

No. **23-6180**

ORIGINAL

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

IN THE

SUPREME COURT OF THE UNITED STATES

CLIFFORD ALLEN FOLLANSBEE — PETITIONER
(Your Name)

vs.

the STATE of ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Court of Appeals, Division One
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clifford Allen Follansbee
(Your Name)

Central Arizona Correctional and Rehabilitation Facility (CACRF)
P.O. Box 9600
(Address)

Florence, AZ 85132-9600
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Are Arizona Judiciaries violating the Due Process Clause of the Arizona and United States Constitutions, by practicing a Professional Norm that is contrary to Arizona law?

1. Is the Arizona Judiciary permissively allowing and participating in an ongoing Professional Norm designed to deny criminal defendants a fair trial?

a. Did the Coconino County Superior Court (Trial Court) provided the forum, by which, to administer "Structural Error"?

1) Is the Association Factor a component of the verdict?

2) Could Curative Instructions have remedied the prejudicial harm suffered?

b. Did the Arizona Court of Appeals provide a continual method to promote "Structural Error"?

c. Did the Arizona Supreme Court provide the means to promote "Structural Error"?

2. Did the Prosecution and Trial Court continually place in jeopardy the fundamental framework of Follansbee's criminal trial, resulting in "Structural Error"?

3. Should all criminal defendants from the period of December 1, 2003 to January 1, 2010 be granted "Retroactive Status" for the Arizona Supreme Court's failure to provide relief from an error of its own making?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Kristen Mayes, Attorney General of the State of Arizona

Dr. Ryan Thornell, Director of the Arizona Department of Corrections, Rehabilitation, and Reentry (ADCRR)

RELATED CASES

STATE v. BOLIVAR, 250 Ariz 213, 477 P.3d 672 (AZ.Ct. App., Div. Two 2020)
Z.W. v. FOSTER (SUPERIOR COURT), 244 Ariz 478, 422 P.3d 582 (AZ.Ct. App., Div. One 2018)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Laconino County Superior Court court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 9, 2023. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal

5th Amendment of the United States Constitution

14th Amendment of the United States Constitution

State

Article II, Section 2.1(A) of the Arizona Constitution

Article II, Section 2.1(C) of the Arizona Constitution

Article II, Section 2.1(D) of the Arizona Constitution

Article II, Section 4 of the Arizona Constitution

Arizona Revised Statute § 13-4401(19)

STATEMENT OF THE CASE

On October 26, 2006, the Coconino County Grand Jury (GJ-538-2006) returned a true bill charging six counts (I, III, V, VII, IX, and XI) of Sexual Assault, six counts (II, IV, VI, VIII, X, and XII) of Sexual Conduct with a Minor, one count (XIII) of Kidnapping, one count (XIV) of Sexual Abuse, one count (XV) of Obstructing Criminal Investigations or Prosecutions, one count (XVI) of Threatening or intimidating, and two counts (XVII, XVIII) of Furnishing Liquor to Minor. fnl. see, CR 2006-1045, Indictment. All counts were alleged to have occurred on the night of October 12th.

fnl. Follansbee apologizes to this Court, his attempt to provide a legible, current docket to navigate the historical filings, resulted in the Clerk of the Coconino County Superior Court providing the following, see, Appendix G, H.

On November 16th, the Coconino County Grand Jury (GJ-564-2006) returned a second true bill charging seventeen counts (I- XVII) of Sexual Exploitation of a Minor, one count (XVIII) of Sexual Assault, and one count (XIX) of Sexual Conduct with a Minor. see, CR 2006-1111, Indictment. All counts were alleged to have occurred on the night of October 12th.

On January 8, 2008, trial commenced, concluding with guilty verdicts on seven counts of Sexual Assault, seven counts of Sexual Conduct with a Minor, one count of Kidnapping, one count of Obstructing Criminal Investigation or Prosecution, and seventeen counts of Sexual Exploitation of a Minor. see, M.E., 01/18/2008. Subsequently, Follansbee was sentenced to 256 years. M.E., 02/13/2008.

On the first round of appeals, Follansbee filed the following: Arizona Court of Appeals (AZ.Ct. App.), CR 09-0290 PR.; pro se Petition for Post-Conviction Relief, see, M.E., 01/22/2013; AZ.Ct. App. granted review and denied relief, see, ICA-CR 13-0121 PRPC; the AZ.Sup.Ct. denied review, see, CR 14-0214 PR; Petition

under 28 U.S.C. § 2254 for a Writ of Habeas Corpus, see, 3:15-cv-08082-GMS (DMF); the Ninth Circuit Court of Appeals, see, 17-15827; and, a Writ of Certiorari, see, 17-9257.

On or about February 10, 2021, attention was brought about a case out of Maricopa County Superior Court, see, Appendix M, ¶4; Appendix N, ¶8. After request from a third party, Barkin Research, Id. ¶9, Follansbee received Z.W. v. FOSTER (SUPERIOR COURT), 244 Ariz 478, 422 P.3d 582 (AZ.Ct.App. 2018), see, Appendix O.

On May 5th, Follansbee filed a Notice Requesting and Successive Petition for Post-Conviction Relief. The State responded on July 21st, revealing Exhibit B, AZ Sup.Ct.'s order R 08-0037. Follansbee submitted a timely Reply and Motion to Amend. The SLAYTON Court dismissed the Petition "as untimely...[but] granted] defendant's motion to amend", see, Appendix D.

On October 6th, an Amended Notice Requesting and Successive Petition for Post-Conviction Relief was presented. Ultimately, the SLAYTON Court rendered an order denying relief, see, Appendix B.

On or about, March 31st, Follansbee was moved from Arizona Department of Corrections, Rehabilitation and Reentry - South Unit to Central Arizona Correctional and Rehabilitation Facility (CACRF), where per facility policy, he was placed on 2 week Covid quarantine.

On April 15th, Follansbee filed a Petition for Review to the AZ.Ct.App. On May 6th, the AZ.Ct.App. issued an "order dismissing review", see, Appendix E. CACRF outgoing mail log indicated Petition was mailed.

On May 20th, Follansbee resubmitted a Petition for Review, accompanied with a Motion to Reinstate, see, Appendix F. Subsequently, the AZ.Ct.App. "granted] review but denied] relief", see, Appendix A. Follansbee, then, sought review with

the AZ Sup Ct., only to be told "Petition for Review = DENIED" see, Appendix C.

Now, Follansbee is respectfully asking this Court for relief under 28 U.S.C.
§ 1257(a).

REASONS FOR GRANTING THE PETITION

Follansbee puts forth this Petition for Writ of Certiorari (hereinafter, "Petition"), under 28 U.S.C. § 1257(a), as a propria persona litigant, unskilled in the science of law and, prays this Petition and attached appendices - in support of - will be received and viewed as such. Follansbee asks this Court not to let form or style to override substance, nor to allow any mistakes in procedural technicalities to defeat fairness or justice from being served. Follansbee does also ask this Court to treat this Petition as whatever legal vehicle necessary to grant relief. This Court, in HAINES v. KERNER, held "pro se litigants are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers... if the court can reasonably read pleading to state a valid claim on which litigant could prevail, it should do so, despite failure to cite proper legal authorities, confusion of legal theories, poor syntax or sentence construction, or litigant's unfamiliarity with pleading requirements". fn 2. 404 U.S. 519, 30 L.Ed. 2d 652, 92 S.Ct. 594 (1972); ERICKSON v. PARDUS, 551 U.S. 89, 94, 167 L.Ed. 2d 1081, 127 S.Ct. 2197 (2007).

fn 2. Follansbee apologizes to this Court for any inconsistencies in legal authorities and theories, whereas, ADCRR regulation, D.O. 902- Inmate Access to the Courts severely restricts a propria persona inmate litigants with policies, such as "SHALL NOT provide legal resource material ... [or] archive services". see, Corrections.AZ.gov / D.O. 902.

Are Arizona Judiciaries violating the Due Process Clause of the Arizona and United States Constitutions, by practicing a Professional Norm that is contrary to Arizona law?

The Term "Victim" Has A Very Embroidered Past In Arizona Law

In 1990, the People of the State of Arizona (AZ) incorporated the Victim's Bill of Rights into the Constitution (Const.), i.e. Article (Art.) II, Section (Sect.) 2.1. Embedded within this section are several provisions, the most notable for purposes of this pleading are subsections,

(A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidate, harassment, or abuse, throughout the criminal justice process.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

(D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed by this section, ...

In 1991, the AZ Legislature (Leg.) enacted the Victims' Rights Implementation Act, i.e. Arizona Revised Statute (A.R.S.) § 13-4401 to -4437. 1991 Ariz. Sess. Laws, CH 229, §§ 1, 7. Affixed within -4401 is subsection "19", which parrots Art. II, Sect. 2.1(C) of the AZ Const. fn3.

fn3. Henceforth, all references to A.R.S.

§13-4401(19) will mean to include Art. II,

Sect. 2.1(C) of the AZ Const.

On December 1, 2003, the AZ Sup. Ct. through a procedural vehicle - Arizona Rules of Criminal Procedure (ARCrP) 39(a)(1), interpreted - 4401(19) to mean "a 'victim' is defined as a person against whom a criminal offense as defined by 13-4401(6) [fn4] has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense, except where the spouse, parent, lawful representative, or child is also the accused".

fn4. The AZ Sup. Ct's reference to 13-4401(6) is a typographical error, wherein, the actual statute is 13-4401(19).

This interpretation changed the "substantive and procedural laws to define" which were explicitly reserved for the "legislature, or the people by initiative or referendum" Art. II, Sect. 2.1(D) of the AZ Const. The unfortunate effect of this interpretation is an accouplement of two opposing definitions into one, resulting in an illogical attempt to bring credibility to a longstanding practice that "victim" and "alleged victim" shared the same significance. This common course of conduct established a PROFESSIONAL NORM founded on ambiguity. SPARKS v. REPUBLIC LIFE INSURANCE COMPANY, 132 Ariz. 529, 534, 647 P.2d 1127 (AZ 1982) (Ambiguity exists when language "can be reasonably construed in more than one sense"); ESTATE OF COWART v. NICKLOS DRILLING COMPANY, 505 U.S. 469, 475, 120 L. Ed. 2d 379, 112 S. Ct.

2589 (1992) (When analyzing a statute's language, analysis must begin with the language of the statute itself, when the statute is clear, "judicial inquiry into [its] meaning, in all but the most extraordinary circumstances is finished").

In 2005, the AZ. Leg. amended the substantive meaning of 13-4401(19) to "a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person." Judicial Notice must be given that the AZ. Leg. did not change the elements that defined a "victim", it only added clarity to the relationship factors set out in the statute. The verbalization of this substantive change reenforced legislative intent of "HAS BEEN COMMITTED" versus that of an interpretative rule of "HAS ALLEGEDLY BEEN COMMITTED".

In September of 2009, the AZ. Sup. Ct. issued R 08-0037 with the purpose of "amend[ing] Rule 39(a)(1)" see, Appendix 1. This amendment modified the term "victim" [to be] defined IN ACCORDANCE WITH THE DEFINITION PROVIDED IN THE ARIZONA REVISED STATUTE [and removed] a person against whom a criminal offense as defined by 13-4401(6) has allegedly been committed, or the spouse, parent, lawful representative, or child of someone killed or incapacitated by the alleged criminal offense," Id.

The issuance of R 08-0037 indicated the AZ. Sup. Ct.'s awareness that an error was present. For it is more than reasonable to conclude, the AZ. Sup. Ct. IS NOT IN THE HABIT OF CORRECTING ERRORS THAT DO NOT EXIST, NOR ISSUING AN ORDER IF THE ERROR IS HARMLESS. R 08-0037 should have

aligned ARCrP 39(a)(1) with A.R.S. §13-4401(19), thereby ending seven years of a court-endorsed PROFESSIONAL NORM grounded on ambiguity.^{fn5} Unfortunately, as future rulings by the Arizona Judiciaries indicate, this is not to be the case.

fn5. The case before this Court went to trial during the period of the AZ Sup. Ct's endorsed ambiguity, i.e. January of 2008.

On August 31, 2017, the AZ Sup. Ct. issued R 17-0002, which served two purposes. First, redesignating ARCrP 39(a)(1) as 1.4(h); and, second, reaffirming "[v]ictim means a person as defined in A.R.S. §13-4401" see, Appendix J. As the record maintains, since 1991, the AZ Leg. has been unwavering in its intent as to what constitutes a "victim".

On May 8, 2018, the AZ Ct. App. - Division (Div.) One, in Z.W. v. FOSTER (SUPERIOR COURT) held that "the superior court retains discretion to address - on a case-by-case basis - whether using a particular term to refer to a victim violates the victim's right to be treated with respect and dignity". 244 Ariz 478, 422 P.3d 582, 583, ¶2.

In the Z.W. case, Z.W. filed a Motion to Preclude reference to her as an "alleged victim" at trial. The Z.W. Court, in response, opined "accordingly, and for reasons that follow, ... [we assert] although 'alleged victim' connotes some degree of uncertainty as to whether a crime occurred, UNTIL A DEFENDANT HAS BEEN CONVICTED OF A CHARGED OFFENSE, THE CASE INVOLVES AN ALLEGED CRIMINAL ACT AGAINST AN ALLEGED VICTIM"; *Id.* at 583, ¶2, 5; thus, putting it in lockstep with -4401(19)'s definition that use of the term

The Bolivar Court did note that the trial court, in close session, denied Bolivar's motion, but in its ruling stated

"So what I'll do in this case is I'm not going to preclude the State from using the word victim. I think that would probably be futile anyway, the prosec[utor]s use that phrase so much, even if I ordered the prosecutor not to use it, she would probably slip up. I don't think it's inappropriate but when it comes up, I will give a limiting instruction to the jury referring to this person as the victim, victim is a legal term of art." *Id.* at 677, 97.

The BOLIVAR Court's review determined "the [trial] court did not give a specific limiting instruction as to the term 'victim'..." *Id.*; but, did conclude "the trial court did not abuse its discretion by permitting Becca to be referred to as the 'victim'". *Id.* at 677, 910. Further, explaining that "[c]ontrary to Bolivar's contention, [the Z.W. Court] does not establish that the term 'victim' is inappropriate when the defendant disputes whether a crime occurred. Rather, [the Z.W.] court stressed that the 'trial courts, should have flexibility in determining how to refer to crime victims during criminal proceedings'". *Id.*

Because of the ambiguousness of the Z.W. Court's decision, that being, the "discretionary rule" of the term "victim" to maintain "respect and dignity", as opposed to the dicta of "until a defendant has been convicted of a charged offense, the case involves an alleged criminal act against an alleged victim"; *Z.W.*, at 583, 95;

the BOLIVAR Court improperly concluded the permissibility of the term "victim" in a trial proceeding. Again, as previously stated, the Z.W. Court did not greenlight the use of the term "victim", it only stated "respect and dignity" must be maintained when addressing the accuser at trial.

Arizona Law, In Comparison With The Legal- Layman Understanding Of The Term "Victim"

The plain language of A.R.S. § 13-4401(19) "has been committed or, if the person is killed or incapacitated" is consistent with accepted legal definition of

- "a person harmed by a crime, tort, or other wrong". BLACK'S LAW

DICTIONARY, Eighth Edition, Copyright 2004; or,

- "one who has suffered the commission of a crime, tort, or wrong".

BALLENTINE'S LAW DICTIONARY, Third Edition, Copyright 2010.

; and, the layman understanding (both by academia and life experiences) of

- "somebody who is hurt or killed by somebody or something;

somebody or something harmed by an act or circumstance". ENCARTA WORLD

ENGLISH DICTIONARY, First Edition, Copyright 1999;

- "a person killed by another; a person subjected to cruelty, oppression, or other harsh or unfair treatment". SHORTER OXFORD ENGLISH DICTIONARY,

Fifth Edition, Copyright 2002;

- "someone or something killed, destroyed, injured, or otherwise harmed by or suffering from, some act, condition or circumstance". WEBSTER'S

NEW WORLD DICTIONARY, Fourth Edition, Copyright 2004; or,

- "one that is injured, destroyed, or sacrificed under any of various conditions; one that is subjected to oppression, hardship, or mistreatment; one

that is tricked or duped" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY,
Eleventh Edition, Copyright 2020.

Clearly, -4401(19) shares the same common denominator with the legal-layman definition of "victim", i.e. an act or acts were perpetrated against oneself or another, describing a "finalty" event - HARM HAS BEEN SUFFERED; a commonality that carries no ambiguity.

1. Is the Arizona Judiciary permissively allowing and participating in an ongoing Profession Norm designed to deny criminal defendants a fair trial?

a. Coconino County Superior Court (Trial Court) provided the forum, by which, to administer "Structural Error".

On January 8, 2008, voir dire commenced with the Honorable Dan Slayton asking the venire,

"Have you, or any members of your family or close friends, ever been involved, in any way, in a case such as this?" Recorder's Transcript (R.T) 01/08/2008, 102:10-12.

which, elicited the following responses,

Prospective Juror Gasdaglis: "Yes, my father tried to sexually assault me from the time I was 13, until I finally got married." id., 103:13-15.

Prospective Juror Wallace (In Chambers): "It is my daughter, and we moved from San Diego to get away from it, ..., she was sexually molested." Id., 106:18-22.

Prospective Juror Dewey (In Chambers): "I was sexually abused by my father, from the time I was a little girl." Id., 108:3-4.

This innocuous inquiry drew vivid life memories of harm and suffering.

On January 9th, the SLAYTON Court proceeded to change the dynamics of its inquiry, by introducing how the term "victim" was to be perceived throughout Follansbee's criminal trial, when it inquired,

"Have you or a close relative or friend of yours ever been a victim of a crime, any kind of crime?" R.T. 01/09/2008, 61:16-18.

This line of inquiry started laying a foundation that the term "victim" is synonymous with A.R.S. §13-4401(19), drawing responses, such as

Prospective Juror Hays-Giloin: "I was assaulted once" Id., 61:20.

Prospective Juror Hamaan: "My co-worker, her father was murdered recently" Id., 62:21-22.

Prospective Juror Loehrs: "My son was a victim of a road rage incident eight years ago." Id., 63:3-4.

Prospective Juror Kulpinski: "My husband's grandfather was murdered 25 years ago." Id., 63:10-11.

Based on the responses, it is clear each reply was drawn from life experiences, that "victim" means an ACT OR ACTS PERPETRATED AGAINST ONESELF OR ANOTHER - HARM HAS BEEN SUFFERED, and these harms reinforced an association between the accuser and criminal defendant whom perpetrated such crimes.

As voir dire continued, it became apparent this particular question did not escape the venire. When prospective jurors were excused, replacement jurors would reply,

Court: "I will ask the question, would any of the questions I have asked been answered 'Yes'?"

Prospective Juror Fisher: There have been a couple of my close friends that

have been involved in molestation cases when they were younger.

Court: Were they victims of molestation?

Prospective Juror Fisher: Yes." Id., 88:2-12.

In all, the SLAYTON Court utilized the term "victim" in a general sense, three times and the State once, receiving approximately thirty-four response from the venire.

Now that the foundation has been firmly rooted, the SLAYTON Court permissively allowed the direct reference to the Accuser as a "victim". Starting with the opening statement, the State averred on two separate occasions,

"[t]he mattress pad cutting was sent off to the Department of Public Safety Lab for DNA comparison with the Defendant and the VICTIM, Lyndsie." fn7. Id., 185:23-186:1

:and,

"[Criminalist Snyder] conducted the analysis and found that the stain contained semen from the Defendant, it was the Defendant's semen, and then the VICTIM, Lyndsie Halfast was there too." fn8. Id., 188:17-20.

fn7. Testimony of DPS Criminalist Kortney Snyder revealed DNA would "stay until it was washed": Id., 150:1-5; and there was no way of knowing when separate DNA profiles were deposited. Id., 154:19-155:19.

fn8. Testimony of Dana Patterson Halfast (mother of the Accuser), Follansbee's ex-wife (divorced after his arrest), revealed the Accuser would frequently lie in the master

bed after using the jacuzzi, or watch television,
or when sick. Id., 211:12-212:25.

It is ratiocinative that Follansbee's semen would be found in his bed; and, based on the frequency of Lyndsie Halfast's (hereinafter, "Accuser") presence in the master bedroom, it would be ratiocinative her epithelial cells would also be present in the master bed.

Follansbee brings to this Court's attention, to maintain "respect and dignity", the State utilized the Accuser's given name proximately seventy times, during opening statement; yet, in retrospect the State resorted to describing the Accuser as a "victim", twice. In comparison the term "alleged victim" was never made, before the fact-finders, to describe the Accuser.

On January 10th, Flagstaff Police Detective Gene Shantz (lead detective) provided testimony, where the term "alleged victim" was utilized once; fn9; and a direct reference to the Accuser as a "victim" was made five times, e.g.

State: "And did you learn who the ALLEGED VICTIM was in the case?"

Shantz: I did.

State: Who was that?

Shantz: The VICTIM was Lyndsie Halfast." R.T. 01/10/2008, 176:25-

177:4

and,

Shantz: "These are pictures that were taken in the VICTIM'S bedroom,
Ms. Lyndsie Halfast." Id., 201:24-25.

fn9. The record clearly shows, in the presence

of fact-finders, this is the one and only time the term "alleged victim", was ever used to describe the Accuser.

The record also shows references to the Accuser's given name was made by the State five times and by Detective Shantz five times.

On January 11th, Flagstaff Police Sergeant Frank Higgins provided testimony, where direct reference to the Accuser as a "victim" was made nine times, e.g.

State: "Sergeant Higgins, I believe that you said that you began your examination of these various items of electronic media with a known photograph of the VICTIM?"

Higgins: Yes.

State: And do you know her name?

Higgins: I believe her first name is Lyndsie." fn10. B.T. 01/11/2008,

53:24-54:5.

fn10. Of the seventeen photographs in evidence, no photographs depicted Follansbee. In fact, the only photograph to depict physical characteristics of the alleged perpetrator is State exhibit 2, where the alleged perpetrator's lefthand is visible. Also visible in this photograph is a scar or flexor crease between the middle and ring finger; a physical characteristic that Follansbee does

not possess. see, Photographs of Follansbee's
Physical Characteristics.

The record reveals references to the Accuser's given name was made by the State two times and by Sergeant Higgins seventeen times.

Shortly thereafter, Criminalist Snyder provided testimony where direct reference to the Accuser as a "victim" was made eleven times, e.g.

State: "And did you also receive a DNA sample from the VICTIM, Lyndsie Halfast?"

Snyder: Yes. Id., 137: 22-24.

In comparison, the record shows references to the Accuser's given name was made by the State two times and by Criminalist Snyder four times.

So far, the State's case-in-chief either described or elicited from law enforcement witnesses that the Accuser in this case was the "victim" twenty-six times. In addition, to add insult to injury, the State recalled Detective Shantz as a rebuttal witness, in which he made ten additional references.

fill. The record also shows, while seeking testimony from character and expert witnesses, the State and said witnesses were able to maintain "respect and dignity" by addressing the Accuser by her given name, approximately ninety-four times.

Next day, the Honorable Slayton charged the jury panel with the final

instructions, wherein, the verdict forms disclosed

"The crime of Kidnapping require proof of the following two things: The Defendant Knowingly restrained the VICTIM and the Defendant acted with intent to inflict a sexual offense on the VICTIM," R.T. 01/18/2008, 51:4-9;

"For the offenses of Sexual Conduct with a Minor, you must also find by proof beyond a reasonable doubt that the Defendant was the stepfather of the VICTIM, and that the VICTIM was under the age of 18 years old and at least 15 years old at the time of the crime." Id., 55:7-13; and,

"The crime of Sexual Assault required proof of the following two things: One, the Defendant intentionally or knowingly engaged in sexual intercourse or social sexual contact with this VICTIM, and two, the sexual intercourse or oral sexual contact was without the VICTIM's consent." Id., 49:23-50:1.

Since the Honorable Slayton read verbatim from the verdict forms, it is reasonable to conclude that the term "victim" breached the sanctity of the deliberation see, Appendixes K, L.

Immediately following, the State presented its summation, where it utilized the term "victim" fourteen times, e.g.

"The evidence in this case has shown, of course, that the VICTIM, Lyndsie, was one month before her 16th birthday." R.T. 01/17/2008, 98:10-12.
; and, on rebuttal two times, e.g.

"Essentially, they looked through the Defendant's bedroom and the VICTIM's bedroom." Id., 165:12-14.

The State in closing referred to the Accuser's given name proximately one hundred thirty times. At no point was the term "alleged victim" utilized to describe the Accuser.

Throughout the course of Follansbee's trial, the Accuser's given name "Lyndsie" was used proximately four hundred fifty times; the term "victim" was used by the State and its progenies proximately fifty-four times, the term "alleged victim" one time. Notice must be given that SLAYTON Court's described the Accuser as a "victim" proximately thirteen times with no reference to "alleged victim" ever being made. Clearly, the use of the given name "Lyndsie" in conjunction with the term "victim" draws a parallel that, in this case, are one in the same.

1) Is The Association Factor A Component Of The Verdict?

In the case before this Court, Follansbee does not dispute his Accuser may or may not be a "victim" of a crime, nor does he dispute whether his Accuser should be treated with "respect and dignity". Art. 11, Sect. 2.1(A)(1) of the AZ Const. But, Follansbee does asseverate when a person is charged with criminal conduct, due process dictates whether a victim exists who is associated with the criminal defendant. see, STATE EX REL ROMLEY v. ROPER (SUPERIOR COURT), 172 Ariz 232, 836 P.2d 445, 449 (AZ Ct. App. 1992) (When defendant's constitutional right to due process conflicts with Victims Bill of Rights directly, due process is superior right, and the Due Process Clause of the United States Constitution prevails over provisions of State Constitution."); see also, STATE EX REL MONTGOMERY v. WELTY, 233 Ariz 8, 308 P.3d 1159 (AZ Ct. App. 2013). fn12.

fn12. In the case-at-hand, A.R.S. § 13-4401

(19) and Art. 11, Sect. 2.1(c) of the AZ Const.

(Victims Bill of Rights) are in lockstep with

the Due Process Clause of the Arizona and

United States Constitution. The issue is during the course of Follansbee's criminal trial, the Judiciary and State actors utilized the interpretative definition, PROFESSIONAL NORM, provided by the Arizona Supreme Court in ARCrP 39(a)(1). An interpretation reversed, in January of 2010, by order R 08-0037. see, Appendix M.

Follansbee has pled NOT GUILTY to all counts, meaning NO CRIMINAL CONDUCT was committed by him. Z.W., 422 P.3d at 583, ¶ 2 ("the term 'alleged victim' simply reflects...[a defendant's] dispute that any crime occurred.") The plea of NOT GUILTY raises such a dispute. This means any criminal defendant who elects to exercise his or her constitutional right to a trial, places the burden on the State to prove beyond a reasonable doubt that

this PARTICULAR ACCUSER is a "victim" who is ASSOCIATED with this NAMED DEFENDANT under these SPECIFIC CIRCUMSTANCES as charged

; ISN'T THIS THE (BEDROCK) FUNDAMENTAL PURPOSE OF A CRIMINAL TRIAL?

Follansbee avers regardless of the quantity or quality of any evidence that may or may not implicate a criminal defendant, the premature use of the term "victim", before all the evidence is presented and a verdict is returned, does not

allow the ASSOCIATION FACTOR between accuser and defendant to develop. This means the proximate sixty-seven references of the Accuser as a "victim" is embryonic, resulting in the improper influencing of fact-finders and relieving the State of its burden of proving guilt beyond a reasonable doubt; a blatant violation of the Due Process Clause.

2) Could Curative Instructions Have Remedied The Prejudicial Harm Suffered?

On January 17, 2008, the Honorable Slayton issued the final jury instructions that charged the fact-finders to "decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.... Determine the facts only from the evidence produced in Court". R.T. 01/17/2008, 43:2-9. The Honorable Slayton goes on to enucleate "[w]hen I say 'evidence' I mean the testimony of witnesses and the exhibits introduced in Court" Id., 43:10-12. In concluding, the Honorable Slayton directed the fact-finders to "consider all the evidence in light of reason, common sense, and EXPERIENCE" Id., 47:12-14.

In the instant case, a more than reasonable probability exists that references made by the Honorable Slayton and, the State and its progenies, that the Accuser is a "victim" mislead AT LEAST ONE MEMBER OF THE JURY in such a way that it would affect the outcome of Follansbee's trial. It is common knowledge, the more times something is repeated, the more apt people are to believe it. This is apparent in today's social media, where misinformation-disinformation is spread so rapidly, repetitiously, and maliciously, without fact checking-in support of-that it

unreasonably influences the logical thought process of the average citizens; the same citizens whom make up the jury panel.

A perfect example of this phenomenon is former President Donald J. Trump, where as President, he painted a fantasy world that proclaimed him doing things bigger, better, more boldly than all who came before him, while facing enemies more penicuous than any in creation. In serving this ego, President Trump said things that were not only wrong, but the precise opposite of right. What made President Trump's falsehoods worse is he would repeat such over and over, even doubling down when the deceptions were exposed. As a consequence of these falsehoods, a sizeable percentage of his estimated seventy-four million supporters were gaslighted into believing the election was stolen. Tragically, President Trump's falsehoods culminated in a violent insurrection of this Nation's Capitol see, Findings of the January 6th Committee. Unfortunately four years later, a large faction of supporters still believe in these distortions of truth see, Trump's Standings as the Republican (GOP) Candidate.

Just like former President Trump's hypnotic hold over a large cross-section of American registered voters, a trial court's permissiveness in and participation of, can have the same influence over fact-finders (registered voters whom make-up the jury panel) in its realm, the criminal courtroom; and, like President Trump's millions of supporters, the uncorrected, repetitious use of words, phrases, and/or statements can and will influenced a fact-finders ability to remain impartial.

As the record evulgates, no curative instructions were ever issued, during the entire trial process, informing the fact-finders that the term "victim" was meant to include "alleged victim". In the absence of a properly administered

cunative instruction the SLAYTON Court's permissiveness of and participation in the repetitious use of a PROFESSIONAL NORM such as the term "victim" resulted in prejudicial harm to Follansbee's case-in-chief.

A harm that led to the predetermination of guilt because it totally disregarded the ASSOCIATION FACTOR between Accuser and Follansbee. A factor that says is "THIS PARTICULAR ACCUSER A VICTIM WHOM IS ASSOCIATED WITH THIS NAMED DEFENDANT UNDER THESE SPECIFIC CIRCUMSTANCES AS CHARGED".

A harm that was fundamentally impossible to cure, whereas, it would have asked the fact-finders to go against their academic and life experiences. An experience that is engrained in all human psyches, that being, "victim" means an act or acts were perpetrated against oneself or another; describing a "finality" event - HARM HAS BEEN SUFFERED.

The fundamental purpose of curative instructions is to insure fairness in the criminal trial process. The lack of such instructions renders a lynch mob mentality, where actions or words are left to indiscriminately sway the fact-finders opinion. The SLAYTON Court's actions, or lack thereof, denied Follansbee the constitutional right to an impartial jury.

b. Arizona Court of Appeals provides a continual method to promote "Structural Error".

On May 8, 2018, the AZ Ct. App., Div. One published Z.W. v. FOSTER affirming the ongoing existence of a Professional Norm by enucleating "the constitutional protections afforded crime victims do not mandate that a specific term be used in referring to victims during court proceedings. Instead, the superior court

retains DISCRETION to address - on a case-by-case - whether using a particular term to refer to a victim violates the victim's right to be treated with respect and dignity". 422 P.3d at 586, 92. The use of this term "discretion" opened a Pandora's Box, in that, the holding only stresses that reference to an accuser must maintain "respect and dignity". The holding did not greenlight the use of the term "victim", in fact, the dicta clearly discourages such, stating "until a defendant has been convicted of a charged offense, the case involves an alleged criminal act against an alleged victim". Id., at 583, 95. Further explaining "the term 'alleged victim'... simply avoids prejudging and reserves judgement on credibility issues, which are for the jury alone to decide". Id., at 583, 96. Unfortunately, the Arizona Judiciaries and Prosecutors misconstrued this decision to mean the Professional Norm of using the term "victim" in the presence of the fact-finders was permissible.

On October 27, 2020, the AZ Ct. App., Div. Two published STATE v. BOLIVAR, where

"Bolivar asserts this issue is one of first impression in Arizona and therefore relies on out-of-state authority to support the proposition that it is improper to describe the complaining witness as the "victim" when the issue is whether a crime has been committed. [fn 13]... The state counters that pursuant to Z.W. v. FOSTER, the trial court maintains broad discretion in determining how to refer to crime victims in court proceedings. 244 Ariz 478, 99, 477 P.3d 672 (App 2018)".

courts) the discretion to address an accuser as a "victim" reverses the corrective action of AZ Sup. Ct's order, R 08-0037. see, Appendix M. Meaning, the only difference between the AZ Sup. Ct's 2003-2010 definition of "victim" and the current "discretionary rule" is the AZ Ct. App's willingness to openly give criminal trial courts the authority to strip a defendant of his or her constitutional right to a presumption of innocence. This prejudicial acceptableness is further exacerbated when the AZ Ct. App. reasons on appeal that "[a]bsent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief". see, Appendix E, STATE v. FOLLAWSBEE, 1 CA-CR 22-0138 PRPC, 2.

The longstanding practice of a Professional Norm, an error of law, that commingles two opposing definitions; coupled with a "discretionary rule" designed to further this practice under the guise of "respect and dignity" prejudices a criminal defendant's ability to receive a fair trial. The AZ Ct. App's discretionary rule provides a method, by which, criminal trial courts can promote STRUCTURAL ERROR in the courtroom.

C. AZ Sup. Ct. provided the means to promote "Structural Error".

As previously stated, on December 1, 2003, the AZ Sup. Ct. through a procedural vehicle - ARCP 39(a)(1), interpreted Art. 11, Sect. 2.1(C) of the AZ Const. (Victim's Bill of Rights) and A.R.S. § 13-4401(19) to mean "a 'victim' is defined as a person against whom a criminal offense... HAS ALLEGEDLY BEEN COMMITTED". This interpretation changed the substantive definition of "victim", a "substantive or procedural" modification RESERVED ONLY for the "Legislature, and the People by initiative or referendum". Art. 11, Sect. 2.1(D) of the AZ Const. The

Unfortunately, this is not to be, as subsection c of this petition argues, the PROFESSIONAL NORM under the guise of the discretionary rule continues to live strong in the Arizona judiciaries and the parties before such. see, Z.W.,

422 P.3d at 583, ¶2. see also, BOLIVAR, at 478, ¶9. This prejudicial norm is further exacerbated when the AZ Sup. Ct.: 1) failed to insure compliance with R 08-0037; 2) failed to correct the prejudicial harm suffered by criminal defendants between December of 2003 and January of 2010; and, 3) refused to review claims of this nature. In the instant case, Follansbee raised a question of law, of which, the AZ Sup. Ct. replied in its standard modus operandi, "Petition for Review = DENIED". see, Appendix F, STATE v. FOLLANSBEE, CR 23-0138 PRPC. The AZ Sup. Ct created an error of fundamental repercussion; issued an order (R 08-0037) with no oversight; and continues to turn a blind eye as this error thrives in Arizona law. It is plainly apparent, the AZ Sup. Ct's Rule 39(a)(1) provided the means, by which, criminal trial courts can promote STRUCTURAL ERROR in the courtroom.

2. The Prosecution and Trial Court continually placed in jeopardy the fundamental framework of Follansbee's criminal trial, resulting in "Structural Error".

Since 1895, this Court has maintained a "principle that there is a presumption of innocence in favor of the accused is UNDOUBTED LAW, AXIOMATIC AND ELEMENTARY, and its enforcement lies at the foundation of the administration of our criminal law." COFFIN, 156 U.S. at 435. This holding of "undoubted law, axiomatic and elementary" solidifies the founding fathers' belief that a presumption of innocence is a self-evident principle of law guaranteed to all criminal defendants whom face deprivation of "life, liberty or property". see, 5th and 14th Amend. of the U.S. Const.; see also, Art. 11, Sect. 4 of the AZ Const. The recognition of this particular right, places it above that of a mere "sufficient constitutional magnitude" threshold. For without this bedrock, a

Immediately following voir dire, the State bridged the gap (fertilized the crop) between "alleged victim" and "victim" by describing the Accuser as both, in the same narrative,

State: "And did you learn who the ALLEGED VICTIM was in the case?"

Shantz: I did.

State: Who was that?

Shantz: The VICTIM was Lyndsie Halfast." R.T. 01/10/2008, 176:25-177:4.

After the singular use of "alleged victim", [fn9] the State abandoned all pretense of "alleged" and proceeded to influence (water the crop) the fact-finders, e.g.,

Shantz: "These are pictures that were taken in the VICTIM's bedroom, Ms. Lyndsie Halfast." R.T. 01/10/2008, 201:24-25; or,

State: "And did you also receive a DNA sample from the VICTIM, Lyndsie Halfast? R.T. 01/11/2008, 137:22-24.

Finally, the State reaped its reward at summation, e.g.,

"The evidence in this case has shown, of course, that the VICTIM, Lyndsie, was one month before her 16th birthday." R.T. 01/18/2008, 98:10-12. ; and, again, on rebuttal, e.g.,

"Essentially, they looked through the Defendant's bedroom and the VICTIM's bedroom." Id., 165:12-14.

Plainly, the failure to develop the ASSOCIATION FACTOR resulted in the weaponization of the term "victim", prejudicially harmed Follansbee's constitutional right to be presumed innocent; and, in the process, thereof, the fact-finders were deprived of their ability to remain impartial.

too hard to measure'; and, 3) it 'always results in fundamental unfairness'.

victim" were molded from the same cloth; thus, encouraging ambiguity. fn16.

fn16. An interpretation still used today under the protection of the "discretionary rule". Z.W., 422 P.3d at 583, 92; BOLIVAR, 477 P.3d at 677, 99.

Two years after Follansbee's criminal trial, the AZ Sup. Ct. made, what must be considered, a haphazard attempt to correct its misdeeds of 2003 by issuing order R08-0037, "amend[ing] Rule 39(a)(1), ... [to] a 'victim' is defined in accordance with the definition provided in the Arizona Revised Statute" see, Appendix M. The primary purpose of R08-0037 was to rescind ARCP 39(a)(1) and bring the term "victim" in lockstep with the Victims Bill of Rights of Art. 11, Sect. 2.1(C) of the AZ Const. and A.R.S. § 13-4401(19).

As previously stated in this Petition, the issuance of R08-0037 indicated the AZ Sup. Ct's awareness that an error was present. For it is more than reasonable to conclude, the AZ Sup. Ct. IS NOT IN THE HABIT OF CORRECTING ERRORS THAT DO NOT EXISTS, NOR VOLUNTARILY ISSUING AN ORDER IF THE ERROR IS HARMLESS. R08-0037 should have aligned ARCP 39(a)(1) with A.R.S. § 13-4401(19), thereby ending seven years of a court endorsed PROFESSIONAL NORM grounded on ambiguity.

Instead, the Arizona Judiciaries and Prosecutors intentionally elected to ignore the Z.W. Court's dicta. that "until a defendant has been convicted of a charged offense, the case involves an alleged criminal act against an alleged victim". 422 P.3d at 583, 95. Thus, placing at odds, Art. 11, Sect. 2.1(A)(1) (maintain "respect and dignity") against that of ARCP 39(a)(1) ("alleged

victim⁹) versus Art. II, Sect. 2.1(C) and a criminal defendant's constitutional right to be presumed innocent, as indicated by the Z.W. dicta ROPER, 836 P.2d at 449 (When defendant's constitutional right to due process conflicts with Victim's Bill of Rights directly, due process is superior right, and the Due Process Clause of the United States Constitution prevails over provisions of State Constitution); WELTY, 308 P.3d 1159.

Here, the AZ Sup. Ct.'s interpretation of the Victim's Bill of Rights, as exemplified by ARCP 39(a)(1), is the vehicle in violation of the Due Process Clause; therefore, the holding of both ROPER and WELTY should be expanded to include misguided practices of AZ constitutional provisions.

In January of 2010, a "transformative event" occurred (R08-0037), unfortunately it was not a "clear break from the past." STATE v. SHRUM, 220 Ariz 115, 118, 203 P.3d 1175 (AZ 2009), quoting STATE v. SLEMMER, 170 Ariz 174, 182, 823 P.2d 41 (AZ 1991).

R08-0037's purpose was to end 7 years of an ambiguous interpretation in AZ law, but it did nothing for the PROFESSIONAL NORM practiced since 2003. Follansbee acknowledges the AZ Sup. Ct. did not "override previously binding case law... [nor a] statutory or constitutional amendment representing a definite break from prior law"; STATE v. POBLETE, 227 Ariz 537, 260 P.3d 1102, 1103 (AZ Ct. App. 2011); but the Court did "definitively] break" from a rule OF ITS OWN MAKING, ARCP 39(a)(1). A rule still practiced by a majority of the prosecutors and trial courts in Arizona.

Follansbee asserts the only remedy for criminal defendants whom were harmed by the AZ Sup. Ct.'s 2003-2010 interpretation is to grant retroactive status.

nothing to quail its continuous use.

Follansbee avers the Due Process Clause of the United States and Arizona Constitutions should have guaranteed him a fair and impartial trial; where the State must prove beyond a reasonable doubt his guilt.

Furthermore, Follansbee avers, regardless of how overwhelming evidence, may or may not be, the fact a criminal defendant pled not guilty entitles him or her to a fair trial. As in the case before this Court, when that entitlement is infringed upon by the entire judiciary (from voir dire to deliberation), the foundation of a criminal trial cannot be said to be in the best interest of justice. Follansbee is of the opinion that this issue transgresses beyond the borders of Arizona, encompassing every jurisdiction throughout this Nation.

Follansbee asks this Court to conclude error has occurred, that this error more than likely influenced the impartiality of the fact-finders (as previously argued, the "Trump phenomenon"), and that this error infected the fundamental framework of his entire criminal trial. Therefore, Follansbee moves this Court to vacate his convictions and sentences, remanding this case for a new trial.

Based on the foregoing, Follansbee asseverates that this claim is an important issue of law that has been repeatedly abused, as a professional norm, by Arizona trial courts and prosecutors, from at least 1991 to present.

As presented before this Court, the trial courts provide the forum to administer this egregiously prejudicial term, "victim"; the AZ.Ct. App. provided a method, "discretionary rule", that depicts an ongoing acceptance of this prejudicial term, and, the AZ.Sup.Ct. established the means of this professional norm, "ARCP 39(a)(1)", that continues in present day criminal courtrooms. This professional norm is so engrained into the criminal judicial process that even the AZ.Sup.Ct.'s effort to correct an error of its own making, "order R 08-0037", did

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: DECEMBER 1, 2023