

No. 26-5796 **ORIGINAL**

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

FILED  
JAN 23 2026  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

MARK ERIC PONSATI — PETITIONER  
(Your Name)

VS.

STATE OF ARIZONA  
~~JOSHUA C. SMITH~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS DIVISION ONE STATE OF ARIZONA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARK ERIC PONSATI  
(Your Name)

ASPC LEWIS, UNIT EAST, PO BOX 70  
(Address)

BUCKEYE, AZ 85326  
(City, State, Zip Code)

N/A  
(Phone Number)

RECEIVED  
APR - 9 2026  
C. P. Lewis

## QUESTION(S) PRESENTED

(1) WHETHER THE ARIZONA COURT OF APPEALS ERRED IN UPHOLDING A CONVICTION OBTAINED WHEN THE SUPERIOR COURT REMOVED THE HOLDOUT WITHOUT CAUSE AFTER THE COURT OBTAINED IMPROPER INSIGHT OF THE DELIBERATING JURY'S VOTING INTENTIONS. (PAGE 1)  
THE CRUCIAL FEDERAL QUESTION IS WHAT CONSTITUTES DELIBERATING.

~~(2) WHETHER THE ARIZONA COURT OF APPEALS ERRED IN UPHOLDING A CONVICTION OBTAINED BY THE SUPERIOR COURT ADMITTING INFLAMMATORY AND PREJUDICIAL UNCORROBORATED RUMORS FROM DISCREDITED SOURCES, DESPITE NOT RISING TO THE CLEAR AND CONVINCING BURDEN OF PROOF, AND USED AS CHARACTER EVIDENCE TO IMPLY CULPABILITY. (PAGE 16)~~

REMOVED TO REMAIN  
WITHIN 40 PAGES.

(2) ~~(3)~~ WHETHER THE COURT OF APPEALS ERRED IN UPHOLDING THE CONVICTION DESPITE THE PROSECUTOR ~~TWICE~~ FALSELY CLAIMING THAT THERE HAD BEEN DOMESTIC VIOLENCE ACCUSATIONS, BECAUSE THE APPEAL COUNSEL FAILED TO RAISE THE ARGUMENT IN THE OPENING BRIEF. (PAGE 21)  
9  
THE FEDERAL QUESTION IS WHETHER A COURT MAY CONSIDER AN ISSUE NOT RAISED.

(3) ~~(4)~~ WHETHER THE COURT OF APPEALS ERRED IN UPHOLDING A CONVICTION OBTAINED BY THE PARAMEDICS COVERING UP AT LEAST THREE RESCUE INCIDENTS BY SUBMITTING A FRAUDULENT "PATIENT CARE REPORT" AND BY COORDINATING LIES TO A POLICE DETECTIVE, DESPITE APPOINTED COUNSELS FAILING TO RAISE THE ISSUE WHEN APPELLANT ATTEMPTED TO RAISE THE ISSUE PRO SE, TO CORRECT THE RECORD. (PAGE 33)  
17  
THE FEDERAL QUESTION IS WHETHER A COURT MAY CONSIDER AN ISSUE NOT RAISED.

## LIST OF PARTIES

<sup>MP</sup> ☒ 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:

~~JOSUUA C. SMT~~<sup>MP</sup>  
GOVERNOR OF ARIZONA  
ATTORNEY GENERAL OF ARIZONA

## RELATED CASES

N/A

## TABLE OF CONTENTS

|                                                        |   |
|--------------------------------------------------------|---|
| OPINIONS BELOW.....                                    | 1 |
| JURISDICTION.....                                      |   |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... |   |
| STATEMENT OF THE CASE .....                            |   |
| REASONS FOR GRANTING THE WRIT .....                    |   |
| CONCLUSION.....                                        |   |

## INDEX TO APPENDICES

APPENDIX A DECISION OF ARIZONA COURT OF APPEALS

APPENDIX B DECISION OF MARICOPA COUNTY SUPERIOR COURT

APPENDIX C DECISION OF ARIZONA SUPREME COURT DENYING REVIEW

APPENDIX D ORDER OF ARIZONA SUPREME COURT DENYING REHEARING

APPENDIX E PAGE 13 OF APPELLANT'S REPLY BRIEF & PAGE 6 OF APPELLANT'S  
PETITION FOR REVIEW TO ARIZONA SUPREME COURT ON 8/24/2025.

APPENDIX F PAGE 102 OF TRIAL TRANSCRIPT ON 3/6/2023 ~~AND PRIOR PAGES~~ *MD*

APPENDIX G PAGE 47 OF APPELLEE'S ANSWERING BRIEF

APPENDIX H ARIZONA COURT OF APPEALS DENYING RECONSIDERATION

APPENDIX I PORTIONS FROM TRIAL TRANSCRIPT USED IN ARGUMENTS.

~~APPENDIX J APPELLANT'S OPENING AND REPLY BRIEFS & APPELLEE'S ANSWERING BRIEF~~ *MD*

## TABLE OF AUTHORITIES CITED

| CASES                                                                                                      | PAGE NUMBER      |
|------------------------------------------------------------------------------------------------------------|------------------|
| STATE V. PAYNE, 233 ARIZ. 484, 510 P 100 (2013)                                                            | 5                |
| STATE V. DAVOLT, 207 ARIZ. 191, 206 P 49 (2004)                                                            | 7                |
| US V. VIRGINIA ERECTION CORP, 335 F 2D 868 (4TH CIR 1964)                                                  | 7                |
| STATE V. MILLER, 178 ARIZ. 555, 558 (1994)                                                                 | <del>6</del> 6   |
| STATE V. MILKE, 177 ARIZ. 188, 122 (1993)                                                                  | <del>6</del> 6   |
| US V. GINYARD, 444 F 3D 648, 370 US APP DC 303, 2006 US APP LEXIS 8404 (DC CIR 2006)                       | 10               |
| US V. SAMET, 207 F SUPP 2D 269, 2002 US DIST LEXIS 11469 (SDNY 2002)                                       | <del>13</del> 8  |
| US V. BARONE, 83 FRD 565, 1979 US DIST LEXIS 10145 (SD FLA 1979)                                           | 14               |
| US V. DEPUE, 879 F 3D 1021, 2018 US APP LEXIS 757                                                          | 14               |
| US V. SYMINGTON, (1999, CA 9 ARIZ) 195 F3D 1080                                                            | <del>15</del> 8  |
| STATE V. BUSH, 244 ARIZ. 575, 591 P66 (2018)                                                               | 15               |
| <br><b>STATUTES AND RULES</b>                                                                              |                  |
| MARTINEZ V. RYAN, 566 US 1, 132 S CT 1309, 182 L ED 2D 272, 2012 US LEXIS 2317<br>(US 2012)                | <del>28</del>    |
| SILBER V. US, 370 US 717, 82 S CT 1287, 8 L ED 2D 798, 1962 US LEXIS 853 (1962)                            | <del>28</del> 15 |
| US V. LOYA, 807 F2D 1483, 1987 US APP LEXIS 949 (9TH CIR 1987)                                             | <del>28</del> 15 |
| VILLATORO V SESSIONS, 680 FED APPX 212, 2017 US APP LEXIS 3784 (4TH CIR 2017)                              | <del>29</del> 16 |
| WILBORG V. US, 163 US 632, 16 S CT 1127, 41 L ED 289, 1896 US LEXIS 2295 (1896)                            | <del>29</del> 16 |
| KOERNER V. GRIGAS, 328 F3D 1039, 2003 CAL DAILY OP SERVICE 3529, 2003 US APP<br>LEXIS 8005 (9TH CIR- 2003) | <del>30</del> 15 |
| US EX REL AMAIO V. REYNOLDS, 300 F SUPP 367, 1969 US DIS LEXIS 8412 (D CONN)                               | <del>32</del> 16 |
| US V DONNELLY, 179 F 2D 227, 150 US APP LEXIS 2205 (7TH CIR 1950)                                          | <del>33</del>    |
| GORISON V. US, 344 US 414, 73 S CT 369, 97 L ED 447, 1953 US LEXIS 2425 (1953)                             | <del>34</del> 15 |
| US V. PANCZKO, 429 F 2D 693, 1970 US APP LEXIS 8129 (7TH CIR)                                              | <del>34</del> 16 |
| <br><b>OTHER</b>                                                                                           |                  |
| FEDERAL RULES OF CRIMINAL PROCEDURE (FRCP) 23 (B).                                                         | 11 & 13          |

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, AS FAR AS I AM AWARE, AFTER REQUESTING THIS INFORMATION,

The opinion of the \_\_\_\_\_ 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 1/5/2026 ~~6/24/2025~~.  
A copy of that decision appears at Appendix AC. *meji*

☒ A timely petition for rehearing was thereafter denied on the following date: 10/29/2025, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 RULES OF CRIMINAL PROCEDURE (FRCP) RULE 23 (b) JURY SIZE

(1) IN GENERAL. A JURY CONSISTS OF PERSONS UNLESS THIS RULE PROVIDES OTHERWISE.

(2) STIPULATION FOR A SMALLER JURY. AT ANY TIME BEFORE THE VERDICT, THE PARTIES MAY, WITH THE COURT'S APPROVAL, STIPULATE IN WRITING THAT:

(A) THE JURY MAY CONSIST OF FEWER THAN 12 PERSONS; OR

(B) A JURY OF FEWER THAN 12 PERSONS MAY RETURN A VERDICT IF THE COURT FINDS IT NECESSARY TO EXCUSE A JUROR FOR GOOD CAUSE AFTER THE TRIAL BEGINS.

(3) COURT ORDER FOR A JURY OF 11. AFTER THE JURY HAS RETIRED TO DELIBERATE, THE COURT MAY PERMIT A JURY OF 11 PERSONS TO RETURN A VERDICT, EVEN WITHOUT A STIPULATION BY THE PARTIES, IF THE COURT FINDS GOOD CAUSE TO EXCUSE A JUROR.

ARIZONA COURTS APPOINTED COUNSEL IN EVERY FIRST COLLATERAL PROCEEDING, AND IT WAS LIKELY THAT MOST OF THE ATTORNEYS SO APPOINTED WERE QUALIFIED TO PERFORM, AND DID PERFORM, ACCORDING TO PREVAILING PROFESSIONAL NORMS, AND IF THAT WAS SO, ARIZONA COULD ENFORCE A PROCEDURAL DEFAULT IN FEDERAL HABEAS PROCEEDINGS. SINCE PETITIONER INMATE'S INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM HAD TO BE RAISED IN AN INITIAL-REVIEW COLLATERAL PROCEEDING, PROCEDURAL DEFAULT DID NOT BAR A FEDERAL HABEAS COURT FROM HEARING A SUBSTANTIAL CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, AS THE INMATE ARGUED INEFFECTIVE COUNSEL IN THE INITIAL-REVIEW COLLATERAL PROCEEDING. MARTINEZ V. RYAN, 566 US 1, 132 S CT 1309, 182 L ED 2D 272, 2012 US LEXIS 2317 (US 2012), LIMITED, DAVILA V. DAVIS, 582 US 521, 137 S CT 2058, 198 L ED 2D 603, 2017 US LEXIS 4060 (US 2017), LIMITED, WILLIAMS V. LUMPKIN, 541 F. SUPP. 3D 735, 2021 US DIST LEXIS 96479 (ND TEX 2021), LIMITED, PERKINS V. PERKY, 2021 US DIST LEXIS 256151 (MD TENN AUG 2, 2021).

## STATEMENT OF THE CASE

ON SEPTEMBER 7, 2017, APPELLANT CALLED 911 AND REPORTED THAT HE FOUND HIS WIFE SHERRI UNRESPONSIVE ON THE BATHROOM FLOOR. FIRST RESPONDERS FOUND HER WITH HEAD AND FACIAL INJURIES THAT ONLY STARTED BLEEDING WHEN THEY STARTED CHEST COMPRESSIONS. THE STATE CHARGED APPELLANT WITH SECOND-DEGREE MURDER. THE DEFENSE THEORY AT TRIAL WAS THAT SHERRI DIED FROM A SLIP AND FALL, AND EVIDENCE SURFACED OF BOTCHED RESCUE EFFORTS COVERED UP BY THE PARAMEDICS BY FALSIFYING THE "PATIENT CARE REPORT" (EXHIBIT 54) AND BY LYING TO DETECTIVE COSTARINA ABOUT A FAILED EXTRACTION (EXHIBITS 53, 107 AND 127). APPELLANT TESTIFIED ABOUT HIS OWN FAILED RESCUE ATTEMPT WHERE HE SLIPPED AND FELL ON SHERRI, AN ACCIDENT HE DID NOT DARE DISCLOSE AFTERWARDS FEARING AN OVER-REACTION.

THE VERDICT WAS INFLUENCED BY THE COURT REMOVING THE HOLDOUT WITHOUT CAUSE DURING DELIBERATIONS, AFTER THE REST OF THE JURY VIOLATED INSTRUCTIONS, ALLOWING THE COURT AND STATE TO GAIN IMPROPER INSIGHT OF JURY'S VOTING INTENTIONS. MOREOVER, UNSUBSTANTIATED PREJUDICIAL RUMORS FROM DISCREDITED SOURCES WERE ALLOWED TO INFLUENCE THE JURY. THE PROSECUTOR FALSELY ALLEGED "DOMESTIC VIOLENCE" CLAIMS AGAINST THE APPELLANT DURING CROSS-EXAMINATION, AND THE COURT OVERRULED THE DEFENSE'S OBJECTION FOR FACTS NOT IN EVIDENCE. THE PROSECUTION REPEATED THIS FALSEHOOD ABOUT "DOMESTIC VIOLENCE" DURING CLOSING ARGUMENTS. THE DEFENSE COUNSEL FAILED TO NOTICE THAT THE REAL RUMOR WAS ABOUT VIEWING PORN ON AN ARMY-ISSUED LAPTOP, WHICH WAS ALSO DEBUNKED AFTER AN ARMY INVESTIGATION.

A FACTION OF SEVEN JURORS ALIGNED ITSELF WITH A JUROR KNOWN TO THE COURT TO BE HOSTILE TO THE APPELLANT AND THE HOLDOUT. THIS PROVIDED THE COURT AND STATE AN IMPROPER INSIGHT INTO THE DELIBERATING JURY'S VOTING INTENTIONS.

APPELLATE COUNSELS COMPOUNDED UPON THE STATE'S ERROR BY NOT RAISING THE ISSUE OF "DOMESTIC VIOLENCE" CLAIMS DESPITE APPELLANT'S INSISTENCE, AND THEN FABRICATED A CORRECTION FALSELY ATTRIBUTED TO THE PROSECUTOR, WHICH PREJUDICED THE APPELLANT'S RIGHTS AND SHOW CAUSES INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND TRIAL COUNSEL.



## ARGUMENTS

QUESTION 1: JURY DELIBERATIONS STARTED AFTER LUNCH ON 3/8/23. HOWEVER,

"A DIFFERENCE OF OPINION THAT WAS BASED ON THE MERITS OF  
DELIBERATION" (PAGES 18 AND 19 ON 3/9/23)

DIVIDED JUROR 1 - WHO ONLY WANTED TO DELIBERATE THE FACTS OF THE CASE AND

WAS NOT READY TO VOTE RIGHT AWAY - FROM THE OTHER SEVEN JURORS WHO ALIGNED

THEMSELVES WITH JUROR 5 IN HER IMPATIENCE TO CONVICT AND GO HOME WITHOUT ANY

DELIBERATION. A SENTIMENT THAT JUROR 5 BLUNTLY EXPRESSED,

"I WANT TO GO BACK TO MY LIFE ... I KNOW THAT SOUNDS COLD BUT  
I DON'T GIVE A SHIT. I WANT TO GET THIS OVER WITH." (PAGE 65)

THE CRUCIAL FACTOR IS THAT THE COURT KNEW OF JUROR 5'S HOSTILITY TOWARD

THE APPELLANT, AS NOTED BY THE DEFENSE COUNSEL,

"THERE IS GREAT ANIMOSITY COMING FROM NUMBER 5 ... I'VE ALREADY  
MADE A RECORD EARLIER THAT SHE ... LOOKS PRETTY ANGRY." (PAGE 84)

AN ASSESSMENT WHICH THE PROSECUTOR CORROBORATED,

"IT APPEARS SHE DOESN'T LIKE THE DEFENDANT ... THAT'S NOT A  
REASON TO STRIKE A JUROR." (PAGE 87)

THE COURT HAD ACKNOWLEDGED THE JURORS' RESTLESSNESS:

"IT'S NOT WHAT YOU SIGNED UP FOR" (PAGE 18 ON 2/22/23)

"THIS I CAN PROMISE YOU IS NOT NORMAL. THIS IS NOT HOW IT GOES...

AT THE BEGINNING WE ASKED YOU FOR SIX WEEKS AND THEN WE STOLE

ANOTHER WEEK FROM YOU AND NOW WE'RE GOING TO ASK FOR ANOTHER

WEEK... IS THAT GOING TO CAUSE A PROBLEM FOR ANYONE? THAT WAS

A HEAVY SIGH." (PAGES 68, 100 AND 101 ON 3/9/23)

ON THE OTHER HAND, JUROR 1 MADE IT ABUNDANTLY CLEAR DURING QUESTIONING FROM

PAGES 34 TO 53, THAT SHE WAS ABLE AND WILLING TO DELIBERATE. WHEN THE COURT

ASKED IF SHE COULD STAY ANOTHER WEEK, JUROR 1 ANSWERED,

"I AM. I DON'T HAVE A PROBLEM WITH THAT." (PAGE 41)

THE FOREPERSON DESCRIBED DELIBERATIONS BETWEEN JURORS 1 AND 5:

"THERE WAS YELLING AS THE SITUATION ESCALATED... ACCUSATIONS OF BIAS,

OF... PRECONCEIVED NOTIONS... THROUGHOUT THE TRIAL... PENT-UP FEELINGS

OR THOUGHTS... AND THEN DURING DELIBERATIONS YESTERDAY GOT TO A

POINT WHERE A DIFFERENCE OF OPINION THAT WAS BASED ON THE MERITS

OF DELIBERATION... TURNED INTO A... COMPILATION OF JUST ANGER AND

FRUSTRATION AND LASHING OUT... [JUROR 1 ACCUSED JUROR 5 OF] NOT

WANTING TO HAVE HER ON THE JURY... WHICH PROMPTED A VERY SHARP

RESPONSE FROM NUMBER 5." (PAGES 18, 19 AND 27)

JUROR 1 WAS FORCED TO RETREAT INTO A BATHROOM STALL.

"I JUST DIDN'T WANT TO BE YELLED AT ANYMORE... I WAS SITTING IN THE BATHROOM... TRYING TO AVOID ANY FURTHER ANIMOSITY OR CONFLICT WHEN IT STARTED UP AGAIN IT WAS 3:00 O'CLOCK SO I SAID I HAD TO GO... THAT'S WHEN [JUROR 5] SAID I ABSOLUTELY REFUSE TO BE ON THE JURY... I DIDN'T KNOW THAT THEY WERE GOING TO STAY AND SUBMIT QUESTIONS ABOUT ME. THEY TOLD ME THAT THEY WERE... ALL WAITING FOR [JUROR 5] TO RECUSE HERSELF" (PAGES 50 TO 53)

AT AROUND 3:30 PM, THE SEVEN JURORS WHO REMAINED TO DISCUSS DELIBERATIONS WITHOUT A QUORUM PAST THE "AGREED UPON DISMISSAL TIME" OF 3 PM, SUBMITTED TWO QUESTIONS IN CONCERT THAT REFLECTED JUROR 5'S ANIMUS TOWARD JUROR 1:

"GIVEN THE STATEMENTS BY JUROR NUMBER 1 THAT SHE IS NOT IN A SOUND MENTAL STATE TO DELIBERATE, IS STRUGGLING WITH MEDICATION AND OUT-OF-COURT ISSUES, AND THAT SHE LEFT THE COURTHOUSE TODAY, MAY JUROR NUMBER 1 BE EXCUSED?... JUROR NUMBER 5 NO LONGER WANTS TO SIT ON A JURY WITH THE OUTWARD STATEMENTS AND BEHAVIOR FROM JUROR NUMBER 1 REGARDING HER MENTAL STATE. MAY JUROR NUMBER 5 BE EXCUSED PENDING THE DECISION ON THE OTHER QUESTION?" (PAGES 23 AND 24 ON 3/8/23)

THESE QUESTIONS CONTRADICT THE APPELLATE COURT'S CONCLUSION ON PAGE 9 THAT,

"WHEN EXAMINED BY THE COURT REGARDING THE CONFLICT BETWEEN

JURORS 1 AND 5, THE FOREPERSON TESTIFIED THAT THE CONFLICT 'WAS ESSENTIALLY ONE VERSUS ONE IN AN ARGUMENT,' THAT 'THERE WERE NOT SIDES BEING TAKEN'... NOTHING IN THE RECORD SUPPORTS PONSATI'S CLAIM OF BIAS OR IMPARTIALITY (SIC) BY THE REMAINING JURORS."

YET, THE FIRST QUESTION DECEPTIVELY INFERRED THAT JUROR 1 HAD LEFT DELIBERATIONS

EARLY AND WITHOUT NOTICE TO MANIPULATE THE COURT INTO REMOVING THE HOLDOUT FOR

HER DIFFERENCE OF OPINION. WHEN IN FACT, THE FOREPERSON ADMITTED THAT,

"3:00 O'CLOCK WAS ACTUALLY [THE] AGREED UPON DISMISSAL TIME" (P. 23 ON 3/19/23)

A SECOND FACT DISPROVES THE FOREPERSON'S CLAIM THAT THERE WERE NO "SIDES BEING

TAKEN" OR THAT THIS WAS ONLY "ONE VERSUS ONE", SINCE HE THEN CONCEDED THAT,

"IT'S NOT AS THOUGH JUROR NUMBER 5 HOLDS THAT OPINION ON NUMBER 1

AND WANTED THAT QUESTION TO BE ASKED. THAT'S AN AGREEMENT OF

THE INDIVIDUALS IN THE ROOM." (PAGE 20)

THE OBVIOUS IMPLICATION WAS THAT THE SEVEN JURORS SIDED WITH JUROR 5 AS

A FACTION HOSTILE TO THE APPELLANT, WHICH PROVIDED THE STATE IMPROPER KNOWLEDGE

OF THE JURY'S VOTING INTENTIONS, INVITING JURY TAMPERING TO INFLUENCE THE VERDICT.

THE COURT OF APPEALS ALTERED THE MEANING OF THE JURY INSTRUCTION,

"YOU ARE TO DISCUSS THE CASE AND DELIBERATION ONLY WHEN ALL JURORS  
ARE TOGETHER IN THE JURY ROOM." (PAGE 64 ON 3/7/23)

IN ORDER TO FIT THE ARGUMENT ON PAGE 8 THAT,

"THE RECORD CONTAINS NO EVIDENCE THAT THE JURY DELIBERATED AFTER  
JUROR 1 LEFT THE JURY ROOM, AND THE RECORD SHOWS NONE...

MOREOVER, THE JURY WAS INSTRUCTED 'TO DISCUSS THE CASE AND  
DELIBERATE[F] ONLY WHEN ALL JURORS ARE TOGETHER IN THE JURY ROOM'  
AN INSTRUCTION THIS COURT PRESUMES THE JURY FOLLOWED."

THEREFORE, THE SEVEN-JUROR FACTION WAS NOT SUPPOSED TO DISCUSS DELIBERATION

WITHOUT JUROR 1. THE FOREPERSON ALSO VIOLATED HIS INSTRUCTIONS:

1. MAKE SURE EVERY MEMBER OF THE JURY IS PRESENT DURING ALL  
DISCUSSIONS AND DELIBERATIONS.

2. PRESIDE OVER DELIBERATIONS AND MAKE SURE THAT THE DELIBERATIONS  
ARE CONDUCTED RESPECTFULLY AND THAT ALL ISSUES ARE FULLY DISCUSSED.

THE DISCUSSIONS SHOULD BE OPEN AND FREE SO THAT EVERY JUROR MAY  
PARTICIPATE.

3. ALL JURORS SHOULD BE ALLOWED TO STATE THEIR VIEWS ABOUT THE CASE  
AND WHAT THEY THINK THE VERDICT SHOULD BE AND WHY." (PAGE 83 ON 3/6/23)

HOWEVER, WHEN THE DEFENSE COUNSEL CALLED FOR A MISTRIAL ON PAGES 22 AND 26

ON 3/8/23, AND AGAIN ON PAGE 80 ON 3/9/23, THE COURT DENIED IT AND SAID,

"I'M NOT GOING TO CALL A MISTRIAL AFTER SIX AND HALF WEEKS WHEN WE  
HAVE THIS MANY ALTERNATES AND DELIBERATIONS HAVE BARELY BEEN  
GOING ON FOR A DAY." (PAGE 27 ON 3/8/23)

THEREFORE, "PREJUDICE MAY BE FAIRLY PRESUMED FROM THE FACTS" SHOWING PREJUDICIAL  
ERROR ON DENYING MOTIONS FOR MISTRIAL. STATE V. MILLER, 178 ARIZ. 555 (1994)

THE APPELLATE COURT STATED ON PAGE 7 OF ITS DECISION THAT,

"THE MATTER OF EXCUSING JURORS IS COMMITTED TO THE SOUND  
DISCRETION OF THE TRIAL COURT AND, ABSENT CLEAR AND PREJUDICIAL  
ABUSE OF THAT DISCRETION, ITS DETERMINATION WILL NOT BE DISTURBED  
ON APPEAL." STATE V. MILKE, 177 ARIZ. 118, 122 (1993)

HOWEVER, JUROR 1 HAD MADE IT CLEAR ON PAGE 39 ON 3/9/23, THAT HER TEMPORARY

OUT-OF-COURT ISSUES HAD BEEN RESOLVED, BUT THE COURT USED IT AS A PRETEXT TO

REMOVE THE HOLDOUT IN ORDER TO FACILITATE A CONVICTION AGAINST FEDERAL PRECEDENTS

"DOESN'T THAT KIND OF RISE TO ALMOST A CAUSE OR A HARDSHIP THAT

"WE DON'T KNOW WHAT'S GOING ON WITH HER HOUSING SITUATION; IF THE

FOAM ISN'T THERE; IF SHE'S STILL SICK; IF SHE COMES IN AND IF SHE GETS

ANOTHER MIGRAINE... I'M GOING TO EXCLUDE JURORS 1 AND 5 FOR CAUSE. (PAGES 96 AND 97)

"THERE WAS A FIRE IN MY BUILDING AND IT AFFECTED MY APARTMENT

SOMEBODY CAUGHT THE DRYERS ON FIRE... YESTERDAY... IN THE MIDDLE

OF THE NIGHT, ABOUT 2:00 IN THE MORNING... I'D BEEN UP ALL NIGHT.

I WAS VERY TIRED... SO LACK OF SLEEP, NO EATING, MIGRAINE HEADACHE.

I DID DELIBERATE. I PARTICIPATED... I JUST DID NOT WANT [TO VOTE]

BECAUSE I DID NOT FEEL THAT I WAS IN THE RIGHT SOUND [SIC] OF MIND.

ANYWAY, IT HAS ALL BEEN RESOLVED. I CAME HERE THIS MORNING TO

MOVE FORWARD. YESTERDAY IS DONE... THERE'S REALLY NO FIRE DAMAGE,

YOU KNOW, JUST SMOKE DAMAGE IN THE VENTS... IT WASN'T WORTH

MENTIONING." (PAGES 34 TO 41)

COURT: I WANTED TO TALK TO YOU ABOUT THE STATEMENT ABOUT A SOUND

MENTAL STATE TO DELIBERATE... ARE YOU OKAY?

JUROR 1: I WASN'T YESTERDAY, NO... I GUESS I MADE THE MISTAKE OF

TELLING THEM... I NEVER WANTED TO RECUSE MYSELF...

COURT: WHAT I'M REALLY CONCERNED WITH RIGHT NOW IS WHAT'S GOING ON

IN YOUR LIFE OUT OF COURT... AND IF THAT'S AFFECTING YOUR ABILITY TO-

JUROR 1: NO...

COURT: WERE YOU ABLE TO SLEEP THERE LAST NIGHT?

JUROR 1: YEAH.

WHILE BOTH COURTS PRESUMED THAT THE SEVEN-JUROR FACTION WAS IMPARTIAL AND NOT

DELIBERATING DESPITE EVIDENCE TO THE CONTRARY, THE SAME COURTS WERE QUICK TO

DISMISS THE HOLDOUT'S ASSURANCE THAT SHE WAS ABLE TO DELIBERATE. THIS DOUBLE

STANDARD MADE THE COURT'S MOTIVE FOR REMOVING THE HOLDOUT VERY SUSPICIOUS.

"IF RECORD EVIDENCE DISCLOSES ANY REASONABLE POSSIBILITY THAT IMPETUS FOR JUROR'S DISMISSAL AFTER DELIBERATIONS STEMS FROM JUROR'S VIEWS ON MERITS OF CASE, COURT MUST NOT DISMISS JUROR, BUT MUST EITHER SEND JURY BACK TO CONTINUE DELIBERATING OR DECLARE MISTRIAL, IN INSTANT CASE THERE WAS REASONABLE POSSIBILITY THAT JUROR'S VIEWS ON MERITS OF CASE PROVIDED IMPETUS FOR HER REMOVAL SO THAT HER DISMISSAL WAS REVERSIBLE ERROR." US V. SYMINGTON, (1999, CA 9 ARIZ) 195 F3D 1080, 99 CDOs 4890, 99 DAILY JOURNAL DAR 6295 CRITICIZED IN PEOPLE V. CLEVELAND (2001) 25 CAL 4TH 466, 106 CAL RPTR 2D 313, 2191 3D 1225, 2001 CAL DAILY OP SERVICE 3585, 2001 DAR 4337

"IN SECOND CIRCUIT, JUROR'S STATUS AS HOLDOUT IS 'RED FLAG' THAT WILL RESULT IN CLOSEST SCRUTINY OF DISTRICT COURT'S DECISION TO DISCHARGE JUROR UNDER FRCP 23(B)." US V. SAMET, 207 F SUPP 2D 369, 2002 US DIST LEXIS 11469 (SDNY 2002).

THEREFORE, THE COURT ABUSED ITS DISCRETION BY KNOWINGLY REMOVING THE HOLDOUT

WITHOUT GOOD CAUSE DUE TO HER VIEWS ON THE MERITS, WHICH DEPRIVED THE

APPELLANT OF THE MOST BASIC CONSTITUTIONAL PROTECTIONS AND VIOLATED FEDERAL

PRECEDENTS. US V. GINYARD, 444 F 3D 648, 370 US APP DC 303, 2006 US APP LEXIS

8404 (DC CIR 2006), APP. AFTER REMAND, 2007 US APP LEXIS 22626 (DC CIR SEPT 21, 2007).

THE CRUCIAL FEDERAL QUESTION IS WHAT EXACTLY CONSTITUTES DELIBERATING

QUESTION 2: DURING CROSS-EXAMINATION, THE PROSECUTOR FALSELY ALLEGED

"DOMESTIC VIOLENCE" BY THE APPELLANT MULTIPLE TIMES WITH THE COURT'S ASSENT:

PROSECUTOR: HER FAMILY MEMBERS RELATED TO POLICE THAT THERE

WERE INSTANCES OF VIOLENCE WITH YOU (PAGE 69 ON 3/2/23)

THEY ALSO TALKED ABOUT VIOLENCE FROM YOU TOWARDS SHERRI (PAGE 75)

THOSE PEOPLE TALKED TO GILBERT PD ABOUT THE VIOLENCE IN

YOUR RELATIONSHIP (PAGE 76)

SHERRI ACTUALLY REPORTED TO YOUR SUPERIORS THAT THERE WAS

DOMESTIC VIOLENCE IN YOUR RELATIONSHIP, ISN'T THAT TRUE?

IT'S DOCUMENTED. YOU'RE NOT AWARE OF THIS?

DEFENSE: OBJECTION (PAGE 77).

FACTS NOT IN EVIDENCE, MISLEADING, CONFUSING (PAGE 79)...

COURT: ANY OBJECTION IS OVERRULED (PAGE 80)

FAR FROM CORRECTING HIMSELF, THE PROSECUTOR REITERATED THIS

MISREPRESENTATION DURING HIS CLOSING ARGUMENT FOUR DAYS LATER:

"THERE IS ONE THING I DO NEED TO CORRECT ON CROSS-EXAMINATION OF

THE DEFENDANT, I ASKED A QUESTION: SHERRI ACTUALLY REPORTED TO YOUR

SUPERIORS THAT THERE WAS DOMESTIC VIOLENCE IN YOUR RELATIONSHIP.

ISN'T THAT TRUE? HE REPLIED: NO, I DON'T THINK SO. THE CORRECT

STATEMENT OF THAT QUESTION SHOULD HAVE BEEN: SHERRI ACTUALLY

MADE AN ACCUSATION OF DOMESTIC VIOLENCE THAT MADE ITS WAY TO THE

ATTENTION OF THE MILITARY. ISN'T THAT TRUE? JUST NEEDED TO

CORRECT THAT INCORRECT INFERENCE FOR YOU." (PAGE 102 ON 3/6/23)

THIS WAS NOT A CORRECTION AT ALL, BUT A REPETITION OF THE MISREPRESENTATION

WHICH MISLED JURORS INTO WRONGFULLY CONVICT THE APPELLANT ON AN IMPROPER BASIS.

WORSE STILL, THE PROSECUTOR MADE THE CLAIM ABOUT THE APPELLANT'S MILITARY

SUPERIORS IN BAD FAITH AND IN VIOLATION OF HIS DUTY OF CANDOR, AS HE PROVED WITH

HIS QUESTION TO STEPHANIE MILLER A YEAR EARLIER:

PROSECUTOR: WHEN YOU REACHED OUT TO KATRINA STEDDUM TO DO

SOMETHING ABOUT THIS ALLEGATION... WAS THAT AT SHERRI'S REQUEST?

MILLER: NO, NO. (PAGE 183 ON 3/21/22)

THEREFORE, THE PROSECUTOR KNEW THAT SHERRI'S ALLEGATION WENT FROM MILLER TO

KATRINA STEDDUM, AND HE HAD NOT MENTIONED THE APPELLANT'S SUPERIORS. THE

PROSECUTOR USED THIS DISHONEST LINE OF QUESTIONING AS AN AMBUSH.

THE RECORD PROVES THAT SHERRI HAD NEVER ALLEGED DOMESTIC VIOLENCE TO ANYONE.

THE DISCREDITED ALLEGATION THAT MADE THE ROUNDS WAS THAT THE APPELLANT HAD VIEWED

PORNOGRAPHY ON HIS ARMY-ISSUED LAPTOP ON PAGES 175 AND 208, WHICH AN ARMY

INVESTIGATION DEBUNKED.

STEPHANIE MILLER DISCREDITED THE PROSECUTOR'S CLAIMS OF DOMESTIC VIOLENCE:

PROSECUTOR: DID SHE EVER TELL YOU THAT SHE WAS BEING PHYSICALLY ABUSED?

MILLER: ... NO...

PROSECUTOR: DID YOU EVER SEE BRUISES OR ANYTHING LIKE THAT THAT MADE YOU THINK SHE MIGHT NOT BE TELLING YOU SOMETHING?

MILLER: NO, NO. (PAGES 94 AND 95)

DEFENSE: YOU NEVER SAW MR. PONSATI WITH YOUR OWN EYES BEING VIOLENT TO MS. PONSATI; CORRECT?

MILLER: ... NO...

DEFENSE: YOU NEVER SAW ERIC PHYSICALLY HARM ANYONE; CORRECT?

MILLER: CORRECT. (PAGES 148 AND 149)

THIS COVERED THE TIMEFRAME WHEN THE APPELLANT AND SHERRI (THE PONSATIS)

LIVED IN FORT RUCKER, ALABAMA, FROM 2013 TO 2015, AND IT WAS CONSISTENT WITH

EVERYONE ELSE THROUGH THEIR NINE YEARS TOGETHER FROM 2008 TO 2017.

SHERRI'S BROTHER KNEW THE PONSATIS AS A COUPLE SINCE 2008 IN WISCONSIN.

HE VISITED THEM IN ALABAMA, CONNECTICUT AND ARIZONA, AND HE ALSO LIVED IN HAWAII

AT ABOUT THE SAME TIME AS THE PONSATIS FROM 2010 TO 2013, JUST 20 MINUTES AWAY.

PROSECUTOR: DID YOU EVER SEE SHERRI WITH INJURIES THAT SHE TOLD YOU WAS FROM HER BEING ASSAULTED BY ERIC?

BROTHER: I HAVE NEVER PERSONALLY WITNESSED ANY INJURIES ON SHERRI FROM THAT NATURE.

PROSECUTOR: WERE YOU EVER IN BOTH OF THEIR PRESENCE AND YOU SAW EITHER ONE OF THEM ASSAULT EACH OTHER?

BROTHER: NO, I HAVE NOT. (PAGES 158 AND 159 ON 3/22/22)

WHEN THE PONSATIS LIVED IN CONNECTICUT IN 2015 AND 2016, SHERRI'S MOTHER ASKED HER, "IS HE HITTING YOU? IS HE DOING ANYTHING LIKE THAT? AND SHE SAID NO, MOM. IT'S NOT THAT." (PAGE 115)

SHERRI'S FRIEND, DANIELLE LUCIO, CONFIRMED THE SAME INFORMATION:

DEFENSE: AND THERE WAS NEVER ANY VIOLENCE AGAINST HER, LIKE PUNCHING OR SLAPPING OR ANYTHING LIKE THAT, THAT WAS EVER DISCUSSED ABOUT MR. PONSATI?

LUCIO: NO.

DEFENSE: MS. PONSATI TOLD YOU THAT ERIC PONSATI HAD NEVER PHYSICALLY HARMED HER; CORRECT?

LUCIO: CORRECT... SHE NEVER MENTIONED ANYTHING PHYSICAL, NO. (PAGES 43 AND 44 ON 3/21/22)

THEIR SIX-YEAR OLD DAUGHTER RELATED THE SAME TO DETECTIVE MICHAEL BISHOP,

AS DID SHERRI'S AUNT AND UNCLE WHO SAW THE PONSATIS DAILY IN 2016 AND 2017.

THE ACTUAL GOSSIP WHICH SHERRI HAD TOLD STEPHANIE MILLER WAS THE DEBUNKED  
AFOREMENTIONED RUMOR CONCERNING PORNOGRAPHY, WHICH MILLER RELATED TO  
KATRINA STEDDUM, WHO IN TURN PASSED IT ONTO HER ARMY SPOUSE, JAMES STEDDUM,  
WHO THEN CONTACTED THE JUDGE ADVOCATE, WHO INITIATED A DIGITAL FORENSIC  
EXAMINATION OF THE LAPTOP, DISPROVING THIS NONSENSE. AS MILLER ADMITTED,  
"WHETHER THAT'S THE TRUTH, I DON'T KNOW." (PAGE 175)

ON PAGES 204 AND 205, KATRINA STEDDUM PROVED THAT MILLER HAD INTRODUCED THE  
FALSE CLAIMS OF ABUSE, WHICH MILLER CONCEDED WERE NOT TRUE ON PAGES 94, 95,  
148 AND 149. KATRINA STEDDUM MADE IT CLEAR THAT ANY TALK OF ABUSE WAS WITH  
MILLER ONLY, THAT SHE NEVER "HEARD THAT FROM SHERRI" AND THAT SHE "PERSONALLY  
DIDN'T KNOW ANYTHING." YET, THE PROSECUTOR SEIZED UPON THIS LIE AND FURTHER  
TWISTED THE RECORD TO AMBUSH THE APPELLANT AND TO DECEIVE THE JURY.  
COMPOUNDING UPON THIS FUNDAMENTAL AND PREJUDICIAL ERROR, THE APPELLATE  
COUNSEL FAILED TO RAISE THE ISSUE ON THE OPENING BRIEF DESPITE THE APPELLANT'S

REPEATED INSISTENCE. WHEN APPOINTED COUNSEL MENTIONED IT ON THE REPLY BRIEF,

HE MISCHARACTERIZED THE RECORD WITH A MANUFACTURED QUOTE, FALSELY STATING,

"THE PROSECUTOR LATER ACKNOWLEDGED DURING CLOSING ARGUMENTS

THAT 'THERE WAS A CLAIM THAT SHERRI REPORTED DOMESTIC VIOLENCE

-NOW, THAT'S NOT TRUE, THAT'S NOT IN THE RECORD' (RT 03/06/23,

AT 102)." (PAGE 13 OF APPELLANT'S REPLY BRIEF)

THE APPELLATE COUNSEL'S PETITION FOR REVIEW TO THE ARIZONA SUPREME COURT

ALSO MISCHARACTERIZED THE APPEAL COURT'S DECISION,

"THE COURT OF APPEALS... TREATED THE PROSECUTOR'S LATER

CORRECTION AS SUFFICIENT TO AVOID PREJUDICE." (PAGE 6)

WHEN THE APPELLATE COURT'S DECISION IN A FOOTNOTE ON PAGE 6 HELD THAT,

"PONSATI ALLEGES IN HIS REPLY THAT THE STATE MISCHARACTERIZED

EVIDENCE BY SUGGESTING S.P. FILED FORMAL DOMESTIC VIOLENCE

REPORTS, WHICH IN TURN WAS PREJUDICIAL... BY NOT RAISING THIS

ARGUMENT IN HIS OPENING BRIEF, THE ISSUE IS WAVED."

WHILE THE APPOINTED APPELLATE COUNSEL PROVED INEFFECTIVE, AN IMPORTANT FACT TO

CONSIDER IS THAT THE STATE BROUGHT UP THE ISSUE OF ABUSE IN THE FIRST PLACE.

THE STATE FALSELY CLAIMED ON PAGE 47 OF THE APPELLEE'S ANSWERING BRIEF THAT,

"THERE WAS NO TESTIMONY CONCERNING ACTUAL PHYSICAL ABUSE"

UPON WHICH "THE JURY WOULD REACH A DECISION ON AN IMPROPER BASIS."

THE QUESTION FOR THE US SUPREME COURT IS WHETHER AN APPELLATE COURT MAY

CONSIDER AN ISSUE NOT PROPERLY RAISED, CONTRARY TO THE ARIZONA APPEAL COURT.

"[A COURT] HAS POWER TO NOTICE PLAIN OR FUNDAMENTAL ERROR

APPEARING ON RECORD, ALTHOUGH NO QUESTIONS IN THAT RESPECT IS

RAISED OR PROPERLY RAISED BY PARTIES" SILBER V. US, 370 US 717 (1962)

"BECAUSE GOOD CAUSE WAS EVIDENT, COURT OF APPEALS CONSIDERED

PRISONER'S... ARGUMENT DESPITE PRISONER'S FAILURE TO RAISE ISSUE

IN OPENING BRIEF FILED BY HIS FORMER APPELLATE COUNSEL; RECORD

REVEALED BREAKDOWN IN COMMUNICATION, AND DISAGREEMENTS AS TO

WHAT ARGUMENTS SHOULD BE ADVANCED, BETWEEN PRISONER AND HIS

APPOINTED APPELLATE COUNSEL... PRISONER ALERTED APPELLATE COURT

TO [ISSUE], FOCUSED ON IT IN HIS... ARGUMENT, AND IT WAS APPARENT THAT,

HAD PRISONER BEEN REPRESENTING HIMSELF, HE LIKELY WOULD HAVE

MADE THIS ARGUMENT FROM OUTSET." KOERNER V. GRIGAS, 328 F 3D 1039 (2003)

"COURT WILL REVIEW ISSUE NOT PROPERLY PRESENTED IF FAILURE TO DO

SO WOULD RESULT IN MANIFEST INJUSTICE." US V. LOYA, 807 F 2D 1483 (1987)

"COMBINATION OF TWO ERRORS IS SUFFICIENTLY PREJUDICIAL TO REQUIRE

REVERSAL OF CONVICTION." GORDON V. US, 344 US 414 (1953)

"IN CRIMINAL CASES, FEDERAL APPELLATE COURTS, IN PUBLIC INTEREST,

MAY, ON THEIR OWN MOTION, NOTICE ERRORS TO WHICH NO EXCEPTION WAS TAKEN, IF ERRORS ARE OBVIOUS, OR IF THEY OTHERWISE SERIOUSLY AFFECT FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS." WILBORG V. US, 163 US 632 (1896)

"IN DETERMINING WHETHER TRIAL COURT'S ERROR IS HARMLESS, TEST IS NOT MERELY WHETHER THERE WAS ENOUGH EVIDENCE TO SUPPORT CONVICTION, APART FROM PHASE AFFECTED BY ERROR, IT IS RATHER WHETHER ERROR ITSELF HAD SUBSTANTIAL INFLUENCE; IF SO, OR IF ONE IS LEFT IN GRAVE DOUBT, CONVICTION CANNOT STAND."

US V. PANCZKO, 429 F 2D 683 (1970)

"ERROR AFFECTING FIFTH AMENDMENT RIGHTS IS NOT HARMLESS IF THERE IS REASONABLE POSSIBILITY THAT EVIDENCE COMPLAINED OF MIGHT HAVE CONTRIBUTED TO CONVICTION" US EX REL. AMAIO V. REINCKE, 300 F SUPP 367 (1969)

"WHERE [APPELLANT] DID NOT RAISE ISSUE IN OPENING BRIEF TO COURT, COURT CONSIDERED MERITS OF ARGUMENT AND RULED ON IT BECAUSE MISCARRIAGE OF JUSTICE WAS APPARENT." VILLATORIO V. SESSIONS, 680 FED APPX 212 (4TH CIR 2017)

THE STATE FALSELY CLAIMING "DOMESTIC VIOLENCE" REPEATEDLY WITH THE COURT'S ASSENT WAS A FUNDAMENTAL ERROR THAT PREJUDICED THE APPELLANT'S CONSTITUTIONAL RIGHTS BY SUBSTANTIALLY INFLUENCING THE OUTCOME OF THE CASE. THE APPELLATE COURT SHOULD HAVE OVERTURNED THIS CONVICTION DESPITE THE APPOINTED COUNSEL'S FAILURE TO RAISE THIS ISSUE ON THE OPENING BRIEF AS THE APPELLANT DEMANDED.

QUESTION 3: CASES ARE CONTINGENT ON THE INTEGRITY OF GOVERNMENT OFFICIALS

TO BE TRUTHFUL IN THEIR STATEMENTS AND REPORTS. HOWEVER, THE PARAMEDICS IN

THIS CASE COVERED UP AT LEAST THREE SEPARATE RESCUE INCIDENTS.

WHEN SHERRI WAS RUSHED DOWNSTAIRS, SHE SLID OFF THE BACKBOARD INTO THE

HANDRAILS OF THE CRAMPED STAIRWELL. THIS INCIDENT BROUGHT THESE HURRIED

PARAMEDICS TO A STANDSTILL, HOLDING SHERRI UP PRECARIOUSLY ON THE STAIRWELL

INCLINE WHILE READJUSTING HER BACK ONTO THE BOARD.

AMONG THE PARAMEDICS, NICK DESTINI WAS THE CHART PERSON IN CHARGE OF

DRAFTING THE "PATIENT CARE REPORT" (EXHIBIT 54), THAT THE MEDICAL EXAMINER (ME)

RELIED UPON TO BE A COMPLETE, ACCURATE AND DETAILED ACCOUNT OF EVERYTHING THAT

HAPPENED DURING THE RESCUE TO DECIDE WHAT LED TO SHERRI'S DEMISE (PAGES 8 TO 87

ON 1/31/23). YET, WHEN THE PROSECUTOR ASKED DESTINI ON PAGE 139 ON 2/6/23,

PROSECUTOR: DID YOU SEE SHERRI PONSATI FALL OR BE DROPPED OFF

OF THE BACKBOARD GOING DOWN THE STAIRS AT ALL?

DESTINI: NO.

PROSECUTOR: IF YOU HAD, WOULD YOU HAVE PUT THAT IN YOUR

"PATIENT CARE REPORT"?

DESTRINI: ABSOLUTELY.

PROSECUTOR: WHY?

DESTRINI: BECAUSE IT'S IMPORTANT TO DOCUMENT EVERYTHING THAT

WE VISUALIZE, THAT'S IMPORTANT FOR US TO DOCUMENT IT FOR CASES

LIKE THIS, BECAUSE SOMETIMES IT TAKES YEARS FOR CALLS, IF THEY GO

TO TRIAL, THINGS LIKE THAT WE HAVE VERY LITTLE RECOLLECTION WITHOUT

THIS CHART, SO IT'S IMPORTANT TO BE VERY THOROUGH DURING THESE THINGS.

THE PROSECUTOR ASKED DAVID SWITZER ON PAGE 89 ON 2/2/23,

PROSECUTOR: DO YOU RECALL ANYTHING ABOUT THE MOVEMENT OF THE

PATIENT FROM UPSTAIRS TO DOWNSTAIRS?

SWITZER: NOTHING OUT OF THE ORDINARY FROM WHAT I COULD SEE.

THE PROSECUTOR ALSO ASKED NATHAN HAWN ON PAGE 32 ON 2/9/23,

PROSECUTOR: DO YOU RECALL ANY INSTANCE SHE COULD HAVE BEEN INSURED

FURTHER ON THE TRIP FROM THE TOP OF THE STAIRS TO THE BOTTOM?

HAHN: NO, SIR. THAT TRIP WAS UNEVENTFUL.

YET, THE FIRST HINT OF TRUTH MANAGED TO PEEK THROUGH THIS STONEWALL WHEN

HAHN ADMITTED THAT "WE DIDN'T HAVE TIME TO TIE HER TO THE BOARD" ON PAGE 31. HAWN

PLACED HIMSELF HOLDING THE HEAD PORTION OF THE BACKBOARD COMING DOWN THE STAIRS

FIRST, WHERE SHERRI SLID OFF MOST. MATTHEW THIELSEN WAS HOLDING THE MIDDLE,

AND SAM CERBO HELD UP THE FEET PORTION OF THE BACKBOARD, COMING DOWN LAST

NEXT, THE PROSECUTOR ASKED MATTHEW THIELSEN ON PAGE 137,

PROSECUTOR: DO YOU RECALL IF IT WAS DIFFICULT TO KEEP HER ON  
THE BACKBOARD?

THIELSEN: JUST THE FACT THAT SHE WAS WET, SLIPPERY, BUT NO, NOT  
NECESSARILY DIFFICULT.

YET, ON PAGE 160, THE DEFENSE COUNSEL REMINDED THIELSEN OF A PRIOR STATEMENT,

DEFENSE: I BELIEVE YOU'VE SAID IN THE PAST THAT THE PATIENT WAS  
VERY SLIPPERY ON THE BOARD AND YOU HAD TO HOLD HER OR ELSE SHE  
WOULD HAVE SLID OFF BECAUSE SHE WASN'T STRAPPED IN, IS THAT CORRECT?  
THIELSEN: THAT'S CORRECT.

ON PAGE 188, THE PROSECUTOR ASKED THE LAST PARAMEDIC, SAM CERBO,

PROSECUTOR: WHEN YOU WERE TRANSPORTING DOWN THE STAIRS, DID  
ANYBODY DROP THE PATIENT?

CERBO: WE DIDN'T DROP THE PATIENT. I REMEMBER SHE WAS SLIDING  
OFF THE BACKBOARD AND WE HAD TO READJUST... I THINK SHE WAS ON  
THE BACKBOARD THE ENTIRE TIME.

ON PAGE 169 ON 1/25/23, THE PROSECUTOR ASKED SERGEANT KYLE PETERSON,

PROSECUTOR: DO YOU WATCH THEM CARRY HER DOWNSTAIRS?

PETERSON: YES, I DO.

PROSECUTOR: DID THEY DROP HER AT ANY POINT?

PETERSON: NOT THAT I SAW.

PROSECUTOR: AND... WERE YOU ABLE TO SEE THEM GET FROM THE TOP  
OF THE STAIRS TO THE BOTTOM OF THE STAIRS?

PETERSON: YES, I WOULD HAVE. I FOLLOWED THEM DOWN THE STAIRS.

PROSECUTOR: IF YOU HAD BEEN IN THIS SITUATION AND THE FIREFIGHTERS  
HAD DROPPED HER ON THE STAIRS IS THAT SOMETHING YOU WOULD HAVE  
NOTED IN YOUR REPORT?

PETERSON: YES, IT WOULD BE.

AS SWITZER EXPLAINED ON PAGE 160 ON 2/2/23, "GETTING HER CARE AS QUICKLY AS

POSSIBLE" DOWNSTAIRS WAS THE PARAMEDICS' PRIORITY ON THAT STAIRWELL. SO IT

STRAINS CREDULITY THAT EVERY PARAMEDIC AND OFFICIAL PRESENT HAD CONVENIENTLY

MISSED THIS HUMILIATING FIASCO, EXCEPT CERBO AND THIELSEN'S SELECTIVE HONESTY.

MOST IMPORTANTLY, THIS WAS NO ISOLATED INCIDENT, BUT A PATTERN OF COVER UPS.

A PRIOR RESCUE DEBACLE THAT HAHN AND DESTRIIN ERASED FROM THE RECORD WAS

THANKFULLY CAPTURED ON TWO POLICE BODY CAMERAS (EXHIBITS 61 AND 63). THE

PARAMEDICS INVOLVED WERE CAUGHT UNAWARES BY THE DAMNING FOOTAGE UNCOVERED

BY THE DEFENSE COUNSEL FOUR YEARS AFTER THE FACT.

THE FOOTAGE CONTAINS DESTINI SAYING "LET'S DRAG HER DOWN," FOLLOWED BY

HAWN DRAGGING SHERRI ROUGHLY BY THE ANKLES, RAMMING HER INTO THE SIDE OF THE

OPEN DOOR, THEN JERKING HER TWICE LIKE A RAGDOLL, BEFORE PULLING HER

VIOLENTLY OVER THE THICK EDGE OF THE BACKBOARD WITHOUT A NECKBRACE,

CAUSING A BRUTAL TOSS OF THE HEAD.

DEFENSE COUNSEL ASKED DESTINI ABOUT THE DECISION TO DO AN EMERGENT MOVE

ON PAGE 12, ON 2/3/23,

DESTINI: IT WAS NOT MY DECISION.

DEFENSE: YOU DID AN INTERVIEW DAYS AFTER THIS INCIDENT WITH POLICE,

CORRECT?

DESTINI: THAT'S CORRECT.

DEFENSE: AND DETECTIVE CASTRONOVA WAS ONE OF THE DETECTIVES?

DESTINI: YES.

DEFENSE: AND SHE ASKED YOU ABOUT THE MOVE, CORRECT?

DESTINI: CORRECT.

DEFENSE: AND YOU TOLD HER THAT YOUR TEAM PUT THE BACKBOARD NEXT

TO HER AND ROLLED HER ONTO THE BACKBOARD, CORRECT?

DESTINI: I DON'T REMEMBER SAYING THAT.

DESTRINI THEN LISTENED TO HIS DECEPTIVE INTERVIEW AND ON PAGE 27 SAID,

DESTRINI: I SAID THAT THEY ROLLED HER ONTO THE BOARD. I DIDN'T

SAY LOGROLL. I THINK THAT WAS JUST A CHOICE OF WORD THAT I USED,

BUT IN NO WAY WAS I INTENDING TO SAY THAT WE LOGROLLED HER...

DEFENSE: SO YOU SAW THE VIDEO FROM EXHIBIT 61. YOU WOULDN'T SAY

THAT WAS A ROLL ONTO A BOARD, WOULD YOU?

DESTRINI: NO, I WOULDN'T.

DEFENSE: OKAY. SO WHY DID YOU USE... THE PHRASE "ROLL" TO

DETECTIVE CASTRONOVA?

DESTRINI: I DON'T KNOW WHY I USED THAT WORD.

ON PAGE 138 ON 2/6/23, DESTRINI CONFIRMED THAT HE HAD AUTHORED THE "PATIENT CARE

REPORT" WHICH CONTAINED THE SAME LIES AND OMISSIONS.

THE DEFENSE COUNSEL QUESTIONED NATHAN HAHN FROM PAGES 59 TO 72 ON 2/9/23,

DEFENSE: WHO SAID, "LET'S DRAG HER DOWN"?

HAHN: THAT'S NICK DESTRINI...

DEFENSE: IS THERE A DIFFERENCE BETWEEN A "LOGROLL" AND A "ROLL"

IN YOUR MIND?

HAHN: NO... I BELIEVE INITIALLY I SAID "WE... ROLLED HER ON A COUNT"

... WHEN PRESSED FURTHER, I, IN ERROR, SAID - SAID "ROLL" OR "LOGROLL"

WHEN BOTH PARAMEDICS INVOLVED IN A BOTCHED RESCUE EXTRACTION GO ON TO LIE IN

TANDEM, USING THE SAME SCRIPTED ANSWERS AND FALSE TALKING POINTS IN THEIR

SEPARATE INTERVIEWS 12 DAYS AFTER THE FACT, AND THAT THESE SAME LIES ALSO

APPEAR ON THE "PATIENT CARE REPORT" THAT IS THE CENTERPIECE OF THIS CASE,

THEN THAT IS NO ERROR OR COINCIDENCE, THAT IS A COVER UP.

A THIRD UNDECLARED RESCUE INJURY CAN BE DEDUCED FROM THE FIVE-MINUTE

AMBULANCE RIDE TO THE HOSPITAL. ON PAGE 34 ON 2/9/23, HAHN EXPLAINED THAT HE

TRIED "TO PLACE THE AIRWAY FOR SHERRI... IN THE MOVING AMBULANCE" WHILE HOLDING

SHERRI'S NECK (PAGE 191 ON 1/31/23 AND PAGES 8 TO 11 ON 2/6/23). THE THIRD OF FOUR

INTUBATIONS ON SHERRI THAT NIGHT. IT WAS INEVITABLE THAT IN THE CONSTANTLY

SHIFTING G-FORCES OF THE RACING VEHICLE, HAHN ACCIDENTALLY PRESSED SHERRI'S

THROAT, RESULTING IN SHERRI'S SUBDERMAL NECK BLEEDING FROM A "FAST BLUNT IMPACT,

OR SLOW PRESSURE TO THE NECK," AS THE MEDICAL EXAMINER EXPLAINED.

AS THE M.E. EXPLAINED ON PAGE 129 ON 1/31/23, "INTUBATION IS NOT PRETTY AND IT CAN CAUSE

INJURIES." ON PAGE 8 ON 2/6/23, "ACTUAL INTUBATION, PUTTING A TUBE DOWN A THROAT

TAKES A LOT OF SKILL AND IT CAN BE VERY DIFFICULT IF THE CIRCUMSTANCES AREN'T

PERFECT." ON PAGE 180 ON 1/31/23, THE M.E. DESCRIBED THE SOURCE OF BLOOD IN SHERRI'S

MOUTH FROM SHERRI HAVING BIT HER OWN TONGUE, WHICH HAPPENS AS A REFLEX DURING

A FALL, BUT "THERE'S NOT A PHOTO OF IT." ON PAGE 39 ON 2/9/23, HAHN DESCRIBED THE

DIFFICULT CONDITIONS OF HIS AMBULANCE INTUBATION WHERE SHERRI'S MOUTH WAS FULL OF

BLOOD AND HE COULD NOT VISUALIZE HER VOCAL CORDS AS HIS MARKER, SO HE WAS

"ESSENTIALLY ATTEMPTING TO INTUBATE BLIND." THE WORST CIRCUMSTANCES IMAGINABLE

WHILE GRIPPING SHERRI'S NECK IN A SPEEDING AMBULANCE. IT WOULD HAVE BEEN

VIRTUALLY IMPOSSIBLE NOT TO ACCIDENTALLY PRESS AGAINST SHERRI'S THROAT.

THE IMPLICATION OF THE COVER UP IS THAT NEITHER THE M.E.'S FINDINGS, THE

GRAND JURY'S INDICTMENT, NOR THE CONVICTION WERE BASED ON THE MERITS OF THIS

CASE, BUT RELY INSTEAD ON INTENTIONAL STATE MISCHARACTERIZATIONS. THEREFORE,

THIS CONVICTION SHOULD BE OVERTURNED AND THIS CASE DISMISSED. THE DETECTIVE AND

PROSECUTOR WERE NECESSARILY AWARE AND COMPLICIT IN THIS INJUSTICE.

## REASONS FOR GRANTING THE PETITION

QUESTION 1: THE APPELLATE COURT IS IN CONFLICT WITH OTHER JURISDICTIONS BY UPHOLDING A CONVICTION ATTAINED BY THE TRIAL COURT REMOVING THE HOLDOUT AFTER OBTAINING KNOWLEDGE OF THE DELIBERATING JURY'S VOTING INTENTIONS, AND DESPITE THE JUROR'S ABILITY AND WILLINGNESS TO DELIBERATE. MOREOVER, THE APPELLATE COURT FOUND "NO EVIDENCE THAT THE JURY DELIBERATED AFTER [THE HOLDOUT] LEFT THE ROOM" AT THE "AGREED UPON DISMISSAL TIME," DESPITE THE SEVEN-JUROR FACTION REQUESTING THE COURT TO REMOVE THE HOLDOUT AFTER "A DIFFERENCE OF OPINION BASED ON THE MERITS OF DELIBERATION" AND THAT JURY INSTRUCTIONS PROHIBIT "TO DISCUSS THE CASE AND DELIBERATION" AND "ALL DISCUSSIONS AND DELIBERATION" WITHOUT EVERY JUROR PRESENT.

~~QUESTION 2: THE APPELLATE COURT FOUND THAT THERE IS NO REQUIREMENT FOR "INDEPENDENT CORROBORATION OR CONCRETE EVIDENCE" BEFORE THE TRIAL COURT ADMITS A FLOOD OF ~~PRE~~PREJUDICIAL AND INCENDIARY RUMORS FROM DISCREDITED AND UNRELIABLE SOURCES THAT FALL SHORT OF THE CLEAR AND CONVINCING PROOF THRESHOLD. THE TRIAL COURT SAID THAT SUCH UNFAIRLY PREJUDICIAL CLAIMS WOULD BE "WONDERFUL FODDER FOR CROSS-EXAMINATION," SHIFTING THE BURDEN OF PROOF ONTO THE APPELLANT.~~

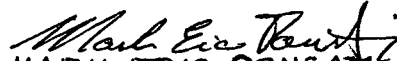
QUESTION 2: THE APPELLATE COURT CONFLICTED OTHER JURISDICTIONS WHEN IT DECIDED THAT THE ISSUE OF THE PROSECUTOR COMMITTING FUNDAMENTAL ERROR BY FALSELY AND REPEATEDLY ALLEGING "DOMESTIC VIOLENCE" WITH THE TRIAL COURT OVERTURNING THE OBJECTION, WAS WAIVED BECAUSE THE APPOINTED COUNSEL FAILED TO RAISE THE ISSUE IN THE OPENING APPELLANT BRIEF. YET, THE STATE BROUGHT UP THE ISSUE IN THE APPELLEE'S ANSWERING BRIEF, AND EVIDENCE SHOWED PERSISTENT INEFFECTIVE ASSISTANCE OF COUNSEL, INCLUDING SEVERAL FABRICATED AND PREJUDICIAL MISCHARACTERIZATIONS OF THE TRIAL AND APPELLATE RECORD, AND A COMMUNICATION BREAKDOWN BETWEEN CLIENT AND COUNSEL WHILE THE APPELLANT INSISTED AND ATTEMPTED TO RAISE THE ISSUE MULTIPLE TIMES THROUGH COUNSELS AND DIRECTLY NOTIFYING THE APPELLATE AND ARIZONA SUPREME COURT TO CORRECT THIS FUNDAMENTAL, MATERIAL AND PREJUDICIAL ERROR THAT COMPROMISED THE CASE, AND UNDERMINED THE APPELLANT'S CONSTITUTIONAL PROTECTIONS.

1.1.1. *MBL*

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
MARK ERIC PONSATI

Date: <sup>6/29</sup>~~3/25~~/2026  
