

for The Defense

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James J. Haas, Maricopa County Public Defender

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*Delivering America's
Promise of Justice for All*

for The Defense

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Requesting a Lesser-Included Offense Jury Instruction

Should You Rely on an Implicit Acquittal or Submit a Jury Interrogatory to Protect Your Client on Appeal?

By Lawrence S. Matthew, Defender Attorney - Capital Unit

If a jury returns a guilty verdict on a lesser-included offense, how do you protect your client from being retried on the greater offense following a successful appeal? Unfortunately, there is no easy answer to this question. In fact, the question may remain unanswered until addressed by a future appellate opinion. In the meantime, there are two schools of thought on the issue and it will be up to counsel to best decide what course of action to pursue. This article addresses the two options available to counsel.

***State v. Wussler*¹ – The Acquittal-First Rule**

The problem addressed by this article did not arise as a result of *Wussler*. To the contrary, it arose due to the demise of *Wussler*. But to understand the problem, it is helpful to analyze the prior state of the law. Pursuant to the *Wussler* opinion, juries were instructed that before they could consider lesser-included offenses, they had to acquit on the greater offense. 139 Ariz. at 430, 679 P.2d at 76.

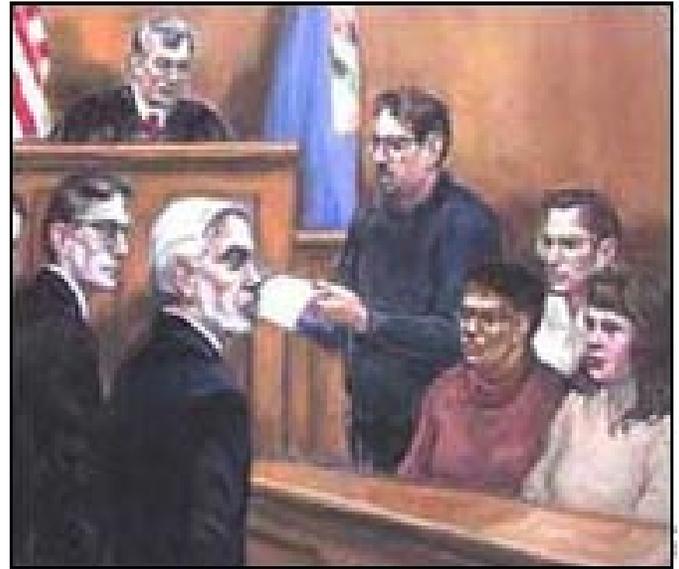
Wussler's requirement of acquittal-first acted like a double-edged sword. On one hand, it made it impossible for the jury to get to the lesser-included offense absent an acquittal of the greater offense. On the other hand, for those clients found guilty of a lesser-included offense who successfully appealed, it barred a retrial on the greater offense on the basis of double jeopardy. With *Wussler*, there was never any question about what charges could be retried following a remand from a successful appeal.

***State v. LeBlanc* – The Reasonable Efforts Rule**

In 1996, the lesser-included landscape changed. In *State v. LeBlanc*, 186 Ariz. 437, 924 P.2d 441 (1996), the Arizona Supreme Court abandoned *Wussler*'s acquittal-first rule. Under *LeBlanc*, jurors are instructed that they may consider lesser-included offenses if either of two conditions are met. They must either acquit of the greater offense or if they are unable to agree on a verdict for the greater charge after reasonable efforts, they may

then consider the lesser-included offense. *Id.* at 440, 924 P.2d at 444. The *Leblanc* rule is known as the “reasonable efforts” rule.

Under *LeBlanc*’s, reasonable efforts rule, however, it is no longer clear whether a defendant who successfully appeals may be retried for the greater offense. Why is this the case? Because under *LeBlanc*, it is no longer certain that the defendant was acquitted of the greater offense. Hence, no double jeopardy protection. This leads us to the meat of the problem. How do you protect your client from being retried for the greater offense if he successfully appeals and the case is remanded for retrial? Here are two lines of reasoning on this issue.



Option One: Submit a Verdict Form that Includes an Interrogatory

There is one line of thought that advocates the use of a jury interrogatory with the verdict form. In such a verdict form, the jurors will be asked to indicate how they got to the lesser offense. Did they acquit on the greater or did they simply fail to agree on a verdict after reasonable efforts and move on to the lesser?

Christopher Johns of the Appeals Division wrote an article in an earlier issue of *for The Defense*² advocating this approach. In his article, Mr. Johns suggests that you add the following to the standard lesser-included jury instruction:

Please indicate whether: 1) you proceeded to the lesser offense because you found the accused not guilty of the greater offense; or 2) you proceeded to the lesser offense because, after full and careful consideration, you could not find the accused guilty or not guilty of the greater offense.

___ Not guilty of the greater offense.

___ After full and careful consideration, could not reach a verdict on the greater offense.

Johns, Christopher, *When is a Lesser Guilty Verdict Not an Acquittal of the Greater Charge?* *for The Defense?* Volume 13, Issue 10, October 2003 at p. 9.

Using this approach, there can be no question how the jurors advanced to the lesser offense. But, if the jurors check the box indicating that they got to the lesser by the “reasonable efforts” approach but not the “acquittal-first” approach, then your client will face a retrial on the greater offense following any remand on appeal.

Option Two: The Implied Acquittal Approach.

This school of thought argues that the use of an interrogatory to specify how the jury got to the lesser-included offense results in a disservice to the client. This line of reasoning relies on a series of cases which indicate that when jurors return a guilty verdict on a lesser-included offense in a jurisdiction (like Arizona) that uses the “reasonable efforts” rule, and the record is silent as to how the jurors reached the lesser offense, then this results in an implied acquittal as to the greater

offense for purposes of double jeopardy. Consequently, if the defendant successfully appeals and the case is remanded for retrial, the defendant cannot be retried on the greater offense.

In support of this reasoning, the proponents of the implied acquittal approach rely on *Green v. United States*, 355 U.S. 184, 190-91, 78 S.Ct. 221, 225-26 (1957). In *Green*, the Supreme Court explained the doctrine of implied acquittal: when a jury convicts on a lesser charge and fails to reach a verdict on the greater charge – after having had a full and fair opportunity to do so – the jury’s silence on the second charge is an implied acquittal. 355 U.S. at 191, 78 S.Ct. at 221.

Jury Interrogatory or Implied Acquittal – You Decide.

At first blush, it might seem as though the reasoning of *Green* puts the issue to rest. Unfortunately, however, legal issues are rarely disposed of so simply. In *State v. Rodriguez*, 198 Ariz. 139, 7 P.3d 148 (App. 2001), Division Two of the Court of Appeals was faced with the issue of whether collateral estoppel consequences applied following a jury’s inability to return a verdict in an earlier case. In the opinion, the court opined in dicta that conviction of a lesser-included offense under *LeBlanc* would not result in a bar to retrial on the greater offense:

[C]onviction of a lesser-included offense when the jury is instructed pursuant to *LeBlanc* is not necessarily an implied acquittal of the greater charge.

Id. at 141-42, 7 P.3d at 150-51.

Similarly, a Division One case also has dicta indicating that a finding of guilt on a lesser does not result in an implied acquittal of the greater offense:

The jurors in this case were instructed, consistent with *LeBlanc*, that they could find defendant guilty of a lesser homicide charge if they either acquitted or could not agree on the greater charge. *It is not true that the guilty verdict as to negligent homicide reflects an acquittal as to murder and manslaughter.*

State v. Harvey, 193 Ariz. 472, 477, 974 P.2d 451, 456 (App. 1998), emphasis added.

Moreover, the rationale of *Green* is not uniformly followed. For example, the Supreme Court of Connecticut has determined that conviction of a lesser-included offense using a “reasonable efforts” instruction does not operate as an implied acquittal because it is unknown whether the jury unanimously agreed to acquit on the greater:

Under a reasonable efforts instruction, however, it is unclear whether the jury’s verdict of guilty of a lesser included offense would result in the defendant’s implied acquittal of the greater offense, because, in the absence of some form of special verdict, it would not be known whether the jury had unanimously agreed to acquit of the greater offense.

State v. Sawyer, 227 Conn. 566, 587-88, 630 A.2d 1064, 1075 (1993).

A wild card in the analysis of this issue is *Ryan v. Arellano*, 296 Ariz. Adv Rep. 43 (Ct. App. June 3, 1999), an opinion that has been ordered depublished by the Arizona Supreme Court. Although it has no precedential value, the analysis in the opinion is of interest. In *Ryan*, the defendant had been tried on charges of aggravated assault, kidnapping, and felony murder predicated upon the kidnapping. The jury returned a guilty verdict on the aggravated assault charge and a verdict on the kidnapping charge of guilty of the lesser-included offense of unlawful imprisonment. The jury was unable to reach a verdict on the felony murder charge. The appellate court was confronted with the question of whether the defendant could be retried on the felony murder using the

kidnapping charge as the predicate. A divided court ruled that under *LeBlanc*, the state was barred by double jeopardy principles from retrying the defendant on the felony murder charge using kidnapping as the predicate.

In reaching this decision, the majority noted that *LeBlanc* did not change substantive law, but was a procedural change. Consequently, the majority concluded:

Unless conviction of a lesser-included offense has the same ‘implicit acquittal’ effect under *LeBlanc* that it did under *Wussler*, *LeBlanc* becomes a significant revision of substantive law – after announcing that it was only a revision of procedural law.

296 Ariz Adv Rep at Paragraph 15.

Thus, the *depublished* opinion in *Ryan* provides compelling support for the “implied acquittal” approach to dealing with the problem. On the other hand, if the *Ryan* analysis is sound, one has to wonder why the opinion was ordered depublished by the Arizona Supreme Court.

The choice for counsel confronted by a lesser-included instruction situation is not easy. If you go with an interrogatory and the jury indicates an acquittal on the greater then you have undisputed double jeopardy protection. If you decide to go with the implied acquittal approach, and your client is convicted of a lesser-included offense, then you will have to wait until the case is reversed on appeal and remanded for a new trial. Then, when the state seeks to retry your client on the greater charge, you can file a special action and settle the question once and for all.

Regardless of the outcome, if you are the attorney who ultimately litigates the implied acquittal issue, you can at least take comfort in the fact that you will have put to rest a contentious legal dispute.

(Endnotes)

¹ 139 Ariz. 428, 679 P.2d 74 (1984).

² *When is a Lesser Guilty Verdict Not an Acquittal of the Greater Charge?*, for *The Defense*, Volume 13, Issue 10, October 2003 at p.1.



Juvenile Files Hold Hidden Treasures

By Chris Phillis, Attorney Manager, and Suzanne Sanchez, Attorney Supervisor

Many clients charged with criminal offenses have juvenile records. Our office represented a large percentage of these clients in juvenile court. The juvenile files often contain a wealth of useful information. Much of it is accessible.

ACCESSIBLE INFORMATION

- **Psychological Evaluations**

Juvenile files often contain psychological evaluations, which are of several types. A psycho-sexual evaluation provides information about a juvenile's sexual history, along with the child's propensity to re-offend. In juvenile court, this report is used to determine what services to provide a child who committed a sexual offense. A psycho-educational evaluation provides information regarding behavioral issues, educational needs and treatment alternatives. A transfer psychological is prepared for use in a hearing at which the court determines whether to transfer a child to criminal court. The report is about amenability to treatment. The transfer report contains information regarding the child's educational level, behavioral disorders, family issues, and amenability to juvenile services. The report is only prepared if the State requests a transfer hearing.

- **Probation Reports**

Probation officers write disposition reports for sentencing. Disposition reports contain information about all police referrals, education, family history, prior treatment and disposition recommendations.

Program Services Staffing Reports are written by a team of juvenile probation officers after a staffing with the child, parent, assigned probation officer and defense counsel. The report contains information regarding the treatment options considered and the approach the probation team recommends. The purpose of the staffing is to look at possible treatment options. Program Services Staffings usually occur when the probation officer is considering recommending that the court place the child in a residential program or a day/evening support program. The child must have a psychological evaluation prior to the staffing.

Review of Status and Review of Placement Reports are written by juvenile probation officers to provide information to the court on juveniles' progress regarding placement or probation terms. If a juvenile is in treatment a review of placement hearing must be held every 60 days. Additionally, the court may also order review of status hearings if the child has deferred detention.

In each case in which the State seeks transfer of a child to criminal court, a probation officer writes a Transfer Report. The report contains the probation officer's recommendation with respect to whether the court should remand the child for adult prosecution. The main concerns of the probation officer are public safety and the child's amenability to treatment.

A Most Current Information Report is written by the juvenile probation officer prior to every court hearing to provide the court with an update regarding the child's and family's activities.

Treatment Providers' Reports are reports written by treatment providers regarding the progress of the juvenile in their programs.

Polygraph Examination Reports occasionally are in juvenile files. Usually only adjudicated sex offenders have polygraphs in their files. The polygraphs are given as part of treatment.

- **Juvenile Profiles**

Juvenile Profiles list all police referrals the Probation Department has received on a juvenile, regardless of whether they were actually charged. The profile also lists all charging documents, all hearings, and all final resolutions. Further, profiles also list the final disposition of all referrals and all services the juvenile was ordered to participate in, as well as whether the child completed the treatment.

- **Juvenile Attorneys**

The juvenile's defense attorney possesses information that may assist in creating a defense strategy or aid in mitigation. The attorney can provide information regarding the family, CPS involvement and Value Options assistance.

INACCESSIBLE INFORMATION

- **Mental Competency Reports**

Mental Competency Reports are required to be sealed. If an attorney believes it is imperative to see these reports they must petition the presiding judge of the Juvenile Division of Superior Court. In cases in which mental competency is raised, most juveniles are evaluated by a psychologist and a psychiatrist. Juveniles who are placed in a restoration program will have a review hearing every sixty days. The restoration specialist and/or supervising doctor will prepare a report for court prior to each review hearing.

- **Psychiatric Assessments**

A juvenile may be ordered to undergo a seventy-two hour evaluation for civil commitment purposes. All reports initiated as part of psychiatric acute care services and thus may not be disclosed. A.R.S. § 8-272(R).

- **Child Protective Services Reports**

Dual wards (dependent and delinquent children) may have CPS caseworker reports in their files. To obtain these reports an attorney must petition the presiding judge of the Juvenile Division of Superior Court.

- **Value Options Reports**

Some clients receive services from Value Options. Reports provided to juvenile defense counsel cannot be disseminated.

ACCESS TO JUVENILE FILES

Attorneys in the Maricopa County Public Defender's Office may view a juvenile's file at the Durango or Southeast juvenile units. (Generally, matters for youths residing west of Central Avenue are handled at the Durango unit, and matters for youths residing east of Central Avenue are handled at the Southeast unit.) In order to keep track of juvenile files and their sensitive information, the files may not be sent out of the division.

Proving the Impossible:

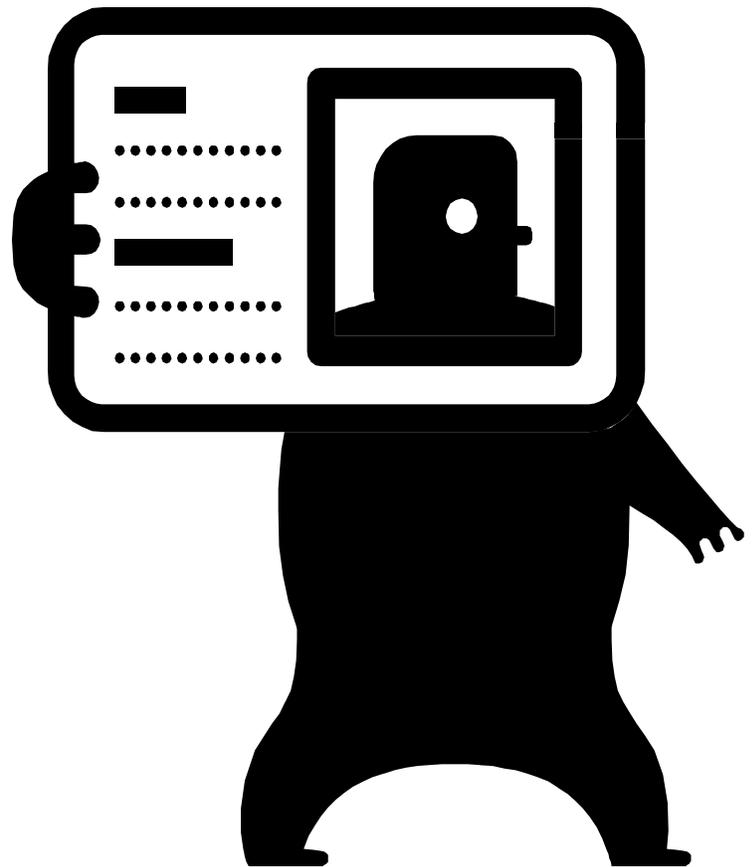
How To Prove Your Client's Mexican Driver's License Is the Real Deal

By Jesse Turner, Defender Attorney

First and foremost, just because an officer says that an ID is false based on his training and experience, that is not dispositive of anything. Recently, I had a case dismissed with prejudice because I was able to obtain documents from the Mexican MVD showing that my client's license is real. My client, "Fred", told me that in Mexico, each town does their own printing, and he provided me with the contact information for the city government in the town where he obtained his license. After calling the main number, eventually I made contact with the transit department. The supervisor there was able to verify Fred's license was real, but a photo of it was not on file. I obtained a letter from the supervisor attesting to the validity of the license. The State filed to dismiss without prejudice. I asked that it be with prejudice, given that the supervisor could be anywhere when they re-filed, and without him it would be difficult to prove the validity of the documents. The State had no objection, and Fred's case was dismissed with prejudice.

How can you replicate these results? To start, you need to know who to call. I was lucky; Fred already had the name of the town and the number I needed to call. If your client doesn't know, you can find out through Wikipedia by following these steps.

1. Go to Wikipedia.org
2. Do a general search for the Mexican State that issued the license.
3. Go to the official Wikipedia page for that state.
4. Scroll down that page until you find a link to another page, listing all the municipalities in that state. For each municipality on the list, a link to the main city is next to it.
5. Scroll down the list of municipalities, looking for anything that matches any of the writing on the license. You are looking for the municipality that issued the license. This is difficult because the part of the license listing the municipality of its origin is displayed different in every license, and it is not always obvious.
6. Click on the link for your town
7. If Wikipedia has a page for the town, scroll down to the bottom. There should be a link to a reference page for the town (In Spanish), providing you with government phone numbers for the town. If Wikipedia does not have a page for the town, do a general internet search, and try to find the official webpage for the town. If that doesn't work, do a search for the municipality.



8. Start calling. Ask for whoever issues the licenses.
9. When you get to the right department, ask to speak to a supervisor.
10. If they have no record, your inquiry is finished. If they have it, see what they are willing to send you. Perhaps they have an actual copy of the license, or perhaps you can get them to send you a letter.

After potentially months of work and tedium, you will hopefully have the proof in your hand that your client's license is real. What do you do with it? You can try to get a dismissal from the state, and you may be successful. If they dismiss, ask that it be with prejudice. Look to Rule 902(3) of the Rules of Evidence, which governs foreign documents, and talk about how you would be prejudiced if you lost contact with the person you've been talking to down there. If they don't dismiss, ask that it be admitted into evidence. Use the second section of rule 902(3), and always remember to provide to the State the name and number of the person you have been dealing with, along with all the information you have received. They have a burden to investigate, and they should be provided with all the information that you have accumulated and the means you used to get it. This is especially important if all you are able to obtain is a fax, and not an original document.

If you are not able to obtain documentation proving your client's license is real, that is not the end of the road. Remember, this article is about how to prove a license is real; the State still has the burden of proving it is false. An Attorney in our office recently had a forgery case dismissed the day of trial because she successfully precluded the officer from testifying as an expert on Mexican identification. The officer had planned on using his "training", plus the International ID Checking Guide, 7th edition, to say that the identification was false. The judge ruled that to prove an Arizona ID false, the state would call someone from the Arizona Motor Vehicle Division, therefore, they should contact the Mexican MVD to determine if a Mexican license was false. The State was unwilling to do so, and the case was dismissed.



Jury and Bench Trial Results

April / May 2007

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
3/26 - 4/3	Farney Iacob Armstrong	Porter	Kay	CR06-114659-001DT Murder 1 Deg., F1D Armed Robbery, F2D Agg. Assault, F3D	Guilty on all counts	Jury
3/28 - 4/4	Guyton Smith Rankin Ralston	French	Golomb	CR06-155636-001DT POND f/s, F2	Guilty	Jury
4/4 - 4/12	Jakobe Davis Rankin Curtis Armstrong	Duncan	Sponsil	CR03-014925-001DT Agg. Assault, F4	Not Guilty (Self Defense)	Jury
4/17 - 4/19	Farney	Blakey	Rubalcaba	CR06-008462-001DT Agg. Assault, F3D	Guilty	Jury
4/26 - 4/30	Fischer	Cunanan	Scott	CR06-174401-001DT Burg. 2 Deg., F3 Trafficking in Stolen Property, F2	Guilty	Jury
4/27 - 5/8	Reece Page Armstrong	Fields	Stevens	CR05-013741-001DT Child Abuse, F2D (DCAC)(DV)	Guilty	Jury
5/1 - 5/3	Shelley Rankin	Anderson	Warrick Hernacki	CR06-156329-001DT Resisting Arrest, F6	Not Guilty	Jury
5/3 - 5/8	DeWitt Ligouri Rankin Armstrong	Gottsfield	Godbehere	CR06-171204-001DT Armed Robbery, F2D TOMOT, F3 Criminal Damage, F5 More than two priors.	Guilty on all counts.	Jury
5/7 - 5/9	Farney Trimble Curtis	Hyatt	Schultz	CR06-009538-001DT TOMOT, F3	Not Guilty	Jury
5/7 - 5/10	Taylor Rankin Hanselman Ralston	Blakey	Susser	CR06-165110-001DT Resisting Arrest, F6 Criminal Trespass 3rd Deg., M3	Not Guilty Resisting Arrest; Criminal Trespass dismissed w/prejudice on the 2nd day of trial.	Jury
5/14 - 5/16	Barraza	Comm. Johnson	Plicht	CR06-157577-001DT Discharge of Firearm in City Limit, F6	Mistrial	Jury

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Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1 (Continued)						
5/15 - 5/16	Woodson	Udall	Okano	CR06-158091-001DT Agg. Assault, F3D MIW, F4	Not Guilty Aggravated Assault; Guilty of lesser included Disorderly Conduct (D); MIW dismissed first day of trial. (Trial held in Absentia.)	Jury
5/15 - 5/17	Taylor Sain <i>Ralston</i>	Gottsfield	Tasopulos Steinberg	CR06-119188-001DT Agg. Assault, F6 Resisting Arrest, F6	Mistrial (Guilty verdict set aside.)	Jury
5/16 - 5/31	Stewart Harmon Charlton <i>Kunz</i>	Lee	Baker Markle	CR06-115499-001DT 2 cts. Agg. Assault, F3D	Not Guilty	Jury
5/21 - 5/23	DeWitt Ligouri <i>Armstrong</i>	Davis	Bonaguidi	CR06-178545-001DT TOMOT, F3 Poss. Of Burg. Tools, F6 More than two priors.	Guilty	Jury
5/21 - 5/23	Iacob Rankin <i>Curtis</i>	Johnson	Mendoza	CR06-167246-001DT Burg. 3rd Deg., F4	Not Guilty	Jury
5/23 - 5/24	Fischer	Hoffman	Felcyn	CR06-171046-001DT Agg. Assault, F6 Threatening or Intimidating, M1	Not Guilty of Agg. Assault; Guilty of Threatening or Intimidating	Jury
Group 2						
4/10 - 4/11	Lee <i>Del Rio</i>	Burke	Eidemanis	CR06-135362-001DT Agg. Domestic Violence, F5	Guilty	Jury
4/11 - 4/16	Leonard Kozelka <i>Burns</i>	Gordon	Rubulcaba	CR06-012529-001DT Agg. Assault, F3D 2 cts. Agg. Assault, F4D	Directed Verdict Agg. Assault, F3D Guilty 2 cts. Agg. Assault non-dangerous State w/d allegation of dangerousness	Jury

Jury and Bench Trial Results

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Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2 (Continued)						
4/16- 4/20	Martens Bublik Romani <i>Burns</i>	Cunanan	Rassas/ Squier	CR06-164371-002DT Agg. Assault, F3D Agg. Robbery, F3 Burg. 1, F2D Assault, M1	Not Guilty Agg. Assault, F3D, guilty of lesser Disorderly Conduct Directed Verdict on Agg. Robbery Hung Jury on Burglary (11-1 Not guilty) Guilty of Assault, M1	Jury
5/23	Taradash	Hicks	Doering	CR2006-174260-001DT Agg. Assault, F3D	Directed verdict	Jury
Group 3						
4/2- 4/5	Sanford Sitton Burgess <i>Brown</i>	Mahoney	Collins	CR06-009309-001DT Agg. Assault, F6	Hung 7-1NG	Jury
4/4 - 4/9	Harmon Schreck Charlton <i>Kunz</i>	Rayes	Bonaguidi	CR06-153342-001DT 4 cts. Theft of a Credit Card by Fraud. Means, F5 3 cts. Theft, F6	3 cts of Theft of Credit Card-dismissed Guilty on Cts. 2, 4 and 6 of Theft and Theft of a Credit Card	Jury
4/10 - 4/17	Stewart Schuster Spizer <i>Kunz</i>	Nothwehr	Lee	CR04-014901-001DT Unlawful Flight from Law Enf. Veh., F5	Guilty	Jury
5/1 - 5/9	Clemency	Mahoney	Eliason	CR06-178858-001DT Manslaughter, F2D Marijuana Violation, F6	Guilty	Jury
5/7 - 5/8	Sanford Schreck Charlton <i>Browne</i>	Davis	Munoz	CR06-108307-001DT 2 cts. Agg. Assault, F6	Guilty	Jury
5/8 - 5/14	Randall O'Farrell	Lee	Low	CR06-165169-001DT Unlawful Imprisonment, F6 Assault-Touched to Injure, M3	Guilty	Jury
5/17 - 5/22	Sanford Sitton Charlton <i>Browne</i>	Mahoney	Collins	CR06-009309-001DT Agg. Assault, F6	Not Guilty	Jury

Jury and Bench Trial Results

April / May 2007

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4						
3/27 - 3/29	Sheperd	Duncan	Blum	CR06-169403-001SE Attempt Agg. Assault, F2 Disorderly Conduct, F6D	Guilty	Jury
3/28 - 4/2	Gaziano	Stephens	Beatty	CR06-164281-001SE Burg. 2nd Deg., F3 Sexual Assault, F2	Guilty	Jury
3/28 - 4/16	Crocker Fluharty Beatty Coward	Arellano	Doering	CR05-123412-001SE Murder 2nd Deg., F1	Not Guilty	Jury
4/3 - 4/10	Houck Beatty	Sanders	Starkovich	CR06-151337-001SE Theft Means Transport., F3	Guilty	Jury
4/5 - 4/6	Dehner	Cunanan	Blum	CR06-104912-001SE Theft, F5	Guilty	Jury
4/9 - 4/12	Engineer	Udall	McGregor	CR06-123472-001SE Hit and Run w/Death/Injury, F4	Guilty	Jury
4/10 - 4/19	Quesada Baker	Talamante	Brooks	CR06-134438-001SE Miscon. Inv.Wps., F4 Discharge Firearm in City, F6	Guilty	Jury
4/11 - 4/12	Klopp	Stephens	Brenneman	CR05-032772-001SE Escape, 2nd Deg., F5	Guilty	Jury
4/11 - 4/18	Ziemba Thomas Lenz	Sanders	Beatty	CR06-169653-001SE Sexual Assault, F2D Agg. Assault, F3D Kidnap, F2D Burg. 1st Degree, F2D	Dismissed w/o prejudice during trial	Jury
4/17 - 4/18	Engineer	Stephens	Cook	CR05-127174-001SE PODD, F4 POM, F6	Guilty	Jury
4/17 - 4/18	Houck Beatty	McMurdie	Schultz	CR06-139927-001SE Theft Means of Trans., F3	Guilty	Jury
4/17 - 4/19	Little	Arellano	Kelly	CR06-141690-001SE Armed Robbery, F2	Guilty	Jury
4/18 - 5/1	Corbitt	Fields	Brooks	CR06-169803-001SE Resisting Arrest, F6 Agg. Assault, F5 POM, F6	Resist Arrest - Guilty Agg. Assault - Guilty POM - Directed Verdict (before Jury deliberation)	Jury

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Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
4/24	Turley	Abrams	Schneider	CR06-031177-001SE Agg. Assault, F4	Not Guilty	Bench
5/1 - 5/3	Sitver	McMurdie	Murphy	CR05-138307-001SE Unlawful Flight, F5 2 cts. Agg. Assault, F2D	Guilty - Unlaw Flight Not Guilty - Agg. Assault	Jury
5/3 - 5/8	Fluharty	Cunanan	Bennink	CR05-137552-001SE Agg. Assault, F6	Not Guilty	Jury
5/7 - 5/15	Corbitt	Sanders	Brooks	CR06-165317-001SE Armed Robbery, F2 TOMOT, F3 Unlawful Flight, F5	Not Guilty - Armed Robbery Guilty - TOMOT Guilty - Unlawful Flight	Jury
5/14 - 5/17	Nurmi	Gama	Bennett	CR06-172375-001SE Sexual Abuse, F3 2 cts. Child Molest, F2 Agg. Assault, F5	Guilty	Jury
5/15	Dehner	Cunanan	Harbulot	CR05-138792-001SE Forgery, F4	Guilty	Jury
5/16 - 5/24	Quesada	Sanders	Brooks	CR06-030287-001SE Disorderly Conduct, F3D	Guilty	Jury
5/21 - 5/24	Fluharty	Blakey	Kelly	CR06-167449-001SE Agg. Assault, F3D Agg. Assault, F6 Burg. 1st Deg., F2D	Not Guilty	Jury
5/24 - 5/29	Dehner	Abrams	Melton	CR06-123475-001SE 2 cts. MIW, F4	Guilty	Jury
Capital						
2/27 - 4/17	Bevilaqua Stazzone Souther <i>McDonald Hoban</i>	Granville	Kalish	CR02-006861 (A) Capital Sentencing	Life Sentence	Jury
3/19 - 4/4	Stein <i>Southern</i>	Udall	Gilketsis	CR04-035015-001 SE Murder 1st Deg, F1, Burg. 2nd Deg., F3, Burg. 3rd Deg., F4	Guilty	Jury
3/26 - 5/15	Patterson Tavassoli Simpson Falduto Flannagan <i>Montoya</i>	Cole	Hoffmeyer / Imbordino	CR99-096276 Murder 1, F1D	Phase I Guilty Phase II F(6) Aggravator Found Phase III Life	Jury

Jury and Bench Trial Results

April / May 2007

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Vehicular						
4/3 - 4/5	Timmer	Holding	Hale	CR06-153889-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
4/16 - 4/18	Conter	Holding	McDermott	CR06-123405-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
4/16 - 4/27	Sloan	Duncan	Goddard	CR06-008219-001 DT 6 cts. Endangerment, F6, Racing, M1	Mistrial	Jury
4/18 - 4/20	Davis	Anderson	Adel	CR06-135406-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
4/23 - 4/24	Whitehead	Anderson	McDermott	CR06-122380-001 DT 2 cts. Agg. DUI, F4, Strike Fixture on Highway, M3	Guilty	Jury
4/23 - 4/26	Conter	Holding	Collins	CR04-007950-001 DT 2 cts. Agg. DUI, F4	Not Guilty	Jury
4/23 - 4/30	Timmer	Mahoney	Kelemen	CR06-012251-001 DT Manslaughter, F2, Hit and Run w/ Death/Injury, F3, Endangerment, F6	Guilty	Jury
4/27	Conter Ryon Urista	Holding	Collins	CR06-173800-001 DT 2 cts. Agg. DUI, F4	Guilty	Trial Waived
5/2 - 5/4	Whitehead	Holding	Hammond	CR06-107308-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
5/22 - 5/24	Sloan	Gaines	McDermott	CR06-138349-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
5/23 - 5/31	Timmer	Nothwehr	Rassas	CR06-157132-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
Justice Court						
4/13 - 4/13	Griffin	Calendar	Windtberg	TR2006-131672-001 DT Extreme DUI w/BAC .15 or More, M1, DUI w/BAC .08 or More, M1, DUI LIC/Drugs/Vapors/ Combo, M1	DV on Extreme, Guilty on lesser counts	Jury

Jury and Bench Trial Results

April / May 2007

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
4/5	Gaunt	Schwartz	AG	JD15486 Dependency Trial	Converted to In-home Intervention with father	Bench
4/6	S. Anderson	Gottsfield	Hernacki	CR06-160276-001 Marijuana Violation, M1	Not Guilty	Bench
4/9	Kolbe	Rees	AG	JD506359 Dependency Trial	Dependency Found	Bench
4/9	Ripa	Woodburn	AG	JD15439 Dependency Trial	Dependency Found	Bench
4/11	Kolbe	Rees	AG	JD506358 Guardianship Trial	Guardianship granted: Client consented	Bench
4/16	Bushor	Gaylord	AG	JD505805 Guardianship Trial	Guardianship granted: Client consented	Bench
4/23	Kolbe	Rees	AG	JD5005834 Guardianship Trial	Guardianship granted	Bench
4/23 - 4/24	Carlson	Sanders	Golomb	CR06-139811-002 Possession or Use of Dangerous Drugs, F4	Guilty	Jury
4/23 - 4/24	O'Neal	Blakey	Tasopoulos	CR05-009511-001 PODD, F4, 1 Ct	Guilty	Jury
4/24	Gaunt	Holt	AG	JD15343 Dependency Trial	Dependency Dismissed	Bench
4/19 - 5/31	Jones Canby	Hall	Bailey Clayton	CR99-016742 Murder 1, F1, 3 Cts, Sentencing	Death Penalty	Jury
5/2	Kolbe	Araneta	AG	JD504987 Severance Trial	Severance Granted	Bench
5/2 - 5/7	Ivy	Talamante	Linn	CR06-163738-001 Theft, F1; Theft - Means of Transportation, F3; Criminal Damage, F6; and Resisting Arrest, F6	Guilty	Jury
5/4	Rosenberg	Woodburn	AG	JD15504 Dependency Trial	Dependency Found: Client submitted/ consented on 1st day of trial	Bench

Jury and Bench Trial Results

April / May 2007

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
5/10	Bushor	Keppel	AG	JD504011 Guardianship Trial	Guardianship Granted	Bench
5/10	Bushor	Keppel	AG	JD506650 Dependency Trial	Dependency Found	Bench
5/17	Kolbe	Rees	AG	JD506574 Dependency Trial	Dependency Found	Bench
5/21	Kolbe	Keppel	AG	JD505220 Severance Trial	Severance Granted	Bench
5/21 - 5/24	Sanders	Foster	AG	JD14104 Dependency Trial	Dependency Found	Jury
5/22 - 5/25	Dorr	Newell	Golomb	CR06-168070-002 Forgery, F1	Guilty	Jury
5/23	Kolbe	Araneta	AG	JD506636 Dependency Trial	Dependency Found	Bench



Jury and Bench Trial Results

April / May 2007

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
4/3 to 4/23	Everett Centeno-Fequiere Brewer Stovall	Steinle	Gingold, Eliason	CR2004-126685-001-DT; 2 Cts Capital Murder (Death Penalty)	Two (2) Natural Life Sentences	Bench
3/27 to 4/11	Garcia Brauer	Anderson	Lynch	CR2006-134943-001-DT; 2 Cts of 2nd Deg Murder-F1	Guilty on Both	Jury
4/4 to 4/6	Gray Mullavey	Ditsworth	Scott	CR2006-128244-001-DT; POND-F4; PODP-F6	Guilty on Both	Jury
4/16 to 4/18	Eaton Youngblood	Reinstein	Harris Bell	JD14206 - Severance Trial	Severed on all counts	Jury
3/5 to 4/20	Christian	Comm. Owens	Siegel	JD506454 - Dependency	Dependency Found	Bench
4/11 to 5/2	Glow Mullavey Sinsabaugh	Lee	Shaw Steinberg	CR2005-109862-001-DT; Child Abuse-F2	Negligent Child Abuse-F4	Jury
4/27 to 5/8	Owsley	Foster	Vescio	JD14450 - Severance Trial	Mistrial	Bench
5/10 to 5/15	Glow Mullavey	Granville		CR2005-006570-002-DT; Trafficking in Stolen Prop - F3	Not Guilty	Jury
5/21 to 5/24	Glow Sinsabaugh	Ishikawa		CR2006-175791-001-DT; Burglary-F4; Theft-MOT-F3	Not Guilty	Jury
5/21 to 5/22	Owsley	Reinstein		JD-14104; Term. of Parental Rights	Termination Granted	Jury
5/1 to 5/7	Gray Brauer	Steinle		CR2006-119605-001-DT; Agg. Asst (4 counts)-F2; Drive by Shooting-F2	Retrial; Guilty on all Count	Jury
5/11	Eaton (Guardian ad Litem)	Comm. Holding		JD14252 - Severance	Both Parents Severed	Bench
5/14 to 5/18	Klass	Raves		JD7250 - Severance	Not Granted - In Agreement w/GAL	Jury
5/24	Klass	Kemp		JD13498 - Severance	Severance - In Agreement w/GAL	Bench
4/11 to 5/2	Glow Mullavey Sinsabaugh	Lee		CR2005-109862-001-DT; Child Abuse-F2	Lesser; Negligent Child Abuse-F4	Trial

Fifth Annual APDA Conference

By Jim Haas, Maricopa County Public Defender



The Fifth Annual Arizona Public Defender Association Statewide Conference was held June 20 to 22 at the Tempe Mission Palms Hotel.

Registration topped 1000, and a number of people had to be turned away. The faculty included 203 presenters, including public defenders from New York, Chicago, Washington D.C. and Minnesota. The conference offered 130 presentations over two and a half days, and the full annual requirement of 15 CLE hours for attorneys. Once again, we reserved the entire Mission Palms hotel, and once again, the hotel was fully booked before the conference brochure went out.

At the awards luncheon, staff and attorneys from public defender offices and programs around the state were recognized for their accomplishments and dedication to indigent representation over the past year. The honorees were:

Outstanding Rural Administrative Professional – **Nancy Fusco**, Cochise County Legal Defender’s Office

Outstanding Urban Administrative Professional – **Ed Hall**, Maricopa County Public Defender’s Office. (Pictured at right with Administrator Diane Terribile and Maricopa County Public Defender Jim Haas).



Outstanding Rural Paraprofessional – **William Herring**, Investigator, Yuma County Public Defender’s Office.

Outstanding Urban Paraprofessional – **Lisa Bolinger**, Mitigation Specialist, Maricopa County Legal Defender’s Office. (Pictured at left with Maricopa County Legal Defender Bob Briney).



“Rising Star” Award – **Melissa A. Puett**, Mohave County Public Defender’s Office

Outstanding Rural Attorney – **Joel A. Larson**, Cochise County Legal Defender’s Office

Outstanding Urban Attorney – **Thomas G. Martin**, Pima County Public Defender’s Office

Lifetime Achievement Award – **Pat Cornell**, Pima County Public Defender’s Office

Lifetime Achievement Award – **Chuck Krull**, Maricopa County Public Defender’s Office



Chuck and Sharon Krull

The Sixth Annual APDA Statewide Conference is already scheduled for June 16 – 18, 2008. It will take place from Monday through Wednesday to coincide with the annual Judicial Conference. Mark your calendars!



Mohave County PD Dana Hlavac, Phoenix PD Gary Kula, LaPaz County PD Ella Johnson and former Pima County PD Susan Kettlewell



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for The Defense

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