

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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The Forfeiture by Wrongdoing Exception to Hearsay

By Laura Glass-Hess, Defender Attorney

We're in day one of a jury trial. My client is charged with Aggravated Assault class 3 dangerous, Unlawful Imprisonment class 6, and misdemeanor Assault, all domestic violence offenses. The State puts on its case: Four police officers and two family members. They describe coming to the victim's house and seeing her hysterical and pregnant, her face bruised and swollen, my client drunk... but no one tells how the injuries happened. The victim is nowhere to be seen, and the jury is getting confused. But then the State plays a taped interview with the victim, recorded the day she was taken to the hospital, where between sobs she describes how my client attacked her and threatened her with a knife. I impeach with a recorded phone call from the victim, in which she denies that my client ever assaulted her with a knife. The State rests. Defense rests.



Wait a minute... the victim testifies without being present? Isn't that hearsay? How did this happen? Welcome to the relatively uncharted world of Arizona Rule of Evidence 804(b)(6). Rule 804(b)(6), which lays out exceptions for the admission of hearsay statements when a witness is unavailable, reads: "A statement offered against a party that has engaged or acquiesced in wrongdoing which was intended to, and did, procure the unavailability of the declarant as a witness."

I. The Back Story

In my case, the story unfolds in jail tapes provided to me by the State. The victim began writing to the defendant in jail. He obtained her number and began to call her. They talk about how much they love each other, how she does not want to prosecute. She tells him that she has no intentions of going anywhere near a courthouse. She calls me and tells me she does not want to prosecute, and with her permission I record that phone call. I forward the phone call to the State, and the

victim also tells the State she doesn't want to prosecute. She and the defendant continue to talk. On the recorded jail call, he tells her that "if that person don't show up, then they got to dismiss... just go to your brother's house for a few days."

Seeing the writing on the wall, the State files a motion for forfeiture by wrongdoing, seeking to use the victim's hearsay statements if she does not show up for trial. When the victim does not appear at master calendar, the State requests a warrant and a one day continuance. The next day, still without a victim, the State decides to go forward with arguing the motion. We are assigned to a judge and over my strenuous objection, the court grants the State's motion. I argue, and win, a motion to have the victim's phone call played to impeach her statement, under Rule 806. After 3 hours, the jury finds my client guilty of the lesser included charge of Disorderly Conduct, Unlawful Imprisonment, and a misdemeanor assault. My client is sentenced and we file a Notice of Appeal.

II. The History of Rule 804(b)(6)

So other than making for a really strange trial, what do we know about Rule 804(b)(6)? As I started researching this, I was surprised at how little case law is available in Arizona, until I realized that this Rule only went into effect on January 1, 2010. The federal rule upon which it is based has been around a bit longer, and has its roots in the common law. The first mention of the forfeiture doctrine is in *Reynolds v. United States*, 98 U.S. 145 (1878), an opinion based on a bigamy trial in Utah. *Davis v. Washington*, 547 U.S. 813 (2006), gives a more contemporary summary of the forfeiture by wrongdoing rule:

But when defendants seek to undermine the judicial process by procuring or coercing silence from witnesses and victims, the Sixth Amendment does not require courts to acquiesce. While defendants have no duty to assist the State in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system. We reiterate what we said in [Crawford](#): that "the rule of forfeiture by wrongdoing ... extinguishes confrontation claims on essentially equitable grounds." [541 U.S., at 62, 124 S.Ct. 1354](#) (citing [Reynolds, 98 U.S., at 158–159](#)). That is, one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation. *Washington* at 833.

So the forfeiture rule is an exception to the Confrontation Clause! The issue then becomes: What conduct on the part of a defendant is so egregious as to forfeit their confrontation rights? As far as I can tell, the majority of the Ninth Circuit cases where the forfeiture doctrine has been held to apply are when the defendant kills the would-be witness. See *State v. Supanchick*, 245 Or.App. 651 (2011); *People v. Banos*, 178 Cal.App. 4th 483 (2009). This was the case in the only Arizona cases that deal with the issue: *State v. Valencia*, 186 Ariz. 493 (1996) as well as an unreported 2011 case, *State v. Ortloff*. However, a murder is not always a prerequisite to application of the doctrine: See *State v. Fallentine*, 149 Wash.App. 614 (2009) and *People v. Pearson*, 165 Cal.App. 4th 740 (2008). I also found that a large number of the cases that deal with forfeiture are unreported opinions.

Giles v. California, 554 U.S. 353 (2008), a Supreme Court case decided after *Crawford* (and also a case where the defendant killed the witness), sheds more light on the contours of the doctrine. The *Giles* court overturned California's forfeiture rule as overly broad, and not in line with the common law understanding of the forfeiture doctrine. The Court found that in order for the doctrine to function as an exception to the Confrontation clause, the State must show not only that the defendant did prevent a witness from testifying, but also that the defendant specifically intended this result. The *Giles* court also gives some idea of the type of behavior the rule is intended to prevent: "The common-law forfeiture rule was aimed at removing the otherwise powerful incentive for defendants to intimidate, bribe, and kill the witnesses against them—in other words, it is

grounded in “the ability of courts to protect the integrity of their proceedings.” *Giles* at 374 (citing *Davis*).

As you’re evaluating any forfeiture issue in your case, I’d suggest considering the following:

- Does the witness/victim independently recant? If so, then there’s a good argument that even if the defendant engaged in unlawful conduct, the witness’ failure to appear is not a result of the defendant’s conduct. Instead, the witness made an independent decision not to appear—and the defendant’s conduct was not the cause of the witness’ absence. The judge in my case refused to even consider this issue, which I believe was a mistake.
- Look at the actual conduct. How often is the defendant calling the witness? Does the defendant visit the witness? Does he have friends or family contact the witness for him? Use a lack of really bad facts to argue that the unlawful conduct is minimal, and does not rise to the level needed to cause a defendant to forfeit essential and long-recognized Constitutional protections. In my case, there were only a few calls on which the defendant and victim/witness discussed court, and there were no visits by family members or other pressure.
- Listen to what the defendant is actually saying (on those jail call recordings we love to receive). I argued that there is a difference between cause and effect statements: “If you don’t come to court, the case will be dismissed” and threats: “If you show up, I will kill you.” My client’s communications with the victim were of the cause and effect variety, without any threats.

This issue is only going to become more common, since the State sees Rule 804(b)(6) as an excellent way to get around that tricky uncooperative witness issue in domestic violence cases.



Grounds for Making and Winning a *Batson* Challenge

By Nathan Wade, JD Candidate, 2013, University of Arizona



Background

The Supreme Court has established that the Equal Protection Clause forbids prosecutors from challenging or striking potential jurors based on race or gender. *Batson v. Kentucky*, 476 U.S. 79 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). In *Batson*, the Court noted that a defendant “does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria.” *Batson*, 476 U.S. 79, 85-6 (1986). As such, the State’s privilege to preemptively strike individual jurors is “subject to the commands of the Equal Protection Clause.” *Id.* at 88. *Batson* set forth a process for challenging a preemptive juror strike based on discrimination on the basis of race, reviewed below. *J.E.B.* expanded the *Batson* ruling and application to include striking jurors solely because of gender. *J.E.B.*, 511 U.S. 127, 130-1 (1994) (“Intentional discrimination on the basis of gender [in the jury selection process] violates the Equal Protection Clause”).

Arizona Application

Arizona courts follow the *Batson* and *J.E.B.* holdings, as well as the process for making a *Batson* challenge. *State v. Purcell*, 199 Ariz. 319 (2001); *State v. Lucas*, 199 Ariz. 366 (2001). *State v. Lucas* heard argument that if race was only one of several factors in a preemptive juror strike and the juror would have been struck for other reasons in addition to race, the preemptive strike could survive a *Batson* challenge. The court rejected this argument, saying, “regardless of how many other nondiscriminatory factors are considered, *any consideration* of a discriminatory factor directly conflicts with the purpose of *Batson* and taints the entire jury process.” *Lucas*, 199 Ariz. 366 at ¶ 11 (emphasis added). Therefore, if race (or another protected class) is a direct factor, even if not the only factor, in preemptively striking a juror, it fails the *Batson* challenge and the opponent of the strike has met the burden of proving a *Batson* challenge.

In the same year that *Lucas* further clarified the scope of a *Batson* challenge, *State v. Purcell* not only affirmed that Arizona follows the *Batson* standard, the court extended the standard to include preventing a party from preemptively striking jurors solely based on their religion. *Purcell*, 199 Ariz. 319 at ¶ 25 (2001). The court noted that *Batson* and *J.E.B.* both challenged preemptive strikes based on fundamental rights covered under the Equal Protection Clause, and added that if a person is struck from a jury based on the person’s exercise of an established fundamental right, a *Batson* challenge is appropriate. *Id.* at ¶ 26 (citing *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976)). Because the free exercise of religion is considered a fundamental right, a law cannot facially discriminate against religious membership or affiliation unless it passes strict scrutiny. That is, the discriminatory law “must be so narrowly tailored as to achieve a compelling

government purpose in order to be found constitutional.” *Id.* Striking a juror based on their religious affiliation or membership did not pass this test, and in Arizona, religion was added to the list of prohibited preemptive strikes, along with race, ethnicity and gender. *Id.* at ¶ 29.

What *will* survive a *Batson* challenge, however, is striking a juror based on opinion relevant to the case at hand, even if that opinion is rooted in a person’s religion. “Thus, we believe that *Batson* and *J.E.B.*, pursuant to the First and Fourteenth Amendments, prohibit the use of preemptory strikes based on one’s religious affiliation, but not based on one’s relevant opinions, although such opinions may have a religious foundation.” *Id.* (Here, the court held that a prosecutor could not preemptively strike a juror because she was Catholic, but could strike the juror because she opposed the death penalty, which was an opinion that rose out of her religious beliefs).

Although race, ethnicity, gender and religion are the only enumerated rights explicitly held to be subject to a *Batson* challenge, *Lucas* and *Purcell* taken together provide insight on other potential challenges to preemptive jury strikes based on discrimination. Both opinions came out in 2001, with *Lucas* giving an idea of what other rights might be considered under a *Batson* challenge, and *Purcell* providing the method to argue that the right should not be used to discriminate against prospective jurors. In *Lucas*, when reviewing the process for bringing a *Batson* challenge, the court states that “the opponent of the strike must make a *prima facie* showing of discrimination based on race, gender or some other protected characteristic.” *Lucas* at ¶ 7 (citing *Purkett v. Elem.*, 514 U.S. 765 (1995) (emphasis added)). Clearly, based on the subsequent *Purcell* decision, religious affiliation is considered a protected characteristic. To determine what other characteristics Arizona may consider applicable under the *Batson* test, the best resource is the State’s unlawful discrimination statutes. Taken together, the statutes say that discrimination, particularly in voting, places of public accommodation, and employment, may not be based on “race, color, religion, sex, age, national origin (ancestry) or on the basis of disability.” A.R.S. § 41-1421, 1442, and 1463 (respectively). All of these listed characteristics should be subject to a *Batson* challenge, using the *Lucas* and *Purcell* precedents. Additionally, applying the Equal Protection explanation laid out in *Purcell*, any fundamental right that has been established as a fundamental right in the Constitution or by the Supreme Court can be subject to a *Batson* challenge.

***Batson* Challenges- Process and Burden**

First, in challenging a preemptory strike, the opponent of the strike must present a *prima facie* showing of prohibited discrimination. *Purcell* at ¶ 23 (citing *Purkett v. Elam*, 514 U.S. 765, 767 (1995)). It falls upon the opponent of the strike to show that the potential juror is a member of the protected class in question and that there is evident discrimination based on said protected class (in Arizona, race, color, national origin and religion based on case law; age and disability based on statute). *Id.* Courts are also clear that a *prima facie* case does not require that the discrimination charged be “more likely than not,” only that there is cause to show discrimination. *Johnson v. California*, 545 U.S. 162 (2005). “A defendant satisfies the requirements of *Batson*’s first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.” *Id.* at 169.

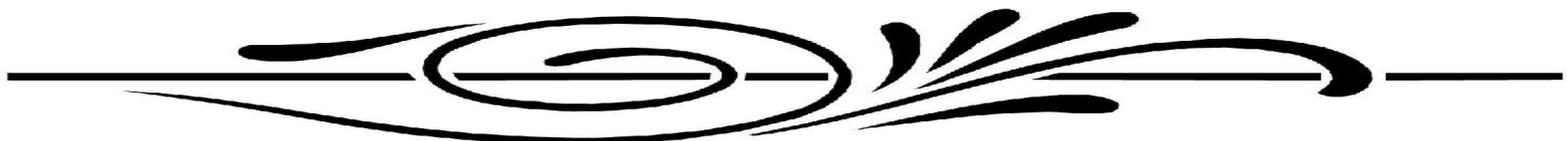
Second, after the charge has been made, the burden then falls on the proponent of the strike to provide a legitimate and neutral explanation, one that is devoid of discriminatory intent. *Id.* The explanation does not have to be persuasive or plausible, simply neutral and on its face a legitimate explanation. *Purkett*, 514 U.S. 765, 768 (1995).

The court takes on the final step of a *Batson* challenge to determine if the opponent of the strike has met their overall burden of proving that the strike was based on a discriminatory characteristic. *Purcell* at ¶ 23. The court weighs the evidence provided by the opponent in step one against the legitimacy of the explanation provided by the proponent in step two. *Id.* This step is one that the *Purkett* Court warned about and cautioned lower courts on. *Purkett* at 768. Often, courts will read

Batson to combine the second and third steps, and require that the explanation be both neutral and plausible without weighing the strike proponent's claim of neutrality against the *prima facie* case presented by the strike opponent. *Id.* Instead, the Court said that the main burden is always on the opponent of the strike and that in step three, the court must weigh the opponent's case against the proponent's explanation before determining if the proponent's explanation is sufficiently plausible to withstand a challenge. *Id.*

Because the ultimate burden to prove a discriminatory preemptive strike is on the opponent of the strike, the court at step three must be able to evaluate the strike proponent's explanation to determine if it is simply pretext for discrimination. As such, most courts have consistently held that the opponent must have an opportunity to show such pretext. *State v. Pharris*, 846 P.2d 454 (Utah 1993) ("To promote comprehensive analysis, trial courts must allow defendants an opportunity to attack the justifications offered by the prosecution for striking prospective jurors."). (Note that Arizona case law and statutes do not spell out the rebuttal process as do states such as Utah and North Carolina, but the opportunity for rebuttal is a generally accepted part of the step three process). Proving that a justification by the strike proponent is merely pretext to mask a discriminatory purpose is usually straightforward. Every reason offered by the strike proponent is subject to challenge by the strike opponent. For example, if challenges are not applied consistently, an argument can be made that the preemptive strike was made for inappropriate reasons under *Batson*. 8 *Ariz. Prac., Trial Handbook For Ariz. Lawyers* § 7:19 (2010-2011 ed.). An opponent may show that a group of jurors falling under a protected *Batson* class were struck for the same reason- not associated to a *Batson* challenge- but that other jurors of a different group were not struck, even if they shared the same characteristic that was the claimed basis for the juror strike. *Id.* Another argument that has been used to overcome a strike proponent's claim of neutrality is to show "disparate questioning" of jurors by race, gender, religion, et. al. in such a manner that all members of a specific group appear to have a single view different from other jurors, and not being consistent in the reason for dismissing jurors. *Id.* Additionally, trial judges may question the challenged juror to determine if the juror was manipulated by or understood questions asked by the strike proponent during *voire dire* questioning. *State v. Newell*, 212 Ariz. 389 (2006).

If the opponent of the strike can meet the burden by first proving to the court that there is a *prima facie* case for a *Batson* challenge, and subsequently by convincing the court that the strike proponent's "neutral" explanation is simply pretext to mask inherent discrimination, then a *Batson* challenge should be successful.



Making a Case for Probation when the State Alleges “Multiple Offenses”

By Linda Tivorsak, Defender Attorney

Under the current A.R.S. §13-703 (formerly numbered §13-702.02), “[a] person shall be sentenced as a category one repetitive offender if the person is convicted of two felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions.” This means that even as a first-time felony offender, a defendant convicted of multiple offenses not committed on the same occasion would be facing a possible prison sentence. In certain cases however, defense counsel may be able to argue that this provision should not apply, and the two (or more) felonies should be regarded as one crime.

Arizona courts have found that sentencing under this “multiple offenses” provision is not applicable to a “spree offender”, who commits more than one crime in a connected series of events on the same occasion. See *State v. Hannah*, 126 Ariz. 575, 576-77, 617 P.2d 527 (Ariz. 1980) (superseded on other grounds), *State v. Sands*, 145 Ariz. 269, 276-77 700 P.2d 1369 (Ariz. App. 1985). The argument can be put forth that although there are multiple offenses, the “spree” should be considered as being on the “same occasion”, making a defendant convicted of multiple offenses potentially probation eligible. (Note: although the statutes applicable in *Hannah* have changed, the argument that multiple offenses can be considered “same occasion” is still valid. *State v. Sheppard*, 179 Ariz. 83084, 876 P.2d 579 (Ariz. 1994).) Though there is no clear test to determine what constitutes “same occasion”, some of the factors that the Court may look to are (1) whether the conduct was directed to the “accomplishment of a single criminal objective and (2) whether the conduct was part of a “continuous series of criminal acts. *Id.* (citing *State v. Noble*, 152 Ariz. 284, 731 P.2d 1228 (Ariz. 1987), *State v. Shulark*, 162 Ariz. 482, 784 P.2d 688 (Ariz. 1989). The Court may also look to whether the criminal conduct was continuous and uninterrupted, the number of victims, or the time period involved. *Noble*, 152 Ariz. at 286.

Making an argument that a defendant convicted of multiple offenses should be probation eligible because it is all part of the “same occasion” can be done when a defendant is charged with several counts of theft related to a single fraud scheme. For example, the State may charge a defendant for multiple counts of theft on different dates in addition to a separate single count of fraudulent schemes and artifices encompassing all the dates related to the separate theft counts. More often than not, these thefts are from a single victim and all related to the overarching fraud scheme. A defendant in this situation has a “single criminal objective” toward a single victim. The conduct may occur over a short or an extended period of time, but the goal of the conduct remains consistent. The fraud scheme charge supports this allegation of being part of the “same occasion”, and arguably, the multiple theft allegations should be considered as one “single offense” because they are part of the same “spree” and “fraud scheme”.

In addition, another argument to potentially set forth is that punishing someone who is convicted of multiple offenses related to a single crime “spree” involving the same victim can constitute double punishment, especially if the defendant is also convicted of an overarching fraud scheme charge. Under A.R.S. §13-116, “[a]n act or omission which is punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent.” To determine if the “double punishment” is in issue, take away the elements of one charge and determine if there are sufficient facts to support the other charge or charges. *State v. Mitchell*, 106 Ariz. 492, 495, 478 P.2d 517 (Ariz. 1970). In the case of a defendant convicted of fraudulent schemes and artifices and multiple theft counts, a conviction for fraud schemes would not be possible had the defendant not “knowingly obtain[ed] a benefit” from the victim. The “benefit” obtained by a defendant would be the thefts. A defendant presumably cannot not commit

a fraud scheme without the theft. As such, there should be a single punishment or sentence for someone convicted of these offenses. Sentencing a defendant to prison under §13-703 (formerly §13-702.02) for the theft counts, but placing him/ her on probation on the fraud scheme charge would effectively be double punishing for the same conduct because prison and probation sentences cannot run concurrently.

Though it is possible that the State and judges may still apply §13-703 for first time offenders convicted of multiple offenses not committed on the same occasion, but consolidated for trial, it is possible that these “multiple offenses” should be considered part of the “same occasion” and defense counsel should make the appropriate arguments. If successful, a defendant facing a mandatory prison sentence despite being a first-time offender may instead be probation eligible.

Save the Dates...



10th Annual APDA Conference **June 20—22, 2012**

For updated information, please visit the APDA website: <http://www.apda.us/>

Jury and Bench Trial Results

December 2011 – February 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Group 1					
1/6/2012	Reece Christiansen	Hoffman	2011-123109-001 Criminal Damage, F6 Aggravated Assault, F6 Child/Vulnerable Adult Abuse, F4 Assault-Intent/Reckless/Injure, M1	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
Group 2					
12/21/2011	Farney Brazinskas Christiansen	Flores	2010-007708-001 Forgery, F4 Taking Identity of Another, F4 Money Laundering, F3 Misconduct Involving Weapons, F4 Crim Poss-Forgery Dev Adapt, F6	28 5 2 5 1	Jury Trial-Guilty Lesser/Fewer
12/22/2011	Farney Brazinskas Christiansen	Brnovich	2011-005869-001 Fraudulent Schemes/Artifices, F2 Murder 2nd Degree, F1	1 1	Jury Trial-Guilty As Charged
1/19/2012	Farney Browne	Gottsfeld	2011-137321-001 Assault, M1 Criminal Trespass 3rd Deg, M3 Agg Aslt-Officer, F6 Resisting Arrest, F6	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
Group 3					
12/2/2011	Salter Thompson	Warner	2011-112347-002 Kidnap, F2 Armed Robbery, F2 Misconduct Involving Weapons, F4	1 1 1	Jury Trial-Guilty Lesser/Fewer
12/5/2011	Quesada Salvato Yalden	Mulleneaux	2010-142843-001 Resisting Arrest, F6 Aggravated Assault, F4 Obst Hwy/Pub Lic Thoroughfare, M3 Aggravated Assault, F3	2 2 1 1	Jury Trial-Guilty Lesser/Fewer

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

December 2011 – February 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
12/9/2011	Banihashemi <i>Salvato</i> <i>Yalden</i>	Warner	2010-006334-001 Sexual Assault, F2 Kidnap, F2	2 1	Jury Trial-Guilty Lesser/Fewer
12/15/2011	Corbitt <i>Yalden</i>	Brotherton	2011-103044-001 Shoplifting, F4	1	Jury Trial-Guilty As Charged
1/5/2012	Parker <i>Salvato</i> <i>Farley</i>	Bailey	2011-132134-001 Aggravated Assault, F3	1	Jury Trial-Not Guilty
1/9/2012	Gilbert <i>Delrio</i>	Garcia	2011-135142-001 Threat-Intimidate, M1 Resisting Arrest, F6	2 1	Jury Trial-Guilty Lesser/Fewer
1/9/2012	Colson <i>Salvato</i>	Bassett	2011-140337-001 Aggravated Assault, F4	1	Jury Trial-Not Guilty
1/19/2012	Allen <i>Verdugo</i>	Lynch	2010-007434-001 Marijuana Violation, F6	1	Court Trial-Guilty Lesser/Fewer
2/2/2012	Banihashemi <i>Salvato</i>	Brotherton	2011-131446-001 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
Group 4					
12/1/2011	Tivorsak <i>Flannagan</i> <i>Curtis</i>	Harrison	2011-005678-001 Fraudulent Schemes/Artifices, F2 Theft, F5	1 3	Jury Trial-Guilty As Charged
12/2/2011	Warner <i>Meginnis</i> <i>Kunz</i>	Pineda	2011-101467-001 Aggravated Assault, F5 Resisting Arrest, F6 Obstructing Govt Operations, M1	1 1 1	Jury Trial-Guilty Lesser/Fewer
12/2/2011	Wallace	Brotherton	2011-114552-001 Dangerous Drug Violation, F2	1	Jury Trial-Guilty As Charged

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Jury and Bench Trial Results

December 2011 – February 2012

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Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
12/6/2011	Becker Flannagan Curtis	Cohen	2009-164957-001 Burglary 3rd Degree, F4	2	Jury Trial-Guilty Lesser/Fewer
12/6/2011	Warner Meginnis Kunz	Lynch	2011-127356-001 Excessive Speeding, M3 Unlaw Flight From Law Enf Veh, F5 Drive w/Lic Susp/Revoke/Canc, M1	1 1 1	Jury Trial-Guilty Lesser/Fewer
12/9/2011	Warner	Bergin	2011-119863-001 Marijuana Violation, F6 Drug Paraphernalia Violation, F6	1 1	Court Trial-Not Guilty
12/16/2011	Finsterwalder	Martin	2010-007659-001 Trafficking In Stolen Property, F3	1	Jury Trial-Guilty As Charged
12/20/2011	Jolley Hagler Verdugo Kunz Austin	Harrison	2010-165153-001 Murder 2nd Degree, F1	1	Jury Trial-Guilty As Charged
1/9/2012	Rathkamp Verdugo	Warner	2011-102959-001 Dangerous Drug Violation, F4	1	Jury Trial-Guilty As Charged
1/10/2012	Wallace Meginnis	Bergin	2011-131263-001 Indecent Exposure, F6	3	Jury Trial-Guilty As Charged
1/17/2012	Becker Flannagan Curtis	Bergin	2010-005952-001 Kidnap, F3, Attempt to Commit Burglary 2nd Degree, F3 Kidnap, F2 Burglary 2nd Degree, F4, Attempt to Commit	1 1 1 1	Jury Trial-Guilty As Charged
1/23/2012	Finsterwalder Flannagan Curtis	Spencer	2011-114059-001 Agg Aslt-Officer, F6 Crim Tresp 3rd Deg/Property, M1	1 1	Jury Trial-Guilty Lesser/Fewer

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Jury and Bench Trial Results

December 2011 – February 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
1/24/2012	Warner Meginnis Kunz	Lynch	2011-115967-001 Custodial Interference, F6	1	Jury Trial-Guilty As Charged
2/17/2012	Finsterwalder Flannagan	Bailey	2011-135464-001 Crim Tresp 1st Deg-Res Struct, F6 Marijuana Violation, F6	1 1	Jury Trial-Guilty As Charged
2/27/2012	Tivorsak Flannagan	Brnovich	2011-007473-001 Murder 2nd Degree, F2, Attempt to Commit Aggravated Assault, F3	1 1	Jury Trial-Guilty As Charged
Group 5					
1/31/2012	Spurling Thompson	Barton	2011-123675-001 Theft Crdt Crd Obt Fraud Means, F5	1	Jury Trial-Not Guilty
2/2/2012	Friddle Munoz	O'connor	2011-131322-001 Dschrng Firearm in City Limit, F6 Aggravated Assault, F2 Aggravated Assault, F3	1 1 2	Jury Trial-Guilty Lesser/Fewer
2/3/2012	Ditsworth Thompson Ralston	Bailey	2011-103583-001 Aggravated Assault, F4	2	Jury Trial-Guilty As Charged
2/29/2012	Glass-Hess	Contes	2011-138908-002 Unlawful Imprisonment, F6 Aggravated Assault, F3 Assault-Intent/Reckless/Injure, M1	1 1 1	Jury Trial-Guilty Lesser/Fewer
Group 6					
12/7/2011	Taradash Souther	Pineda	2011-131297-001 Burglary Tools Possession, F6 Burglary 3rd Degree, F4	1 1	Jury Trial-Not Guilty
12/15/2011	Mccarthy	Vandenberg	2011-119784-001 Marijuana Violation, F6	1	Court Trial-Guilty Lesser/Fewer

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

December 2011 – February 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
1/25/2012	Delatorre <i>Souther</i> <i>Trimble</i>	Gottsfeld	2006-180277-001 Aggravated Assault, F5 Narcotic Drug Violation, F4	2 1	Jury Trial-Guilty As Charged
RCC					
12/2/2011	Cooper <i>Verdugo</i> <i>Curtis</i>	Miller	2011-129966-001 Crim Tresp 1st Deg-Res Struct, F6	1	Jury Trial-Guilty As Charged
1/18/2012	Primack <i>Trimble</i>	Reagan	2010-119435-001 Fail To Comply-Court Order, M1	1	Court Trial-Not Guilty
Training					
1/31/2012	Roth <i>Romani</i>	Bassett	2011-102078-001 Aggravated Assault, F4 Assault-Intent/Reckless/Injure, M2 Resisting Arrest, F6	1 1 1	Jury Trial-Guilty Lesser/Fewer
Vehicular					
12/2/2011	Whitney <i>Thompson</i> <i>Delrio</i>	O'connor	2010-152838-001 Arson of Occupied Structure, F2 Misconduct Involving Weapons, F4 Aggravated Assault, F3 Endangerment, F6	1 1 1 1	Jury Trial-Guilty As Charged
12/12/2011	Dehner <i>Romani</i> <i>Ralston</i>	Martin	2010-006294-001 Sexual Abuse, F3 Kidnap, F2 Sexual Abuse, F5 Kidnap, F5 Molestation of Child, F2	1 1 2 1 1	Jury Trial-Guilty Lesser/Fewer
12/12/2011	Foundas <i>Renning</i>	Cohen	2011-118152-001 Agg DUI-Lic Susp/Rev For DUI, F4	2	Jury Trial-Guilty Lesser/Fewer
1/3/2012	Foundas	Svoboda	2011-107286-001 Agg DUI-Lic Susp/Rev For DUI, F4	2	Jury Trial-Guilty As Charged

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Jury and Bench Trial Results

December 2011 – February 2012

Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
1/9/2012	Alagha	Miller	2009-174507-001 Agg DUI-Lic Susp/Rev For DUI, F4	2	Jury Trial-Guilty Lesser/Fewer
1/19/2012	Foundas	Miller	2011-106884-001 Agg DUI-Lic Susp/Rev For DUI, F4	2	Jury Trial-Guilty As Charged
1/25/2012	Alagha <i>Jarrell</i> <i>Moss</i> <i>Renning</i>	Miller	2011-138731-001 Agg DUI-Lic Susp/Rev For DUI, F4	2	Jury Trial-Guilty As Charged
2/27/2012	Conter <i>Moss</i> <i>Jarrell</i> <i>Chappell</i>	Harrison	2010-005514-001 Aggravated Assault, F2 Aggravated Assault, F3	1 2	Jury Trial-Guilty Lesser/Fewer



Jury and Bench Trial Results

December 2011 – February 2012

Legal Advocate's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
2/6/2012	Glow	Brnovich	2011-005191-001 Murder 1st Degree, F1 Aggravated Robbery, F3 Trafficking In Stolen Property, F3	1 1 1	Court Trial-Guilty As Charged

Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
12/1/2011	Youngblood Armbrust	Sinclair	JD19446 Severance	Severance Granted	Bench
12/6/2011	Timmes Gill	Ishikawa	JD509153 Dependency	Dependency Granted	Bench
12/6/2011	Todd Stocker	Aceto	JD508131 Severance	Severance Granted	Bench
12/6/2011	Youngblood Armbrust	Hicks	JD18372 Severance	Severance Granted	Bench
12/8/2011	Klass Sherry	Steinle	JD20417 Dependency	Dependency Granted	Bench
12/9/2011	Todd Stocker	Thompson	JD504477 Supp Severance	Severance Granted	Bench
12/14/2011	Timmes for Stubbs	Aceto	Severance	Severance Granted	Bench
1/23/2012	Christian Christensen	Abrams	JD508501 Severance	Severance Granted	Bench
2/2/2012	Christian Christensen	Ishikawa	JD509161 Dependency	Dependency Found	Bench
2/7/2012	Christian Christensen	Thompson	JD508888 Severance	Severance Granted	Bench
2/23/2012	Stubbs Holmes	Smith	JD508342 Severance	Under Advisement	Bench

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Jury and Bench Trial Results

December 2011 – February 2012

Legal Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
Capital					
12/13/2011	Curry Lawson <i>Horrall</i> <i>Haimovitz</i> <i>Williams</i> <i>Woodrick</i> <i>Fehnel</i>	Barton	2009-007744-001 Murder 1st Degree, F1 Kidnap, F2	1 1	Jury Trial-Guilty As Charged
1/20/2012	Cleary Navazo <i>De Santiago</i> <i>Hill</i> <i>Carrillo</i> <i>Rubio Gaytan</i>	Jones	2011-006436-001 Murder 1st Degree, F1 Aggravated Assault, F3	1 3	Jury Trial-Guilty Lesser/Fewer
1/25/2012	Sinclair	Kreamer	2010-111801-001 Burglary 3rd Degree, F5, Attempt to Commit Aggravated Assault, F3	1 1	Jury Trial-Guilty Lesser/Fewer
Felony Trial					
12/9/2011	Lane	Miles	2010-161566-001 Dangerous Drug Violation, F4 Drug Paraphernalia Violation, F6	1 1	Jury Trial-Guilty As Charged
12/22/2011	Collins	Warner	2009-170388-002 Theft-Means Of Transportation, F3	1	Jury Trial-Guilty As Charged
1/3/2012	Shipman <i>Haimovitz</i>	Bergin	2011-110105-001 Burglary 2nd Degree, F3	1	Jury Trial-Guilty As Charged
1/10/2012	Shipman	Bailey	2011-118391-002 Burglary Tools Possession, F6 Burglary 2nd Degree, F3	1 1	Jury Trial-Guilty Lesser/Fewer
2/6/2012	Lee	Martin	2011-137763-002 Burglary 2nd Degree, F3	1	Jury Trial-Guilty As Charged
2/13/2012	Storrs	Sanders	2011-134070-002 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer

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Jury and Bench Trial Results

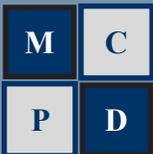
December 2011 – February 2012

Legal Defender's Office – Dependency

Last Day of Trial	Attorney <i>Case Manager</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
1/3/2012	Kolbe	Abrams	JD509254 Dependency Trial	Dependency Found	Bench
1/4/2012	Kolbe	Abrams	JD509014 Severance Trial	Severance Granted	Bench
2/24/2012	Kolbe	Ishikawa	JD509635 Dependency Trial	Dependency Found	Bench
2/17/2012	Kolbe	Ishikawa	JD509640 Dependency Trial	Dependency Found	Bench



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for The Defense

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