror Number 200.

5 Sir, in your questionnaire on Page 9, you've
6 said that you don't agree that the testimony of a law
7 enforcement officer is no different than anyone else.

8 PROSPECTIVE JUROR: I did.

9 MR. EISENBERG: Okay. And you said officers
10 are trained to be more observant and subjective than the
11 general population.

12 PROSPECTIVE JUROR: That's right.

13 MR. EISENBERG: Okay. As you sit here
14 today, is that what your thought process is?

15 PROSPECTIVE JUROR: Yes. There was a
16 follow-up question to that that I answered as well, but I
17 still agree with that.

18 MR. EISENBERG: Okay. And the follow-up
19 question was, could you follow the law even if you
20 disagree with it.

21 PROSPECTIVE JUROR: I believe I can. I just
22 think that they're trained for it. So like if we -- if an
23 officer and myself saw the exact same thing, he or she
24 would probably have more details than I would, I would
25 assume.

1 MR. EISENBERG: If the Judge instructed you
2 the law makes no distinction, would you be able to follow
3 that law?

4 PROSPECTIVE JUROR: Yes.

5 MR. EISENBERG: Thank you, sir. And
6 Juror 205, sir. On Page 4 of your questionnaire there was
7 a question about employment. And that's as to your spouse
8 or significant other. You indicated that that person is
9 employed part-time.

10 PROSPECTIVE JUROR: My girlfriend, who
11 currently lives with me, works for Fry's. Her technical
12 status is part-time. She still works a fairly heavy
13 schedule, but it's generally never 40 hours a week.

14 MR. EISENBERG: That's fine. It's Fry's
15 food stores?

16 PROSPECTIVE JUROR: Yes.

17 MR. EISENBERG: Thank you, sir. You
18 indicated that you have a grandchild that lives with you?

19 PROSPECTIVE JUROR: Yes.

20 MR. EISENBERG: And how did that grandchild
21 come to live with you?

22 PROSPECTIVE JUROR: I refer to her as my
23 granddaughter, but she's actually my girlfriend's
24 granddaughter. Her daughter is a little bit less than
25 stable. When she was probably a little less than two

1 years old, her daughter was essentially homeless so she
2 came to stay with us. Since then, my girlfriend has got
3 custody of her, and we're raising her as of today.

4 MR. EISENBERG: You indicated that you have
5 friends that have been involved in the criminal justice
6 system.

7 PROSPECTIVE JUROR: Lots of them.

8 MR. EISENBERG: Here in Maricopa County?

9 PROSPECTIVE JUROR: Yes.

10 MR. EISENBERG: Okay. Anything about the
11 way that any of your friends have been treated by the
12 police, the prosecutors, defense attorneys, or Judge that
13 would make it difficult for you to be fair and impartial?

14 PROSPECTIVE JUROR: You know, I don't know
15 about my friends' instances. They, most of them, my
16 friends that have been involved will gladly tell you now
17 that they were involved or deserved whatever they got.

18 Also on that questionnaire is a question
19 asking about groups. And I belonged to a motorcycle club
20 for nearly a decade. I know that I saw what I felt was
21 inappropriate behavior towards members of the motorcycle
22 club community for a lot of years, abuse of their
23 authority and, you know, just things that I felt were
24 general harassment.

25 So I don't know if I would hold every

1 officer to that standard. There are good and not so great
2 people in every profession. I'm assuming policemen. So,
3 you know, I wouldn't say that would affect me, but I don't
4 know if I would be 100 percent honest with myself if I
5 said that it didn't affect me somehow.

6 MR. EISENBERG: And then you also indicated
7 on Page 16 that for the death penalty, for you to consider
8 the death penalty, the situation would have to be heinous
9 or extreme?

10 PROSPECTIVE JUROR: Yes. I just would think
11 that like, you know, I understand that there's the law and
12 I could follow whatever the guidelines were set by the
13 law. So if it was, you know, guidelines were given to me,
14 I feel like I could do it, but I do believe that
15 personally that, you know, I don't have a problem with the
16 death penalty, but it would have to be a situation that I
17 felt was particularly heinous or particularly, you know,
18 maybe a lot of forethought given to it or something of
19 that nature to be able to consider the death penalty.

20 MR. EISENBERG: If the Judge suggests to you
21 or instructs you on something different, would you be able
22 to follow the Judge's instructions, or are your feelings
23 so strong in yourself that you would have a difficult time
24 following the instruction?

25 PROSPECTIVE JUROR: No, I could follow the

1 instructions. I mean, I understand the concept of
2 legality and the parameters that are set within, if --
3 whatever, if -- you know, if somebody were to be found
4 guilty and they were to fall within those parameters, I
5 wouldn't have an issue with trying to -- or not trying,
6 but I wouldn't have an issue with deciding if they fell
7 within those parameters and finding the death penalty
8 appropriate.

9 MR. EISENBERG: Thank you, sir. Juror 211.

10 PROSPECTIVE JUROR: Yes.

11 MR. EISENBERG: You told us you had an issue
12 with doctors' appointments. Have you been able to clear
13 that up?

14 PROSPECTIVE JUROR: There's a couple of
15 appointments that I really haven't cleared up simply
16 because I didn't know if I was chosen or not. So I didn't
17 want to cancel anything until I find out for sure.

18 MR. EISENBERG: Okay. So at this point, do
19 you have a conflict?

20 PROSPECTIVE JUROR: Not at this time.

21 MR. EISENBERG: Okay. You also indicated in
22 your questionnaire that your nephew had been convicted of
23 a crime.

24 PROSPECTIVE JUROR: Uh-huh.

25 MR. EISENBERG: Do you know when and where?

1 PROSPECTIVE JUROR: You know, I really don't
2 know the specifics because I'm not really that close to
3 them.

4 MR. EISENBERG: And then you indicated that
5 someone was an Air Force veteran?

6 PROSPECTIVE JUROR: Yes.

7 MR. EISENBERG: Who was that?

8 PROSPECTIVE JUROR: My husband.

9 MR. EISENBERG: On Page 14, Question 45,
10 with respect to the death penalty, you indicated that you
11 were not sure; do you see that?

12 PROSPECTIVE JUROR: Oh, how do I feel about
13 the death penalty, yeah.

14 MR. EISENBERG: Yes.

15 PROSPECTIVE JUROR: I just would definitely
16 just -- I would have to look at all the evidence that's
17 presented and then make a decision based upon what's
18 presented and look at the overall picture.

19 MR. EISENBERG: Okay. And when you talk
20 about on question 59, there are instances where mercy is
21 applicable; do you see that?

22 PROSPECTIVE JUROR: Uh-huh.

23 MR. EISENBERG: On Page 17?

24 PROSPECTIVE JUROR: Uh-huh.

25 MR. EISENBERG: Would you be able, if

1 everything pointed in one direction, to either give a life
2 sentence or a death sentence?

3 PROSPECTIVE JUROR: Yes, I believe I can.

4 MR. EISENBERG: Juror 213. You have a prior
5 divorce?

6 PROSPECTIVE JUROR: Yes.

7 MR. EISENBERG: Any issues with that?

8 PROSPECTIVE JUROR: My husband -- or my
9 ex-husband -- got angry at the end, and he did hit me.
10 And he went to court for that, but I don't know what the
11 end result was because we were separated.

12 MR. EISENBERG: How about for you? Any
13 issues for you at this point?

14 PROSPECTIVE JUROR: No. I just separated
15 myself from that and moved across the country.

16 MR. EISENBERG: Thank you, ma'am.
17 Juror 214, sir. You indicated in 1990 you had a
18 possession of marijuana.

19 PROSPECTIVE JUROR: Yes.

20 MR. EISENBERG: Was that here in Phoenix?

21 PROSPECTIVE JUROR: Yes.

22 MR. EISENBERG: Any problem with the police
23 agency, the prosecutor, anything like that?

24 PROSPECTIVE JUROR: No.

25 MR. EISENBERG: Were you actually given a

APPENDIX T

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

STATE OF ARIZONA,	}	CR-18-0295-AP
Plaintiff,		
vs.		CR 2015-106788-001
ALLYN AKEEM SMITH,		
Defendant.		

Phoenix, Arizona
April 3, 2018

BEFORE: The Honorable MICHAEL W. KEMP, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Jury Selection)

Reported by: Mr. Scott M. Coniam, RMR, CRR
Certified Court Reporter #50269

1 male, not a female.

2 THE COURT: Right.

3 MS. WADE: And when he actually spoke during
4 voir dire, he was in that first panel, he actually asked
5 to speak in privately and he raised several issues. He
6 said he had to do a lot of soul searching. He couldn't
7 make a decision. He did not want that weight. He would
8 hesitate and say that he could. He said, I lean towards
9 life. I could. I think so. Soul searching. Can't make
10 a decision. The evidence would be difficult.

11 So, Your Honor, we believe that all of those
12 are race-neutral reasons for juror number 14.

13 With regards to juror number 211, juror
14 number 211 actually checked "other" on her racial form on
15 the biographical information. She has a masters in
16 theology. She is a human services counselor. Human
17 services counselors typically believe in redemption. She
18 does counseling for domestic violence and she does
19 counseling for addiction. All of those things are about
20 forgiveness and all of those things are about the
21 redemption of a human.

22 And in addition, Your Honor, she also had
23 some medical issues that she was concerned about. She
24 raised them in both, I believe, her questionnaire, the
25 initial screening. And I believe she may still have some

APPENDIX U

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

STATE OF ARIZONA,	}	CR-18-0295-AP
Plaintiff,		
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(Jury Selection)

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Certified Court Reporter #50269

1 put on the record?

2 MS. WADE: No, Your Honor.

3 THE COURT: All right. Mr. McCarthy.

4 MR. MCCARTHY: Your Honor, I have nothing
5 else to add.

6 THE COURT: All right. The Batson motions
7 are denied. I find that the State has made race-neutral
8 reasons for striking them.

9 I remember juror 14 very clearly being very
10 hesitant about being able to serve on this. We talked to
11 him for some period of time. And I believe we spoke to
12 him privately.

13 211 there were race-neutral reasons given.
14 She does have hardships with regard to her health, at
15 least to a certain degree.

16 So I find that the Batson challenges shall
17 be denied.

18 So let's call them in.

19 (The prospective trial jurors entered the
20 courtroom.)

21 THE COURT: Thank you. Please be seated.

22 All right. Ladies and gentlemen, what we're
23 going to do at this point -- show the presence of all the
24 jury members, for the record.

25 We're going to call the 18 people that are

APPENDIX V

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

STATE OF ARIZONA,)	
)	
Plaintiff,)	
	)	CR 2015-106788-001 DT
vs.)	
	)	1 CA-CR 18-0295-AP
ALLYN AKEEM SMITH,)	
)	
Defendant.)	
)	
)	

Phoenix, Arizona
March 29, 2018

BEFORE THE HONORABLE MICHAEL W. KEMP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 7

ORIGINAL

REPORTED BY:

HOPE J. YEAGER, CR, RPR
Certified Court Reporter #50910
yeagerh@superiorcourt.maricopa.gov

1 instructions. I mean, I understand the concept of
2 legality and the parameters that are set within, if --
3 whatever, if -- you know, if somebody were to be found
4 guilty and they were to fall within those parameters, I
5 wouldn't have an issue with trying to -- or not trying,
6 but I wouldn't have an issue with deciding if they fell
7 within those parameters and finding the death penalty
8 appropriate.

9 MR. EISENBERG: Thank you, sir. Juror 211.

10 PROSPECTIVE JUROR: Yes.

11 MR. EISENBERG: You told us you had an issue
12 with doctors' appointments. Have you been able to clear
13 that up?

14 PROSPECTIVE JUROR: There's a couple of
15 appointments that I really haven't cleared up simply
16 because I didn't know if I was chosen or not. So I didn't
17 want to cancel anything until I find out for sure.

18 MR. EISENBERG: Okay. So at this point, do
19 you have a conflict?

20 PROSPECTIVE JUROR: Not at this time.

21 MR. EISENBERG: Okay. You also indicated in
22 your questionnaire that your nephew had been convicted of
23 a crime.

24 PROSPECTIVE JUROR: Uh-huh.

25 MR. EISENBERG: Do you know when and where?

APPENDIX W

JUROR NUMBER: 57

JURY QUESTIONNAIRE

You have been selected for a pool of prospective jurors for the criminal trial entitled, State v. Allyn Smith. The State has alleged that on December 11, 2015, Allyn Smith shot Khalli Lawrence in the back of the head, killing her. This occurred at 1800 W. Liberty Lane in Phoenix, Arizona. The State further alleges that Allyn Smith shot and wounded Khi'yah Smith, an 8 week old infant. The baby was the daughter of Allyn Smith and Khalli Lawrence. The State has charged the defendant with Murder in the First Degree and Child Abuse. Allyn Smith has pled not guilty to the charges.

In order to assist the Court and the parties in selecting a fair and impartial jury, the Court requests that you complete the following questionnaire as completely and accurately as you reasonably can. Please understand that your answers to the questions are under oath and under penalty of perjury. Everyone has unique life experiences, associations with other people or organizations, and personal beliefs. Each may influence a person's ability to be a fair and impartial juror. These questions are designed to identify experiences, associations or beliefs which are important to determine whether you are best qualified to serve as a juror in this case. There are no right or wrong answers. Please answer the questions as candidly as you can. If you might not be able to be a fair and impartial juror to both sides in this case, it is important that you say so now, rather than later during or after trial. Do not leave any question blank.

Please use a pen and do not write on the back side of the questionnaire. Do **not** discuss the case or contents of the questionnaire with anyone, including your fellow jury candidates, family or friends. The answers must be yours alone. However, if you have questions about the questionnaire, please ask the court to assist you. You will be able to discuss the case and ask questions later when the judge, the defendant and the lawyers ask you follow-up questions.

Many of the questions are personal and sensitive in nature. By using this questionnaire we hope to avoid the need to ask each prospective juror every one of the questions in open court. This should help the jury selection process go more smoothly and efficiently. If a question does not apply to you, write "n/a" (not applicable).

Your answers will be viewed only by the judge, the defendant, and the attorneys involved in the case. Your questionnaire will not be made public. In court we will refer to you only by your juror number. The page containing your phone number(s) will be kept by the Court and will not be given to the defendant or the attorneys. Please make sure to sign and date the last page and put your juror number with your signature.

Thank you.

Questionnaire

1. Name: Madelyn Ellsworth Juror Number (assigned by the Court): 57
2. Age: 24 Gender: Female
3. Area in which you live (not a specific address): Mesa, AZ, 85203
4. Place of Birth: Mesa, AZ
5. Marital status: Please check all that apply:
 Single, never married Married Divorced Widowed
 Remarried
6. What is your educational background?
 Some high school High school graduate
 Some college Community college Degree earned: _____
 Technical school College graduate Degree earned: _____
 Post-graduate degree Major area of study: _____
If a college graduate, what was your major? _____
Other educational programs (vocational schools, night schools, part-time study, certificate programs) you have attended: _____
7. Current employment status:
 Employed full-time Unemployed - looking for work
 Employed part-time Unemployed - not looking for work
 Self-employed Retired
 Homemaker Other
 Student
8. a. What is your occupation (or what was it, if retired or unemployed?)
Customer Service
- b. By whom are (were) you employed? Americopy (Nathan)
- c. What are (were) your specific duties and responsibilities on the job?
Production Supervisor / Cashier
- d. How long have (did) you work(ed) there? 2 years

9. Current employment status of spouse/significant other: (If widowed, divorced or separated, please complete the following questions as to your most recent spouse/mate.)

- | | |
|--------------------------|---|
| _____ Employed full-time | _____ Unemployed - looking for work |
| _____ Employed part-time | _____ Unemployed - not looking for work |
| _____ Self-employed | _____ Retired |
| _____ Homemaker | _____ Other |
| _____ Student | |

10. If married, what is your spouse's occupation (or what was it, if retired or unemployed?) and who is/was their employer? _____

11. Do you have any children? No If yes, how many? _____

Natural _____ Step-children _____ Adopted _____ Foster _____

Please tell us the following about your children, foster children and/or stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?

12. Have you or your current spouse/partner ever served in the military?

_____ Yes No

If yes, please list:

Branch of Service: _____

Duty Assignment: _____

13. What civic, social, political, religious, professional, fraternal, neighborhood or trade clubs or organizations do you belong to or have you belonged to in the past, and what office, if any, do you or did you hold in each organization? Religious: Latter Day

Saint of the Church of Jesus Christ

14. Are you a member of any group, organization, or association, which advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system (e.g., victim's rights or defendant's rights)?

_____ Yes No

If "Yes", briefly describe that group, organization, or association and the nature of your participation: _____

15. Have you, your spouse or any close family member ever applied to, worked for, or had training with any of the following? Check all that apply and note if it was you, your spouse or a family member.

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?

_____ b. Any private firm involved in the investigation of civil or criminal matters?

_____ c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?

_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?

- _____ e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
- _____ f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
- _____ g. A psychologist, psychiatrist, mental health center?
- _____ h. A social work or social service agency, or counselling service?
- _____ i. A treatment program for alcohol, drug or any other substance abuse?
- _____ j. Medical, nursing, or EMT services?

If "yes" to any of the above, please provide details: _____

This trial is expected to last approximately sixteen (16) weeks once jury selection has been completed. The daily schedule generally will be from 10:30 AM to 12:00 Noon and from 1:30 PM to 4:30 PM, Monday through Thursday. Rarely will any block of testimony exceed 90 minutes. Short breaks will occur at those intervals. Trial will not be held on Fridays.

16. Is there anything about the expected length of the trial or the daily schedule that would create an undue hardship for you? _____ Yes No

If "Yes", please explain:

17. Are you taking any medication that might affect your ability to listen to and evaluate the evidence in this case? _____ Yes No

If "Yes", please explain: _____

18. Do you have any health problem, either physical or emotional, which you think might affect your ability to listen to and evaluate the evidence in this case?

_____ Yes No

If "Yes", please explain: _____

19. Is there anything else, whether personal or business related, or any other circumstance in your life, that you feel might affect your ability to listen to and evaluate the evidence in this case? Yes No

If "Yes", please explain: _____

20. Where do you get your news? (i.e., television, newspaper, internet) Internet,
Television

21. Do you recall hearing or reading anything about this case? Yes _____ No
If yes, what do you recall about the case? _____

If yes, what are the source or sources of your information and the approximate number of times you have seen, heard or read anything about this case (e.g., newspaper, radio, TV, conversation.) Include any conversations you may have overheard: _____

If yes, can you set aside any knowledge you have about this case and base your decision solely on the evidence presented in court? Yes _____ No _____

22. Is there anything about alleged facts of this incident which could affect your ability to be a fair and impartial juror in this case? _____ Yes No
If yes, please explain: _____

23. The following people may be called as witnesses in the trial or their names may be mentioned during the trial:

<p>Phoenix Police Department Det. Darren Udd (retired) Det. Paul Dalton Det. Shannon McGee Det. Helene Balmir Det. Kyle Eisentraut Det. Ray Roe Det. Josh Champion Det. Geoffrey Bergeron Det. Cristie Eisentraut Sgt. Eric Lumley Off. Eric Zurcher Off. Christopher Parese Off. Leon Sexton Off. Benjamin Geanetta Officer Eric Burke Off. Matthew Gile</p>	<p>Phoenix Police Department Crime Lab: Javier Sandoval Elaine Finley Vanetta Esperum (former crime lab employee) Katie Mason Erin Hickson John Kinnamen Laura Alzubi Sean Conner (currently with Mesa Police Dept.) Tara Zuckerbrow Kyle Mueller Kendra Eckard Christina Dominguez (former crime lab employee)</p>	<p>Other: Monica Nelson Randy Raymond Kyshia Ward Tashae Jones Tationnya Moore Kathy McGill Veronica Black Heather Meinhardt Robert Marley Jonathan Farko Devante Clarke Kristi Albert Jowharah Hall Rajeeyah White Ana Lindfors Shaylana Tillie Maria Rosales Traci Mickelson Betty Polanski Monica Moore Leonard Thurman Austin Lawrence Allyn Smith Sr. Aaliyah Brown Deborah Smith Antoinette Higginbotham Kisha Spelman Alexandria Jones Dorothy Williams Erik Mosely Glenda Sulley Robin Nagel Diane Beecroft Brian Crowder Charles Schnoor Clarissa Granillo Ryanne Pinney Cierra Traynor Tearah House aka Viney Gilford Curley</p>
<p>Maricopa County Sheriff's Office Travis Sedlacek Geraldine Edgar Lisa Evans</p>	<p>Phoenix Fire Department Kellie Bowers Dankulic Sheena Broek (retired) Cade Swallows</p> <p>Office of the Medical Examiner Dr. John Hu</p>	
<p>Tempe Police Department Edward Hache Michelle Solmen</p>	<p>Experts: Dr. Kurtis Staples Dr. James Eisenberg Dr. Krim Lacey Dr. Michael Grandner Dr. Steven Pitt</p>	
<p>Maricopa County Attorney's Office Barry Giesemann</p>		

Do you know any of these people or recognize their name? _____ Yes No

If yes, please list the name and briefly describe the nature of your association or acquaintance with the person, or the reason you recognize the name: _____

24. Have you, a family member, or a close personal friend ever been a **victim** of any criminal act?

_____ Yes No

If yes, was the incident reported to the police? _____ Yes _____ No

Briefly describe the incident(s) and, if other than yourself, the relationship of the person to you:

25. Have you, a family member, or a close personal friend ever been a **witness** to any crime?

_____ Yes No

If yes, briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

26. Have you, your spouse/partner, your child or any other family member, or a close personal friend ever been arrested for, charged with, or convicted of any crime other than minor traffic violations?

_____ Yes No

If "Yes", briefly describe the incident and, if other than yourself, the relationship of the person to you: _____

27. Have you ever personally known anyone who was murdered or killed other than by accident?

_____ Yes No

If your answer is "Yes," please explain:

28. Have you or any family member or close friend ever killed anyone, accidentally or otherwise? _____ Yes No

If your answer is "Yes," please explain:

29. Have you ever testified in a criminal trial for any reason? _____ Yes No

If yes, what was the reason for your testimony? : _____

30. Will you accept, without reservation, the Judge's order that while this case is going on you cannot speak with anyone about the case or access or use the internet to gather information of any kind regarding this case and the trial? Yes No _____

31. Have you ever followed a criminal case either in the news or personally attended a trial? Yes _____ No

If yes, which trial or trials have you followed? _____

32. Have you ever studied, had training, or work experience in psychology, psychiatry, psychotherapy, counseling, sociology, or any related subjects? _____ Yes No

If yes, please describe: _____

33. What is your opinion about the ability of psychologists or psychiatrists to identify and explain the reasons for human behavior in criminal trials?

I trust their opinion. I believe they are well educated about the way a human mind can function.

34. Have you, a member of your household, close relative or close personal friend ever received treatment (medication, counseling or other assistance) from a mental health provider or facility of any kind? Yes _____ No

If yes, please explain:

My sister was bullied in school. She received help from a therapist who diagnosed her with bipolar disorder.

35. Was the mental health treatment provided helpful to you, the family member, or close personal friend? Yes No

Please explain:

I believe my sister is a more stable adult thanks to past therapy.

36. Have you or any member of your immediate family or close personal friend ever been employed, or worked in a volunteer capacity in the field of mental health?

Yes No

If yes, please explain: _____

37. Have you or any member of your immediate family or close personal friend ever had a bad experience with anyone (counselor, psychologist, psychiatrist, or other therapist) in the field of mental health? Yes No

If yes, please explain: _____

38. Please state the number of times you have served on a jury, if any:

0

39. If you served on one or more **criminal** juries, when did you serve, what charges were involved and what was the verdict? _____

40. Was there anything about that prior jury experience that would make it difficult for you to again serve as a juror in this case: _____

41. The law provides that the testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. Do you agree with this law? Yes No _____
Can you follow this law even if you disagree with it? Yes No _____
If no to either question, please explain: _____

42. The law provides the State must prove every element of each charge beyond a reasonable doubt with its own evidence. The defendant in a criminal case does not have to present any evidence. Do you agree with this law?
_____ Yes No
Can you follow this law even if you disagree with it? Yes _____ No
If no to either question, please explain: _____

43. A person charged with a criminal offense has a constitutional right to remain silent and not testify at his trial. Do you agree with this principle of law?
 Yes _____ No
Can you follow this law even if you disagree with it? Yes _____ No
If no to either question, please explain: _____

44. You may be asked to view photographs, including autopsy photographs, which show some of the victim's injuries and blood. Will viewing these photographs affect your ability to serve as a fair and impartial juror? _____ Yes No
If yes, please explain: _____

PENALTY PHASE

If the defendant is found guilty of First Degree Murder, the jury will have to decide whether the defendant will be sentenced to life imprisonment or receive the death penalty. This is called the penalty phase of the trial.

The penalty phase of the trial may contain two stages. The State must first prove beyond a reasonable doubt that one or more aggravating circumstances exist for a defendant to be eligible for a death sentence. Aggravating circumstances are set forth in the law. The law allows only very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of Murder in the First Degree eligible for a death sentence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the existence of that aggravating circumstance.

If you do not unanimously find that the State has proved that at least one of these aggravating circumstances exists beyond a reasonable doubt, the death penalty cannot be imposed. At that time, the jury will be discharged and the judge will impose a sentence of life in prison without the possibility of release.

If you unanimously find that the State has proved that at least one of the aggravating circumstances exists, the penalty phase of the trial moves to its second stage. Then the defendant has the opportunity to prove the existence of mitigation. Mitigation is a fact or circumstance that in fairness or mercy may be considered as extenuating or reducing the degree of moral culpability or blameworthiness. The defendant must prove any mitigating fact by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that a fact or circumstance is more likely true than not. A finding that some mitigation exists need not be unanimous and you all need not agree on what particular mitigation exists.

The mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison. A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. Each juror must determine whether, in that juror's individual assessment, the mitigation is of such quality or value that it warrants leniency in a particular case.

If you unanimously find the mitigation is sufficiently substantial to call for a life sentence, the Court will sentence the defendant to life imprisonment without the possibility of release.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, you must impose the death penalty.

If you unanimously find that no mitigation exists or that the mitigation is not sufficiently substantial to call for a life sentence, then the judge will order that the defendant will be put to

death based on the jury's decision. A jury's decision to sentence a defendant to life in prison or death is not a recommendation, it is binding on the Court.

45. How do you feel about the death penalty? It may be
necessary dependent on the crime.

46. What, if anything, have you heard about the Arizona death penalty process? What is the source of your information (news, internet, work, etc.)?
Not sure on the process.

47. Have you ever felt differently about the death penalty than you do now?
 Yes X No

If yes, please explain: _____

48. Do you belong to any group or have you contributed to any group that advocates either the increased use of or the elimination of the death penalty? Yes X No

If yes, please describe the group and the extent of your participation: _____

49. The law allows very specific aggravating circumstances to be used, if proven beyond a reasonable doubt, to make a defendant convicted of First Degree Murder eligible for a death sentence. No other fact or detail about the case or the person accused may be considered as an aggravating factor. Do you agree with this law?
X Yes No

Can you follow this law even if you disagree with it? X Yes No

If either answer is no, please explain: _____

50. The law requires that aggravating circumstances be proven beyond a reasonable doubt. Mitigation, on the other hand, need only be proven by a preponderance of the evidence. Do you agree with this law?

Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

51. The law puts absolutely no restrictions on what may be considered as mitigation. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Do you agree with this law? Yes No

Can you follow this law even if you disagree with it? Yes No

If either answer is no, please explain: _____

52. A decision to impose a life or death sentence is a personal, moral decision that is made by each individual juror. Do you agree with this law?

Yes No

If the answer is no, please explain: _____

53. Mitigating circumstances are not an excuse or a defense to murder but are factors that in fairness or mercy may reduce the defendant's moral culpability, and are considered by the juror in deciding whether to impose a life sentence or a death sentence. Mitigation can be found anywhere in the case if a juror decides that the defendant

deserves mercy or leniency based on the mitigation found or if the juror simply does not believe that the facts of the offense warrant a death sentence. Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense. If you convicted a defendant of first degree, premeditated murder, would you be able to meaningfully consider mitigation?

Yes No

If no, please explain:

54. If you are selected for this jury, you will be entirely responsible for your individual, moral decision whether to impose a life or a death sentence. You, the juror. Not the judge. Not the prosecutor. Not the defense attorney. Not the defendant. Is that a responsibility you are willing to accept?

Yes No

If no, please, explain: _____

55. The financial cost of either life in prison or the death penalty cannot be considered by the jury in deciding punishment. Do you agree with this law?

Yes No

If no, please explain: _____

Can you follow this law even if you disagree with it? Yes No

56. Do you believe that any person who kills another should **never** be sentenced to death?
 Yes No

Please explain: I believe certain extreme crimes are punishable by death.

57. Will you, for whatever reason, always vote **against** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: _____

58. Will you, for whatever reason, always vote **for** the death penalty without considering the evidence and the instructions of law that will be presented to you?

____ Yes No

If your answer is yes, please explain: _____

59. Do you believe that a person who is convicted of First Degree Murder should **always** be sentenced to death? ____ Yes No

Please explain: In certain certain circumstances, I believe some individuals may better improve themselves by serving time in jail or prison.

60. You will be instructed that the jurors must accept and follow the law as instructed by the judge, whether or not you personally agree with that law. Are you willing to follow this instruction? Yes ____ No

If no, please explain: _____

61. Do you have any personal, moral, religious, philosophical or conscientious objections to the imposition of the death penalty? Yes ____ No

If your answer is yes, please explain: I believe that death penalty is not always the answer to a crime.

62. Are your views regarding the death penalty, whether based on moral, philosophical, religious or any other grounds, so strongly held by you so that you will be prevented from performing your sworn duty to follow the law and applying it to the facts of this case? Yes No

If your answer is yes, please explain:

63. Would the fact you are being asked to judge the guilt or innocence and/or decide life or death for another person, affect your ability to be fair and impartial?

Yes No

Please explain: I will be fair based on evidence presented to me.

64. Please circle the letter(s) of any statement(s) that describe you:

a. I like assuming a leadership role in a group of people.

b. I tend to step in and take an active role in solving disagreements between people.

c. I tend to "speak my mind" in group discussions.

d. I prefer to listen rather than speak in group discussions.

e. I dislike being involved in group discussions where there are disagreements.

65. If you were selected as a juror, would you be able to treat the opinions of all jurors with respect, even if you disagreed with them?

Yes No

If no, please explain: _____

66. Is there any question in this questionnaire that you did not understand?

____ Yes No

If yes, which question or questions would you like clarified? _____

67. Are there any matters not covered by this questionnaire that you would like to discuss regarding your ability to serve on this jury? ____ Yes No

If yes, what would you like to discuss? _____

I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION THAT I HAVE PROVIDED IN THIS JURY QUESTIONNAIRE IS TRUE AND CORRECT.

3/19/18

Date

Modelyn Ellsworth 57

Signature of Juror and Juror number