IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Frank Jarvis Atwood, Petitioner, v. David Shinn, Respondent.	No. _____ ** CAPITAL CASE** Execution Date: June 8, 2022

EXHIBITS TO PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254

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Exhibit 1

FD-302 (REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

-1-

Date of transcription 9/28/84

STEPHANIE DAWN HOSKINSON (age 11), 1920 W. Hadley, Tucson, Arizona, was advised as to the identities of the interviewing agents and the purpose for the interview, at which time she provided the following information:

On Monday, September 17, 1984, she left Flowing Wells Junior High School around 3:35 p.m. and arrived at her home about 3:40 p.m. She advised she walks to and from the Junior High School. When she arrived at home she went into her room to do homework.

When she came out of her room, she asked her mom where VICKI was and her mom told her that VICKI had gone to the Circle K to mail a letter. At approximately 3:50 p.m. she told her mom that she would go look for VICKI. She got on her bike and rode south on Hadley to J Avenue and then J Avenue to La Osa Street and then turned west to La Cholla preceeding north on La Cholla to Amy drive and turning east on Amy Drive to J Avenue which lead to Wetmore, then she turned east on Wetmore to the Circle K where VICKI was to have mailed a letter. She did not see VICKI at the Circle K or the mail box, so then she rode south on Romero from the Circle K where she passed the Church of Religious Psychology where she cut through the Church property onto a trail which leads to Pocito Place.

When she got to Pocito Place, she saw a bike in the middle of the street on the south end of Pocito Place at Root Lane. The bike was in the middle of the street (Pocito) lying in front of the second house, eastside of the street north of the intersection of Pocito Place and Root Lane. She went to the bike and noticed it was VICKI's. At this time, a lady came out of the first house on Pocito Place located on the eastside of the street north of the intersection of Pocito Place and Root Lane. The name of this lady is unknown to her. The lady asked her if she knew who the bike belonged to. She told the lady it was her sister's bike and she gave the lady VICKI's description and asked if she had seen VICKI. The lady said no and told STEPHANIE she had been home approximately 30 minutes and the bike was in the road at the time she got home. The lady let her move the bike to her front yard, after which time STEPHANIE rode home to tell her mother. She rode down Root Lane to Pasco Reforma and then took a bike trail to Hadley, arriving home at 4:05 p.m.

She told her mother about the bike and her mom told her to stay at home and that she would go look for VICKI.

Investigation on 9/19/84 at Tucson, Arizona File # PHOENIX 7-1196

by SA PETER M. ZOBENICA
SA EDWARD R. HALL/seb Date dictated 9/26/84

Disclosures Mgmt NOV 01 1984

FD-302a (3-8-83)

PX 7-1196
ERH/seb

Continuation of interview of STEPHANIE DAWN HOSKINSON, Page -2-

STEPHANIE advised that VICKI would usually go down the dirt alley or bike path to Paseo Reforma then to Root Lane which lead to Romero and to Homer Davis School. She advised that VICKI would not take the alley if she were by herself. If she were by herself, she would go to the next door neighbor's, DORAME'S, and TRACY DORAME and VICKI would go out the DORAME's back gate to Paseo Reforma to Root Lane then to Romero and to Homer Davis School.

She advised that when VICKI was riding her bike she would go through the alley to Paseo Reforma then to Root Lane and that she also believes this is the way VICKI probably went when her mother sent her to mail the letter. She also believes VICKI would have returned to their home via Pocito Place to Root Lane to Paseo Reforma then down the dirt alley to Hadley and then back to their home.

She advised that within the past week she has not noticed any strangers or people acting in strange ways that would have brought concern to her. She also advised that VICKI, in the last week, had never mentioned anything about strangers or any incidents or occurrences happening with strangers.

Disclosures Made NOV 0 1 1984 1

Exhibit 2

Some kidnap evidence apparently not checked

Atwood was picked early as top suspect

By EDWARD HUMES
Citizen Staff Writer

Since the day 8-year-old Vicki Lynn Hoskinson disappeared, the Pima County Sheriff's Department has failed to pursue substantial leads and witnesses that could have shown what happened to Vicki, a month-long investigation by the *Tucson Citizen* has found.

These leads and witnesses were not proved incorrect through official investigation. They simply did not support the detectives' criminal case against Frank Jarvis Atwood, a convicted child molester from California who was seen in Vicki's neighborhood on the day of her disappearance.

The *Citizen's* investigation has found:

• Detectives rejected as incorrect a detailed eyewitness account that put a tearful and exhausted Vicki at the Tucson Mall in the company of a woman, at a time that would clear Atwood. The eyewitness' description of Vicki is nearly flawless: The girl's face, hair, teeth and red-white-and-blue dress all were recounted in detail that the witness apparently could not have known without seeing Vicki that night.

Although the eyewitness at first was believed by the authorities — she was considered their best witness — they later decided she was "mistaken." The eyewitness' account does not fit the authorities' stated theory of what happened to Vicki.

Vicki Lynn Hoskinson

• As many as eight potentially key witnesses, located recently by the *Citizen*, say they never were sought or questioned by investigators. Some of these witnesses have information about Atwood's whereabouts on Sept. 17, the day Vicki vanished; others have information about other potential suspects.

• Some witnesses have moved, leaving no forwarding addresses.

• Numerous leads that could link a local woman recently declared mentally incompetent to Vicki's disappearance were not investigated. Had investigators checked, they would have been told this woman had been diagnosed as having mental problems; fantasized about being a nurse and sometimes took children home with her; and allegedly had attempted to abduct a developmentally disabled teen-age boy within a few days of Vicki's disappearance.

• This woman — call her Billie (her real name is being withheld for legal reasons) — gave conflicting alibis to authorities about where she was

EVIDENCE, Continued Page 7A

Evidence not pointing to Atwood was overlooked

(Story Page 1)

When Vicki disappeared, a transcript of her interrogation of the investigators shows, investigators entered her birthday, they said.

★ A local hospital employee, whose job requires him to move throughout the city making deliveries, described Bible as a woman he had seen "cruising" several local schools three days before Vicki disappeared. He said she was driving a Datsun "2?" car. He picked Bible out of a photo lineup provided by the police. Although he had contacted investigators after what he had seen, they never investigated his information.

★ About a week before Vicki vanished, a mother told reporters of investigators, a woman who could fit Bible's description attempted to abduct the mother's son, and from an apartment complex about two blocks from where Vicki disappeared. The mother said she fought the woman off and reported the incident to authorities after getting more details of Vicki's disappearance. The mother, Charlene Nelson, has since moved and left no forwarding address.

★ Two high-school girls say they saw Vicki and a "2" car near the spot Vicki's bike was found described as one convey and different from Atwood's, investigators of Vicki's homicide said.

★ A 9-year-old boy, who claims to have seen Vicki abducted and is the only such witness found, says a woman fled it.

Vicki disappeared from a street near her home at about 3:45 on Sept. 17. She was carrying home from school a note for her mother.

Only her abandoned bicycle was found, lying in the middle of the street.

Within three days of Vicki's disappearance, the sheriff's department was not in doubt as to the cause for Vicki, but working to build a case against Atwood, according to information culled from sheriff's reports, statements and court records.

"It was a question of resources," explained one officer.

In the weeks three days after Vicki's disappearance, at least a dozen another could be a murder or Vicki's neighborhood, school and playground. Investigators spent hours up and down Park "2" Car — and in the longest record of one evening's activities.

Within a few weeks, it was clear to investigators that Vicki's abductor was a woman? Were of Vicki was in the back of a blue Datsun "2" car driven by Ann Atwood, a boy Atwood knew? Could Vicki even be in the area of the city and never seen by anyone?

"It's possible," conceded one officer in the case. "We just hope that's not true. But we have to go with the facts that we've got."

Moreover, the "hard facts" at best provide a circumstantial against Atwood. Pima County Sheriff Clarence Dupnik conceded. But he said he is confident that he can convict investigators of the case was proper, and he is confident that prosecution in the case will follow. He would not elaborate on the source of his confidence, he said, because of the pending criminal investigation.

★ No hard news appeared not to discuss these aspects of the case," Dupnik said. No other officials would discuss the case for the record.

Dupnik is a 20-year-old woman who worked as a typist clerk at the Tucson Mail. She believes she saw Vicki Bible in the company of a woman after 7 p.m. on Sept. 17. Later, she saw the woman and girl together with light brown hair only for another, then leaver.

Frank Arenal was with a friend — now the prosecution's witness, John David McDonald — on Sept. 17 p.m. on Sept. 17, according to testimony. He turned his car around at the end of right.

Because they are convinced Arenal did it, officials say, they are convinced Conner must be wrong.

Conner called detectives shortly after the 11 p.m. interrogation session on Sept. 17. She had been talking with her husband when she glanced at the TV screen and saw Vicki's picture flash in front of her, part of a story about a missing bike girl and a woman's hunt for her. Conner told the Citizen.

It was the first solid lead since Vicki had vanished that afternoon. officers said in a story about Conner's house where she met them.

She provided a detailed description of Vicki and identified the woman girl's photograph. Then she sat down with a sheriff's artist and produced a sketch of the dark-skinned, dark-haired woman who had been with the girl.

The Citizen has found at least eight people — neighbors, court workers, store clerks and other witnesses — who identified the sketch as Bible, who lives alone, five miles from where Vicki was abducted. These people say they never were contacted by police.

The sketch was published in newspapers and television in sheriff's News on Sept. 18. Investigators received numerous calls that day and the next, but none identified the Bible, records show.

One man's call came from the manager of a Tucson Police Department employee. The caller worked at a bank and said Bible often came to the bank and counted large amounts.

At least two witnesses called in to say such a woman was seen driving in Bible's Datsun "2" car, sheriff's reports show. Bible owns a brown Datsun station wagon.

Many callers also thought they recognized the sketch from news shows pictures of Bible in custody. Many callers also thought they recognized the sketch from news shows pictures of Bible in custody. Many callers were named through sheriff's files and the Citizen's library, they said, but police officers never got back in touch with them after initial interrogation.

By the afternoon of Sept. 18, sheriff's investigators had obtained criminal record information on Bible and had a description of her home address and car. They learned Bible had been indicted for bond and insurance fraud in 1961 and then the case was quietly dismissed.

Later November, it was dismissed on grounds of mental incompetence. Examiners found her non-competent to stand trial because of symptoms of mental her past history, records show.)

Within a day or two of Vicki's abduction, investigators knew Conner owned a car, allowing her to post from a car window at several months. One months ahead of the time of her husband's co-worker found in Vicki. The woman was Bible.

Conner told deputies the only way she could be sure of her identification was to have the woman's voice.

The sheriff's department never offered her that opportunity, she said. They never did. They had taken a non-committal statement from Bible two days after Vicki disappeared, she said.

It was the investigators who never given Conner an opportunity to hear Bible's voice, Conner said.

Instantly, in the presence of a Citizen reporter, Conner called Bible's voice. Conner remembered the voice she heard as the shopping mall to be gruff, deep-throated, husky. Bible's voice certainly, she said it did not sound like that.

Conner then contacted Bible who met the woman she had seen with Vicki, although "it can't make up her."

Court workers who dealt regularly with Bible in the months before her abduction described Bible's voice as sometimes stern and high-pitched, and sometimes deep and husky. Those workers were never contacted by detectives.

Bible's co-workers described her voice as very changeable. She has shaken her mixed feelings, he said, and her voice's pitch and quality vary with those moods.

A sketch of the woman in Tucson Mall was distributed by deputies the day after Vicki disappeared.

Bible's co-workers described her voice as very changeable. She has shaken her mixed feelings, he said, and her voice's pitch and quality vary with those moods.

Ten co-workers were was contacted by investigators, he said.

Conner was told this witnesses and Bible's voice changed depending on her mood. Some Conner's reply Bible could be the woman she saw with Vicki.

The co-workers said some moments ago Bible who has an aging condition of her eyes, and a "more fantasy" and brought attention to herself and to "make more of." A neighbor who said he says Bible being a "little eccentric of sorts. He said he considered she had embellishing.

A sheriff's official said investigators had determined Bible had no criminal record in Tucson and no Bible. It had had one misdemeanor arrest. Many noted was that Bible had been indicted and then fleeing over fraud in Bible's possession.

When asked if there were any witnesses that implicated Bible in the Bible in the case of Vicki's disappearance other than Bible himself, the official said: "Not to my knowledge."

Investigators claimed the were in contact on the afternoon of Sept. 17, they thought her name and said K man".

Then she said she met her employees at a store on East Broadway Highway that night. She said the same of days with an elderly woman she called Ma. She claimed she drove to her boyfriend's ex-wife's house to see if he was home.

At any point, she said she had to they what she did that day.

She denied any involvement with Vicki's disappearance.

She denied being in the Tucson Mall on Sept 17. She said she was there the day before.

When contacted for the Citizen, Bible again denied any involvement with Vicki. She denied this anyone saw her in the mall, although investigators told her during the interview that more than one person saw her at the Tucson Mall on Sept. 17.

In the Citizen interview, she denied ever having access to a Datsun "2" car. She admitted frequenting a bar in the area of Vicki's disappearance, where she said unsavory characters sometimes go.

Abraham Rodriguez contacted sheriff's officials on Sept. 19 for in a mail court on St. Mary's Hospital and showed up at court where making arrangements.

On Sept. 14, he saw a woman in a brown Datsun "2" car cruising several streets, including Mabel. He identified Bible's car as the "2" car he had investigators. The woman appeared to be watching the children playing in the school yard, he said.

When he saw the sketch of the woman Conner said, he thought it was the same woman he had seen. He identified Bible's Datsun that, and records verify he report of Sept. 17.

They never showed him a picture of Bible or any other woman, he said. They never contacted him again.

When the Citizen provided this with the photo of the woman, Rodriguez picked Bible out as the woman he had seen. The only difference: Bible's hair is shorter, he said, while the woman he saw had blonde or very light brown hair.

A woman well acquainted with Bible, never contacted by detectives, said the woman was seen a blonde wig.

That answer was related through public records at Pima County Superior Court. The source is the one of the "boyfriend" said in court was contacted by police, although he was part of Bible's life on Sept. 17.

They were told the Citizen he was not Bible's boyfriend, his answer is divorce decree. His records, he said, the boyfriend's name, showed up at his store and accosted him, insisting that he loved him and could help him. He contacted police and got a court order. Bible, manager said harassment. Arenal his sexual orientation, he said.

Those facts Bible's Vicki disappeared, the woman was fired for and got an expensive against Bible. The suit against Bible's Bible's boyfriend's ex-wife and claimed she frightened the boyfriend's teen-age nonetheless dismissed grounds.

In an interview, the ex-wife and Bible men had plan to move her her. At into her car. She was not. The was arrested overlooked without a week or two of Vicki's disappearance he said.

The ex-wife also said Bible had a pair of earrings that Bible had given to her daughter. Bible's ex-wife described the same kind of earrings on the woman she saw with Vicki.

In her interview with sheriff's investigators, Bible denied having such earrings.

At least three Tucson Mall workers cited that Conner and Bible on the night of Sept. 17 who resembled Bible. One of them, an employee of the Sunset Drive store, gave her name, but would not give forwarding address, a store worker said. Another, attending to customers at a Maryley's store, also saw a woman resembling Conner's sketch buying girl's clothes on Sept. 17.

Maryley's employee refused to name that employee or give to the press.

Conner said the woman she saw with Vicki had a big bag from Maryley's.

An employee in a mall pizza restaurant says she saw a girl with a woman in the restaurant on the night of Sept. 17, according to a co-worker at the restaurant. That employee refused to be interviewed by the Citizen but had spoken to investigators.

The Citizen has located two more workers there on the evening Vicki disappeared. Both worked in the store. Neither's those workers were never contacted by detectives, the workers said.

Pink paint is only link to car, Vicki

When Frank Jarvis Atwood, 28, was arrested in Texas and charged with kidnapping Vicki Lynn Bible, his car was impounded and also examined by authorities for testing.

There no police findings from Atwood's car.

★ Tests by the FBI Crime Laboratory in Washington, blood or blood evidence that may prove Vicki ever was in Atwood's car, authorities said.

★ Because there is no adequate sample of Vicki's hair to make any conclusion can be performed, the FBI reported.

★ Investigators found traces of pink paint on the front bumper of Atwood's Corvair, authorities said yesterday. Tests by the FBI showed "the paint on the bumper came from the bicycle or from the same source such that the same and source paint." Pima County Sheriff's detective Lt. Dalton Holland, in Atwood's preliminary hearing in Justice.

Officials will not disclose the paint evidence until after trial.

The Tucson Citizen has learned that at least one witness remembers the type of car the paint used on Vicki's bicycle. That person, a white called "pink" paint. It is described by Maurice's description of how it was painted by what characteristics for those purposes, and may be similar or other paint purposes. No other purposes, according to Jon Thompson of the Tucson Department of Laboratories. He is Dr. Murray's suppliers.

It is the type of paint that could be found on bicycles that scratch a bruise, but not on a car used to wax paint, he said. Thompson said the same source given such paint would be found in the vehicle.

Officials testified that he found what appeared to be brush scratches on Vicki's bike. Others who handled the case believe but noted no damage, he said.

Atwood declined to an interview with the Citizen that immediately after his arrest in Texas, authorities asked if he would submit to a lie detector test. Atwood refused he agreed to the test, but that it was under duress.

Pima County Sheriff Clarence Dupnik said he did not know if what Atwood said is true.

Atwood's father betting home his son is innocent

(Story Page 1)

said, "Frank didn't. It's that simple."

In a retired general who served through World War II and Korea and later handled a pioneering jet TV station, Hamilton has had a son who lacked strength was devastating, he said.

The legal troubles began soon after Frank entered junior high school — shoplifting, drug offenses, theft. Juvenile court, had to adult court. They came the manufacture and drug counts, and the years of prison and mental hospital stays. He was considered a dangerous man, a compulsive sex offender.

But Frank had served his time in last conviction in May and moved in with his parents. He diligently helped with the job in the family business.

"He really seemed to be making some progress," the general said. "I think he had it (his sexual urges) for children) beaten."

Hamilton is puzzled that the face belonged to Vicki Lynn Hoskinson, and it has haunted Conner for the last six months. She says she saw the face on a toy store in the Tucson Mall after 7 p.m. on Sept. 17.

If Conner saw Vicki at that time and place, then Frank Jarvis Atwood is an innocent man.

If Conner is right about what she saw, Atwood did not kidnap and murder Vicki, then despite of the body before? If so, do detectives and prosecutors allege.

So the detectives and prosecutors who at first believed Conner now tell her she must be wrong. Conner says she knows what she saw. And it is ruining her life.

"They don't come out and say it, but it's like they think I'm trying to help a child molester," she says.

"But all I am trying to do is what's right. I know what I saw."

Conner knows something, says. At she is right, maybe Vicki is alive somewhere, right now. No body has ever been found. Conjectures, as who knows what happened?

Stranger things have happened, Conner says. "I see what's happened to me."

Conner said she had to quit her job as the toy store two weeks after Vicki's disappearance. Curiosity seekers kept coming by, asking her if she was the one who saw Vicki. A man committed suicide nearby.

The gawkers kept buying clothes in the toy store. Conner had told police that the woman she saw with the girl she believes was Vicki bought the girl a Garfield doll, and that fact was reported by the news media.

Someone telephoned her and suggested they contact a story together, then cash in on the renewed memory offered for Vicki's return.

"Can't that sick?" Conner commented. "I hung up on him. I never knew it could get so ugly just from telling the truth."

Now she is working as a secretary but hopes to become a nursery and get out of Tucson. She is 3 feet

Exhibit 3

426

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist	Beat	Page
S/85-04-12-020	7300 Block W. Tna Road	52.03	C	4	1 of 4

Connect-Up Recon Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R.L. Van Skiver	466	4-12-85	1500	

Typed By	ID	Date Typed	Time	Storage Code
R.L. Van Skiver	466	4-15-85	0700	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

On 4-12-85 at approximately 1100 hrs. this officer arrived at 7301 W. Tna Road. There I contacted Detective Cary Dhaemers #426. I ask Dhaemers if I could be of any assistance. He advised that I could. Dhaemers and Det. Sgt. Doug Witte #411 requested that I Interview the subject who had reportedly found what appeared to be a human skull. they further requested that I contact all of the other residents at 7301 W. Tna Road.

At approx. 1105 hrs. I was led by Det. Dhaemers and Sgt Witte to where the skull was located. I saw what appeared to be a human skull.

At approx. 1110 hrs. I met with a subject who identified himself as

Gary Michael Wommack W/M 1-31-51
7301 #C W. Tna Rd. SSN 557-86-2275
Tucson, Arizona 85743
Phone: 744-4622
Employed by : Arizona Childrens Home, 2800 S. 8th Ave. , Phone 622-761
Works at the " Wilson Home "
7326 N. Paseo Del Norte
Phone: 297-6569
Has been employed as a " Child care worker " for seven (7) years.

Mr. Wommack advised me that he was in fact the person who found the human skull. He gave the following account that led to his discovery.

On 4-11-85 at about " Mid day " Wommack's dog turned up missing. The dog was described as a medium sized, brown and white Springer Spaniel mix. The dog goes by the name of " Augie " which is short for " August". Wommack advised that he searched for the dog for a while before he went to work, as he works from 1400 to 2200 hrs. on thursdays. He came home at approx. 2100 hrs. and again began to search for his dog. He was out till approx. 2300 hrs. then quit looking. That night around 2400 hrs. he heard several coyotes, and this made him even more upset.

On 4-12-85 Mr. Wommack got up at approx. 0530 hrs. and was out looking for his dog by 0600. He advised that he searched the area to the south of his residence, as this is where he normally goes hiking. He later rode up and down Tna Road to Wade Road and around to Picture Rocks Road on his bicycle. All of this was with negative contact so he returned home around 0800 to 0830 hrs..

Upon his return to his residence, Wommack sat down in back (the west side) of his residence. He sat there for a few minutes then he remembered seeing a rattlesnake near a tree in his back yard, just the day before. He thought to himself that possibly his dog had been snake bitten and may have wandered across a fenced area to the west. He advised that he (Wommack) does not walk or hike in this area as it is private property and he has always respected this. After crossing a barbed wire fence and walking for a very short distance, within three minutes, Wommack found what he said he recognized as a " Human Skull ". Wommack advised that he continued to look around the area for another 10 to 15 minutes. He advised that he saw some other small bone fragments, however, there was nothing that he recognized as being human bones. I later walked thru

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location			Class	Dist	Beat	Page
S/85-04-12-020	7300 Block E. Ina Road			52.03	C	4	2 of 4
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed by		
	R.L. Van Skiver	466	4-12-85	1500			
Typed By	I.D.	Date Typed	Time	Storage Code			
R.L. Van Skiver	466	4-15-85	0700				
Type	Item	Qty.	Disp.	Serial Number	Description of Property		Value

the desert area with Mr. Wommack, however, he was not able to relocate the " Bones " that he had seen.

Wommack advised that he returned to his property. There he told the other residents about what he had found. He then led the following people back to look at the skull.

Paul Landrum (Identified as being the " Landlord ")
Mike Barnett
Myrna Barnett

After looking at the skull, Wommack advised that no one touched it, they returned to their property and Paul called the Sheriff's Department to report what had been found.

Mr. Womack advised that and his girlfriend have resided in this residence since March 23rd 1985. He advised that they have never ventured onto the property to the west, were the skull was found. Wommack identified his girlfriend as follows

Linda Kay Densmore W/F 6-2-58 (26 yrs.)

Works at: Professional Pool Care
Unknown address

At approximately 1135 hrs. Mr. Wommark and I walked into the desert area where he pointed out the skull that he found. He advised that this was in the same location that he had found it in. We continued to walk thru the area looking for the other " Bones " that he had seen. We were not able to locate any and returned to the area where the skull was found.

There I spoke to a subject who identified himself as

Michael Robert Barnett W/M 2-6-47 (38 yrs.)
7301 W. Ina Rd. #B SSN 527-36-7071
Tucson, Arizona
No phone
Self employed as a " Watchmaker-repairman "

Mr. Barnett advised that his wife was not there at this time. He identified her as

Myrna C. Barnett W/F 32 yrs.

Mr. Barnett advised that he does not walk in the area where the skull was found. He advised that he does not go into the area because it is fenced off and knows it to be private property. He advised that he and his wife Myrna have only lived there for a short time. He was not sure of the date stating that it was four or five months ago. He thought that it was September or October of 1984. He could recall that the first week they were there they had searchers in the area, reference the Vicki Hoskinson case.

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist	Beat	Page
S/85-04-12-020	7300 Block W. Ina Road	52.03	C	4	3 of 4

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R.L. Van Skiver	466	4-12-85	1500	

Typed By	I.D.	Date Typed	Time	Storage Code
R.L. Van Skiver	466	4-15-85	0700	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Mr. Barnett advised me that he and his wife live alone. It should also be noted that Mr. Wommack and his girlfriend live alone.

I then spoke to a subject who identified him self as

Paul Warren Landrum W/M 5-13-53 (37 yrs.)
7301 W. Ina Rd. #A
Tucson, Arizona
Phone: 744-0561
Unemployed- works as " Caretaker of the property " at 7301 W. Ina Rd. doing maintence work and collection of the rent.

Mr. Landrum advised that he lives alone with his wife

Margaret C. Mason W/F 42 yrs.

Employed by : First Investers - unknown address (near Broadway & Kolb)
Student at University of Arizona

Mr. Landrum advised that his wife has lived on the property since October 1974. He has lived there since March 1985, as he just moved down from Oregon. Landrum advised that they have hiked in this area (West of their residence) but not this specific spot. He advised that he was sure he would have seen the skull if he would have been by it. He advised that in January or February 1985 his wife buried their dog at the base of the mountain, south-west of their property. He pointed to the mountain and advised that it was a mile or more away. Landrum wanted the Sheriff's Dept. and the searchers to be aware of this in the event someone found the dogs grave.

I was then directed to the only other resident who was presently at home. I made contact with a subject who identified herself as

Sandra Lynn Graban W/F 12-27-48 (36 yrs.)
7301 W. Ina Rd. #E or 5
Tucson, Arizona
Phone: 744-0584
Employed as a " Seasonal worker " for the National Park Service

Ms. Graban advised that she has lived there since about February 1984. She advised that in 1984 she was out of town in September and returned on or about October 6th.. She Advised that she was not aware of any searches being conducted in the area. Ms. Graban advised that she does not walk in the area to the south or west of her residence. She advised that she does not go in this direction because it is fenced off. She said that she did not go with the others to look at the skull.

The only other residents of 7301 W. Ina Road, who were not present were identified as

Barbara Furer W/F Early 30's
7301 W. Ina Rd. #D

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist	Beat	Page
S/85-04-12-020	7300 Block W. Ina Rd.	52.03	C	4	4 of 4

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R.L. Van Skiver	466	4-12-85	1500	

Typed By	I.D.	Date Typed	Time	Storage Code
R.L. Van Skiver	466	4-15-85	0700	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

and a subject identified as her boyfriend

Carl (Last name unknown)

Ms. Purer was said to work as a University of Arizona plant biologist at ' Arid Lands " at the air port.

After completing the above interviews and obtaining names of those residents, I briefed Det. Dhaemers and Sgt Witte of the information. At approximately 1315 hrs. I left the property to return to regular activities.

Exhibit 4

SUPPLEMENT TO SEARCH REPORT
LARGE SCALE SEARCH EFFORT OF
SATURDAY, OCTOBER 29, 1984
BY
SGT. L. F. SELIGMAN

EXECUTIVE SUMMARY SECTION

New or modified search assumptions justified an additional search effort on Saturday, September 29, 1984. The search centered on areas north of the prior weeks' search and on areas that are further from roadway than were covered earlier.

No clues or relevant information can be reported from this search effort.

Search efforts by SAR were terminated at dusk of Septembert 29, 1984 by permission of Major D. Douglas. Additional search efforts are pending new assumptions or leads in the case.

RESOURCE SECTION

Arizona Army Guard helicopter
Tucson Police helicopter
SAR volunteers
Special Operations/SAR staff
University of Arizona Math professors
Sheriff's Posse
Sheriff's 4 x 4 officers

SEARCH THEORY SECTION

1. Victim is assumed to be carefully hidden from view.

2. Victim is assumed north of prior search area because of investigative leads indicating sighting of suspect on Ina Road.

3. Victim is assumed up to 1/4 mile from roadway access point.

SEARCH AREA DESCRIPTION SECTION

1. Silverbell Road (NE; Pima Farms Road (S); Scenic Drive (W).

2. Pima Farms Road (N); Artesiano Road (E); Ina Road (S); mountains (W).

3. Pima Farms Road (NE); Wade Road (E); Ina Road (S); Artesiano Road (W).

4. Silverbell Road (NE); Cortaro Road (E), Ina Road (S); Wade Road (W).

5. Silverbell Road (NE); Ina Road (S); Cortaro Road (NW).

6. Area (N) of Cortaro Road and accessible from Silverbell Road.

7. (S) of Ina Road between Interstate Ten and Santa Cruz Wash.

8. Area adjacent west end of Camino Del Cerro.

9. Area adjacent west end of Sweetwater Road.

10. Area of Picture Rocks Road and Wade Road.

Exhibit 5

FD-30 (Rev. 3-3-77)

84091040

DISCLOSED

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/10/84

SAM HALL, Physical Education Instructor, Homer Davis Elementary School, telephone 887-1100, extension 341, was interviewed in the gymnasium office at that location.

Also present during the interview with SA GOSTING was Detective RICHARD MC KINLEY, Pima County Sheriff's Office. Detective MC KINLEY took a tape recorded statement of the interview with SAM HALL. The comments of SAM HALL listed below were recorded on notes taken by SA GOSTING during the recording of his statement. These comments by HALL are in no way inclusive of his total statement, but is a synopsized version of the comments he made regarding observation of a vehicle and an indiviudal near the school ground.

HALL stated during the interview that he exited the gym on Monday, September 17, 1984, at approximately 3:15 p.m. He was accompanied at that time by a student, BOBBY DE CHESKE. As he was locking the gate to the school yard, a car proceeded in a westerly direction down the alley behind him and pulled up almost directly behind him. He turned around momentarily and observed a black or dark blue Datsun 280Z car with California license plates. This car was driven by a white, male, adult, long black hair, beard, moustache, in his late twenties or early thirties. HALL stated he observed this indiviudal from the side and slightly to the back and did not observe him full face. He stated the driver was acting strange and was gesturing with his head like he was a crazy person or high on drugs. Also, the driver seemed to be having trouble with the gearshift in the car. HALL stated due to the strange actions and the out of state plate on this car, he went to his truck, which was parked nearby, and wrote down the license number he had observed on the Datsun 280Z.

HALL stated the driver had backed up and turned around by this time and was proceeding in an easterly direction down the alley south of the school, and headed towards the Flying H Trailer Park. He observed that the back of the car was loaded with things, which appeared to be a suitcase, clothing, etc. He stated his observations of the car and the driver were as close as 20 feet, and at times up to 50 feet distance.

HALL stated that the license he copied on the black 280Z car, was California 1KEZ608.

Investigation on 9/19/84 at Tucson, Arizona File # PX 7-1196

by SA CARL A. GOSTING/slc Date dictated 9/27/84

9.

HALL stated that the student, BOBBY DE CHESKE, told him next day that he had seen this same car parked along the fence he trailer park on Sunday. DE CHESKE had walked by the car observed that no one was in the car on Sunday when it was sitting he trailer park.

The above was taken from notes prepared during the interview ALL and the totality of the interview can be obtained from transcription of the recorded statement.

Exhibit 6

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE				1 of 1

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R. CLARK	639 R			

Typed By	I.D.	Date Typed	Time	Storage Code
RITA G. UZUETA	1607	09/20/84		

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

1000 hours, 20 September 1984

Interview: John Ortiz
Flying H Trailer Park, Space 26

Ortiz stated that his sister, Sylvia Egger, and her husband, Michael Egger, had encountered the suspect vehicle, a black 280-Z, in the alley south of Homer Davis School. Arranged appointment for around 1600.

1600 hours, 20 September 1984 (Accompanied by Dep. T. Maroney, PCSD 393)

Interview: Michael Egger, 01/13/55
Sylvia Egger, 12/11/55
4082 N. Reno
888-5185

Michael stated that at approximately 1500 hours, 17 September 1984, he along with Sylvia Egger, his son Brian, and an infant, was driving north on a road from the Flying H Trailer Park to the alley along the south perimeter of Homer Davis School. As Egger's car entered the alley, he saw a black 280-Z eastbound in the alley at high speed. Both cars stopped abruptly with the front ends of both vehicles close together. Egger shouted at the driver of the 280-Z, to tell him that he had no reverse gear, and was unable to back up. Driver of the 280-Z apparently could not hear Egger, and opened the door of his car, and stood just outside car saying, "what did you say?" Egger noted that the subject was of medium-build, and had dark, shoulder-length hair. Subject had a "gruff" voice and seemed to be laughing.

The vehicle driven by above subject was described as a black 280-Z with blue/gold California license plate. Car had tinted windows, and possibly had objects in rear of passenger compartment. NOT SEE TOO WELL

Driver of the 280-Z got back into car and backed up to clear way for Egger's car. Egger reported that the 280-Z struck a wooden telephone pole, approximately at the center of the rear bumper. Examination of a pole, in the location described, at approximately 1700 hours, 20 September 1984, showed a slight indentation with a black scuffmark. (See I.D. Supplement for details). Eggers reported that the driver of the 280-Z appeared to be laughing after striking the pole. They observed no other person in the"Z".

During the interview, Egger's son, Brian (age 6), stated that he had seen the black car parked "under the trees at Tommy's house" earlier on Monday. "Tommy" is approximately age 4-5 years, and lives in the Flying H Trailer Park (last name and location unknown).

Disclosures Made NOV 0 1 1984 1

Exhibit 7

16-79)

[redacted]

Washington, D. C. 20537

REPORT
of the
LATENT FINGERPRINT SECTION
IDENTIFICATION DIVISION

YOUR FILE NO. Case #840917040 December 20, 1984
FBI FILE NO. 7-19466
LATENT CASE NO. C-37191

TO: Mr. Clarence W. Dupnik
Sheriff of Pima County
Sheriff's Department
Post Office Box 910
Tucson, Arizona 85702

Attention: Captain David L, Bosman
Commander
RE: Management Services Division

UNKNOWN SUBJECT(S);
TUCSON, ARIZONA
LATENT PRINT EXAMINATION

REFERENCE: Letter September 24, 1984
EXAMINATION REQUESTED BY: Addressee
SPECIMENS: Numerous miscellaneous items, Q1 through Q17 and Q24
Bicycle, Q20
(part of Q6, processed prior to receipt)
(Q numbers 7, 10, 14, 15, 16, 17 and 20, processed prior to receipt)
Footprint card of Debra Hoskinson, K8
Five lifts
Elimination fingerprints and palm prints of Lori Suzanne Myers and six other individuals

The Q specimens will be further described in a separate Laboratory report.

Inasmuch as no latent prints remain unidentified from the 1975 Datsun 280Z, VIN 30208184, and its contents, only the bicycle, Q20 and the lifts from this item were examined.

One latent palm print and one latent impression, which is either a fingerprint or palm print of value are present on two lifts from the handle bars of the bicycle. No other latent prints of value are present on the remaining lifts or the bicycle.

AUG 6 1985

(Continued on next page)

1 - FBI, San Antonio (7-1196)(P) (with copy of incoming)
2 - Phoenix (with copy of incoming)

Disclosures Made JAN 4 1985

THIS REPORT IS FURNISHED FOR OFFICIAL USE ONLY

Mr. Clarence W. Dupnik December 20, 1984

The latent palm print is not a palm print of Myers; Lila and Rick James Trimmer; Stephanie Dawn Hoskinson; George Glenn and Deborah Jane Carlson; Annette F. Fries; or Frank Jarvis Atwood, FBI #401416N11.

The latent impression was compared with the available fingerprints and palm prints of the aforementioned individuals and the fingerprints of James Doyal McDonald, FBI #277281Ji, but no identification was effected. No palm prints were located here for McDonald.

Photographs of the latent prints have been prepared for our files and will be available for any other comparisons desired.

The result of the laboratory examination and the disposition of all the specimens, will be the subjects of a separate report.

REPORT
of the

FBI
LABORATORY

[redacted]
WASHINGTON, D. C. 20535

To: SAC, San Antonio (7-1196) January 16, 1985

FBI FILE NO. 7-19466

LAB. NO. 40927012 S QQ VI VR VM
40927013 S QQ VI
40928044 S QQ VI
41001021 S QQ VI
41018020 S VI

Re: FRANK JARVIS ATWOOD;
VICKI HOSKINSON - VICTIM;
KIDNAPPING

OO: Phoenix

Examination requested by: San Antonio

Reference: Communications dated September 25, 1984, September 26, 1984, September 27, 1984 and

Examination requested: September 25, 1984

Specimens received Microscopic Analyses - Chemical Analyses - Instrumental Analyses - Soil - Fingerprint

Specimens received October 17, 1984, under cover of communication dated October 12, 1984 (41018020 S VI):

Q170 Sheet

Q171 Sheet

2 - Phoenix (7-1196)
2 - Mr. Clarence W. Dupnik
Sheriff of Pima County
Post Office Box 910
Tucson, Arizona 85702

Attention: Captain David L. Bosman
Commander
Management Services Division

Exhibit 8

REPORT OF POSTMORTEM EXAMINATION

IN THE CASE OF

VICKI LYNN HOSKINSON

ML 85-0391

(JANE DOE #5)

PIMA COUNTY, ARIZONA

PIMA COUNTY SHERIFF'S OFFICE

CASE #850412020

13 April 1985

ML 85-0391

Re: Vicki Lynn Hoskinson

PATHOLOGIC DIAGNOSES:

I. Skeletal Remains: Human, multiple bones.

OPINION:

The cause of death of this 8-year-old child is undetermined.

Richard C. Froede, M.D.
Chief Medical Examiner
Pima County, Arizona

RCF:mbw:jr

MEDICOLEGAL INVESTIGATION

CIRCUMSTANCES OF DEATH:

The skull of the deceased was found by a person walking through the desert in the 7300 block of West Ina Road on 12 April 1985. Detective Gary Dhaemers, Badge #426, of the Pima County Sheriff's Office took possession of the skull at 1203 hours on 12 April 1985 and the skeletal material was brought to the Office of the Medical Examiner on that date. The mandible was brought to the Office of the Medical Examiner on 13 April 1985 by Detective Gary Dhaemers. Subsequent examination of the scene revealed other bones, both human and nonhuman, all of which were picked up by the Office of the Medical Examiner on 14 April 1985. Dr. Richard Froede went to the scene and did a walk-through with Detectives Dhaemers and Duffner. The scene search was continued for another week. The bones were examined by Dr. Richard Froede and Dr. Walter Birkby, Director of Human Identification Laboratory, beginning on 15 April 1985. Identification was made from the skull and jaw bone. A scene walk-through and search was made on 25 April 1985 by Dr. Birkby and anthropology students including the following: Ms. Michelle Napoli, Mr. Bruce Anderson, Ms. Alison Galloway, Mr. Rick Harrington, and Ms. Suzanne Froede. Dr. Froede and Mr. Morris Reyna, Chief Medicolegal Investigator, conducted the scene search. Present also were Detectives Dhaemers and Duffner, and Deputy County Attorney John Davis. A DPS helicopter was brought to the scene and Dr. Froede, Dr. Birkby, Mr. John Davis were present on board as a number of pass-overs were made over the scene. Small fragments of bone, human and nonhuman, and a button fragment were recovered during this search.

AUTHORIZATION:

The postmortem examination is performed upon my appointment as Pima County Medical Examiner.

IDENTIFICATION:

The body of Vicki Lynn Hoskinson (DOB: 2 February 1976) is identified through the examination of the teeth of the upper and lower jaws and comparison with dental radiographs.

POSTMORTEM EXAMINATION

CIRCUMSTANCES OF THE EXAMINATION:

The postmortem investigation on the body of Vicki Lynn Hoskinson is performed at the Office of the Medical Examiner, 190 West Pennington Street, Tucson, Arizona on 12, 13, and 14 April 1985 and subsequently at the Human Identification Laboratory of the Arizona State Museum. Involved in the preliminary investigation are Ms.Suzanne Froede, anthropologist; Gary Dhaemers, Detective, Pima County Sheriff's Office; Homicide Division; Thomas E. Henry, M.D.; Mr. Rob Kutob, medical student, and Mr. Morris Reyna, Medicolegal Investigator. X-rays are taken of the skull and visual examination of the skull is made looking for the presence of hairs. Dental X-rays are taken on the morning of 13 April 1985 at the Human Identification Laboratory. The skull materials are returned to the Office of the Medical Examiner. Fragments of adipocere were taken and retained. A section of tendon still attached to the second cervical vertebra was removed for histologic studies, and fragments of cartilage and tendon were removed for toxicologic studies.

GENERAL DESCRIPTION:

The bones recovered were examined both grossly and with the Bausch and Lomb stereo zoom microscrope as well as a microscopic section of long bone.

Received are four paper sacks and one plastic bag E series, F series, G series, and E-1 which consist of two, a large and smaller paper sack stapled together, and a small plastic bag with a segment of bone labeled G-10. Each has the Pima County Sheriff's Office number of 850412020.

E-1:
The attached bag contains four containers. The smaller bag has the four containers labeled with the Sheriff's Office case number, the date 12 April 1985, the name "Froede" and the different segments of hair recovered. The larger bag contains a skull without mandible. Inside the large bag is a smaller plastic bag labeled with the case number and has a mandible with eight teeth.

Subsequently the other E. F. and G containers with bony fragments were received and examined by Dr. Birkby. Hair samples were retained by Dr. Birkby.

GENERAL DESCRIPTION: (Continued)

For detailed descriptions and identification date, see Appendix I and II from Dr. Birkby, Human Identification Laboratory, Arizona State Museum.

List of Bones Examined:

Cranium
Mandible
1st cervical vertebra
2nd cervical vertebra
2 other cervial vertebrae
1 thoracic vertebra
4 left ribs
5 right ribs
4 body fragments from ribs
Distal phalanx (finger or toe)
Fragment of right humerus (diaphyseal)
Fragment of left radius (diaphyseal)
Fragment of left fibula (diaphyseal)
Diaphysis of left tibia
1 left body of rib
1 left rib head
Left clavicle

25 April 1985
left rib fragment
left rib head

POSTMORTEM INTERVAL

Based on the positive identification of the cranium and mandible as that of the deceased, the estimated postmortem interval is no longer than 7 months (17 September 1984 to 12 April 1985). The presence of the adipocere and weathering on the other bones and bony fragments would also be consistent with the time of exposure of the cranium and mandible.

MICROSCOPIC FINDINGS

The tendinous tissue removed from the odontoid process of the second cervical vertebra was rehydrated, processed, and stained with hematoxylin and eosin. The sections showed fibrous connective tissue and collagen with cellular components. No nuclear detail remains to discern chromatin patterns. The section of bone from the left tibia was decalcified and stained with hematoxylin and eosin. Haversian systems (human) were discerned but no cellular components were observed.

TOXICOLOGICAL FINDINGS

Vertebral Scrapings:

Butabarbital undetected.
Butalbital undetected.
Amobarbital undetected.
Pentobarbital undetected.
Secobarbital undetected.
Phenobarbital undetected.
Glutethimide undetected.

Radioimmunoreactive opiates undetected.
Radioimmunoreactive cocaine and/or metabolite undetected.

mbw

Exhibit 9

AFFIDAVIT OF DR. KRIS LEE SPERRY

State of Georgia)
) ss.
County of Fulton)

Dr. Kris Lee Sperry, being first duly sworn upon his oath, deposes and says:

1. I am a medical doctor and a forensic pathologist. I am presently employed as a forensic pathologist in the Fulton County Medical Examiner's office in Atlanta, Georgia. I spent 4 years at the University of New Mexico pathology department and I am familiar with characteristics of human bodies which have been buried or left exposed in desert environments.

2. I have reviewed the interview of Dr. Froede, his testimony at trial and the trial testimony of Dr. Birkby. I have also reviewed the post-mortem examinations reports of Drs. Froede, Birkby, Chilton and Keen.

3. The presence of adipocere on the remains of Vicki Lynn Hoskinson proves that her body could not have been dumped in the desert. Adipocere, or "grave-wax", is the product of soft tissue decomposition in a moist, anaerobic environment. Adipocere will form on the bones only if the body had been kept intact and in a moist anaerobic environment for at least two months.

4. Under the weather conditions that existed around September 17, 1984 to mid-October, 1984, a body dumped in the desert near Tucson would be skeletonized by insects, carnivores, raptors or/and scavengers in two to four weeks.

5. Skeletonization would prevent the creation of adipocere on the bones, by removing the necessary soft tissue.

6. The desert is not the moist environment required for the production of adipocere. A body dumped in the desert will mummify, if it is not scavenged. That mummification would also

317

preclude the production of adipocere, because it requires moist soft tissue.

6. Since adipocere requires an anaerobic environment, the body must have been kept in a place which excluded not only insects, carnivores, raptors and scavengers but also oxygen.

7. In order for the reported adipocere to develop, it would be necessary that Vicki Lynn Hoskinson be buried in the ground to a depth of no less than one foot and most probably two feet.

8. The absence of carnivore tooth marks on the skull render it more likely than not that the skull not disinterred by animals.

9. Though animals can carry bones a great distance (up to a quarter of a mile), the absence of carnivore tooth markings on the skull prove that the skull was not moved a substantial distance after it was disinterred and that it was not carried a substantial distance after the soft tissues decomposed.

10. The soft tissues covering are most frequently the first tissues in the body to decompose.

11. The failure of the forensic anthropologists and the search teams to find any grave in the area near the skull strongly suggests that there is no grave in that area.

12. The physical evidence referred to in the post-mortem examinations and in the testimony of Drs. Froede and Birkby and in Dr. Froede's interview support the hypothesis that the body of Vicki Lynn Hoskinson was buried in a grave for no less than two months; that portions of her remains were then disinterred by a human and moved and scattered around the site where those bones were found. That explanation accounts for the presence of the adipocere, the absence of the grave near the bones and the fact that none of Ms. Hoskinson's bones have before or since been found in that area.

13. The alternative hypotheses: that the body was dumped in the desert or haphazardly covered with dirt or that there is a grave in the area where the bones were found, are not supported by the physical evidence. If the body had been dumped or haphazardly buried, there would be no adipocere due to putrefaction or scavenging. If there was a grave in the vicinity of the bones, it would be near the location of the skull. The fact that search teams and a class of graduate anthropologists were unable to detect any sign of a grave in the area shows that there is no grave there.

FURTHER AFFIANT SAYETH NAUGHT.

Kris Lee Sperry, M.D.

SUBSCRIBED AND SWORN TO before me this 14th day of August, 1996, by Kris Lee Sperry, M.D.

Notary Public

My Commission Expires:
July 16, 1999

Exhibit 10

AFFIDAVIT

I, Luis Garcia, do solemnly swear that the following statement is true and accurate.

I, Luis Garcia, a landscape and maintenance professional for approximately three (3) and a half years, do affirm, having constructed a number of similar holes in the area of 7600 West Ina Road, that the construction of a hole two (2) feet deep, four (4) feet long, and two (2) feet wide, would entail a period of time of no less than two (2) hours of continuous labor. This is in consideration of the hole being constructed in the area of the 7600 West block of Ina Road, in dry soil conditions using a standard spade shovel, and by a man of fair physical condition.

Luis A Garcia

8-8-96
Date

Luis A Garcia
Affiant

3168 N Romero A-10
Address

Tucson Az 85705
City, State, Zip

8 August, 1996
Date

Witness

SUBSCRIBED AND SWORN TO before me this 8TH day of AUGUST, 19 96.

My Commission Expires:
9-22-96

Notary Public

Exhibit 11

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	1920 West Hadley		26.04	C	20	1 of 8
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By	
	Barkman, W.J.	175	20 Sept. 1984			
Typed By	I.D.	Date Typed	Time	Storage Code		
Rodriguez, Adella	1503	9/20/84				

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

SYNOPSIS: This report deals with an interview of KONNIE D. KOGER on 17 and 18 September 1984.

DETAILS: On Monday, 17 September 1984, at approximately 2320 hours, I had occasion to interview, in the parking lot of the shopping center located on the north east quadrant of Mission and Ajo, an individual who identified herself to me as;

KOGER, Konnie Dee;
White Female; 20 years;
28 July 1964;
7100 West Bopp Road;
883-3647 (Fathers telephone number)
Employed: Cartoon Junction;
4500 North Oracle #618;
887-9306 (employed 1800 through 2100 hours)

Present during the course of the interview, was Sergeant Paul A. Pedersen as well as the witness' husband who periodically was within earshot of the interview, the husband identifying himself to me as;

Koger, Dennis Lee;
White Male; 20 years;
10 June 1964;
7100 West Bopp Road;
883-3647 (Father-in-laws phone)
Employed: Sears Roebuck
4500 North Oracle;
629-2041 (Receiving Department)

24 SEP 84 12 40 P.C.S.D.

The interview of Koger took place subsequent to her (Koger) placing a telephone call to the "Command Post" established at Homer Davis Elementary School adjacent to the scene of this incident. Generally, Koger informed investigators she had seen the photograph of Vicki Hoskinson during the course of a newscast, Koger recognizing the child as having been at her place of employment earlier in the evening. Investigators at the Command Post informed Pedersen of the telephone call, Pedersen arranging to meet and interview Koger at the shopping center.

Upon arrival at the shopping center, Pedersen and I introduced ourselves both verbally and by showing Koger our credentials. During the course of the interview (which lasted until approximately 0155 hours) I noted Koger to be a caucasion female appearing her stated age of twenty years. Well oriented to time and place, Koger's answers were responsive and appropriate, there was no evidence of any drug or alcohol intoxication, Koger's demeanor being that of sincerity and concern. During the course of the interview, Koger's statements and descriptions were noted to remain consistent, Koger (and her husband) seeming to be sincerely interested in the

1.

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

CID

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welfare of the missing child.

At the outset of the interview, Pedersen furnished Koger a color 8 x 10 photograph depicting a smiling Vicki Lynn Hoskinson. Prior to the witness being given the photograph, she was told that we wished her to view a photograph, Pedersen saying words similar to "Is this the child you saw tonight?" or words very similar to that. Upon taking the photograph, Koger looked at the photograph for perhaps five to ten seconds at which time she said "Oh cheesh," then saying "That looks like her". (At the conclusion of the interview, the photograph was marked as evidence by myself and Koger).

Asked to describe the events in a "narrative form" and then being asked specific issue questions, Koger described generally that she was on duty at the "Cartoon Junction" store in the Tucson Mall at "about 7:00 or 7:10 tonight" when she noted a child enter the store in the company of a woman. Koger, who was on duty alone in the store, noted that the child was crying and her first impression was "Its a mother whose gonna buy a toy for her kid to shut her up" or words very similar to that. As she noted the movements of the pair, Koger informed me she heard the child say "I want to go home". The woman responding, "We'll go home" or words very similar to that.

Generally, Koger described how the pair first approached the display of "Cabbage Patch" figurines, later the pair approaching various other areas in the store, Koger noting that the woman "had the little girl by the hand and wouldn't let her go" or words very similar to that. Koger recalls that as she approached the pair, the little girl "hung on" to her (Koger's) leg, the girl continually saying "I want to go home, take me home" or words similar to that. When asked to describe the frequency of these words, Koger stated "she said it over and over".

Recalling the child said "Your not going to take me home" (speaking the words to the woman) Koger recalled the woman said "We'll go home" or words similar to that.

Koger informed me that ultimately the pair purchased a "Garfield doll", paying for the doll with a "twenty dollar bill". Koger recalled that the woman "looked at T-shirts for the girl" the T-shirts being on display near the doorway of the store.

In response to a narrative/specific interview, Koger informed me that she placed the time of the incident at "about 7:00 or 7:10" by relating the incident with a sale she had just made. Koger informed me that "just before" the pair entered the store, she had sold a "Mickey Mouse clock". This clock, on display, had been purchased for "$39.95", Koger saying "Mickey hadn't struck yet" at the time of the sale. Koger explained that the clock, which was "plugged in" "sings songs ever hour". In this regard, Koger informed me, "Mickey

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says its time to brush your teeth, or something like that", and Koger recalled that as she was removing the clock from the wall for sale she noted it was "just before 7:00 and Mickey hadn't struck yet", or words very similar to that.

Recalling there may have been "three other people in the store", Koger informed me that she was the only employee in the store. In this regard, Koger stated a fellow employee had left the store momentarily and was not present during the course of the woman and child being in the store.

When asked to describe the woman, Koger described the woman as;

> "White or Spanish" (explaining that the woman was "dark" as if she were "Spanish or White but had "laid in the sun alot"); "Thirty to thirty-five years old"; "5'5 or 5'6" (Koger gesturing as she described the woman's height); "Not thin and not real fat but sturdy"; Hair "black to white or white to darker" (Koger explaining the woman's hair had "Obviously been colored, and the roots were starting to show"); The woman's hair was described by Koger as "permed and growing out", the hair not being "real wavy but not straight" or words very similiar to that; Eyes, no recollection.

When asked to describe how the woman could be "picked out of a crowd", Koger informed me the woman had a prominent nose, describing the nose as "large and it had a hump in it", the term "Roman nose" being offered, Koger agreeing with the description. Further, Koger stated the woman "looked like she needed a bath", stating the woman was not "filthy but she wasn't clean" or words very similar to that.

When asked to describe the woman's clothing, Koger informed me she could not recall any clothing worn by the woman with the exception of the following items:

1. A large brown leather clasp top type purse. This purse was noted to have a shoulder strap attached thereto, the shoulder strap having on it a device used to pad the wearer's shoulder from the strap. Koger recalls the woman carried the purse using the shoulder strap, the pad or "patch" situated on the woman's shoulder. Koger recalls that the purse, measuring by gesture approximately 18" x 12" x 8", had built into it, on it's exterior, two cigarette pouches. Koger recalls that the pouches contained cigarettes, Koger unable to recall if it was one or both of the pouches having cigarettes therein.

2. A brown hat. This hat described as "ugly" and "weird

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looking" was described by Koger as having a round brim, a round crown, and was constructed out of "not straw but a woven type material". Koger recalls a dark hat band to be in place, the band measuring approximately one inch by gesture. Koger recalls the woman to be wearing the hat when she entered the store, Koger noticing the previously described hair when the woman removed the hat upon entering the store.

Koger informed me the woman was not wearing a wedding band. Koger, by habit, looks to see if people are married, Koger having a specific recollection that the woman was not wearing a wedding band. Koger recalled that the woman was wearing earrings, describing them as "like turquoise earrings". Originally unable to recall if the earrings were being worn by the woman or the child, Koger recalled that the woman was wearing earrings saying "I think it was the woman. Yeah, "It was the woman", Koger recalling she mentioned something to the woman regarding how pretty the earrings were. She described the earrings as "dangling on a chain or something", Koger having no recollection of any other items of jewelry being worn by the woman.

When questioned, Koger described the woman's voice as "kind of deep", further describing it as "scruffy". Koger recalled the woman's statements were short and curt, Koger unable to detect any accent or speech impediments.

Koger recalled the woman was carrying a "bag from Mervyns". Koger recalled the Mervyns bag was "kind of brown", further recalling the bag was larger than the bag given the woman at "Cartoon Junction". Koger originally stated she (Koger) thought the Mervyns bag contained a "comforter or towels", explaining she has no recollection of seeing the content. Koger informed me she based her opinion on the touch and feel of the bag's contents, Koger describing the bag's contents as being "soft and bulky, like a bunch of towels or a comforter".

When questioned, Koger informed me that she had no specific recollection of how the woman was dressed, explaining she was "paying more attention to the little girl than to the woman". When asked if she would recognize the woman should she see her again, Koger said "I think so. I think I would", nodding her head in an affirmative fashion.

When asked to describe the child in the company of the woman, Koger described the child as:

"A white female"; "Between five and nine years old"; approximately "3'10" tall (this height was arrived by Koger estimating the height with her hand, the level of her hand

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being leveled with the inferior aspect of my sternum, a distance of 3'10" from the ground); described as "thin"; hair "darker in the picture" (a reference to the previously described 8 x 10 photograph), "still short", being described as "like layered in the back then straight across" (Koger gesturing toward the midline of the neck), Koger, when viewing the photograph described her recollection of the hair as being "a little darker" describing to Pedersen how the hair, in the back, had "just a little curl" as if it "had grown out".

After viewing the photograph, Koger stated "I remember her teeth. Like in the picture. There were no teeth on the sides", or words very similar to that, Koger pointing to the photograph saying "There were spaces on the sides where the teeth hadn't come in", Koger further recalling the child had a soft voice, also recalling the child's ears were pierced and had "rings in them", Koger unable to recall the size, shape, or style of earring.

It should be noted at the outset of the interview immediately after Koger had been given a photograph of Vicki Hoskinson, I asked her "How was the kid dressed?", or words very similar to that. At that time, Koger, after reflecting for perhaps three or four seconds, said "She was dressed patriotic", simultaneously making "up and down gestures" as if she were describing vertical stripes. When asked the specific issue question "What do you recall about her dress", Koger said "There were stripes that went up and down on her", or words very similar to that. At that time, I supplied Koger with a pen and paper, requesting Koger to draw, as best she could, the dress she recalled the child to have been wearing. The drawing was submitted and made part of this case file. Notes made on the side of the drawing by Koger include "had full collar", as well as "elastic waistline", along with "short sleeved", Koger noting "tie shoes"; relatively new, but "worn". In this regard, Koger informed me she has a recollection that one of the child's shoes was untied. Koger informed me the length of the dress was "like to the knee", Koger again mentioning her impression of "the dress was patriotic". When questioned, Koger claims no recollection of evidence of injury or abuse on the child.

Koger informed me she recalls the child was "crying". Stating she could see "tears", Koger stated it was her impression the child had "been crying for awhile", Koger explaining how the child was "whimpering" or "trying to stop from crying". Originally having the impression that "this was a kid that was mad at her mother", Koger informed me she now feels that the woman was holding unto the child because "She was afraid the child would run away". In this regard, Koger informed me that the woman "held on to the little girl all the time" Koger recalling the woman grasped the child by the wrist.

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As mentioned, Koger recalls the pair originally approached a display of "Cabbage Patch" figurines, at which time the woman said to the child, "Do you want this", the child saying "No". At that time, Koger recalls the woman "pulled her around the counter", and the pair began walking toward the display of "stuffed animals". Koger recalls that at this time she approached the couple, greeted the woman, the woman not acknowledging nor responding to Koger's greeting even though she (the woman) saw Koger put her (Koger's) arm around the child.

Recalling that it was at this point and time that the "little girl sort of put her arm around my leg", Koger recalled that the woman "kept holding on to the little girl". Koger recalled that the child shyed away from the woman's touch, the child continuing to "hang on" as the trio examined the stuffed animal display.

Leaving the stuff animal display, the group walked to the display of "Garfields". At that time, a "halloween Garfield" was purchased, this toy being a figure of the cartoon character cat "Garfield" clad in a "red cape and carrying a pitchfork".

Walking toward the checkout counter, Koger watched as the woman opened the previously described purse. Koger recalled the woman produced a "white bank envelope" from where she produced a twenty dollar bill. Koger recalls there were other bills in the envelope, Koger unable to recall the quantity or denomination of the remaining bills.

Koger recalled that the Garfield was placed into a blue paper sack along with a receipt, at which time the woman "pulled the little girl out of the store". Duplicate "Garfields", blue sacks and "Cartoon Junction" receipts are available.

As mentioned, the child "over and over" said "I want to go home", as well as "take me home", and similar statements. It was during this time that the woman looked at Koger and said, "I have visitation tonight", or words very similar to that, the woman telling the child "We'll go home".

Koger recalled that while standing at the Garfield display she heard the child's "stomach growl". At that time, Koger asked the child if she had had supper, the child saying "No".

After the woman and child left the store, Koger recalls she waited on two more customers. The final customers having left the store, Koger walked out of the store to the balcony. At that time Koger noted the woman and child to have exited an elevator in the mall, Koger watching the pair. Koger recalls the pair then went to the "bench by the water thing" (apparently a reference to a fountain) at which time she noted a conversation to take place between the woman

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and a male.

Estimating the distance by fixed objects in the parking lot, Koger described the distance as being approximately 175 yards. Describing her vision as "nearsighted", Koger described the male seated on the bench as:

> "White male"; "Had a beard, brown hair" and was "wearing blue jeans".

When questioned specifically as to the race or age, Koger was unable to state an age, saying "I think he was white".

Koger recalled that the woman and child approached the man, the child still being held by the woman. Koger recalled the female stood directly in front of the man, and apparently "said something". She noted the man "nodded" at which time the woman "left".

Obviously unable to over hear the conversation, Koger stated her impression was that the man and woman knew each other, recalling that the woman continued walking with the child in tow after concluding the conversation.

Koger stated that upon returning to her residence, she was watching the "back half" of the Channel 13 television news. Koger recalled that she saw a "picture flashed on the screen", Koger thinking to herself, "My God, I've seen that kid". Stating she had to "Stop and think", Koger stated she thought to herself "I know I've seen that face, where did I see it?" After approximately "five minutes", Koger states she approached her husband and said "This is weird, I've known I've seen that kid somewhere", at which time it "dawned on me", Koger making the previously described telephone call to investigators.

At 0020 hours, I asked the specific issue question "Do you think that the little girl in this photograph is the same little girl you saw in the store tonight", to which Koger replied, "Yes, I do."

At approximately 0140 hours, Deputy Lee Ann Dobbertin, #598, arrived at the scene. At that time, Dobbertin had in her possession a dress that is property of Vicki Hoskinson. This dress is purportedly identical to the dress Hoskinson was wearing at the time of her disappearance with the exception of a color variation. This dress can be described as:

> Red, white, and purple, striped "King Koli" size 14 dress. This dress has a red waist sash, and was marked by myself and Doubbertin.

Giving the dress to Pedersen, Pedersen explained to the witness that

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the dress we were going to show her was similiar except the colors were different on the collar and lower border. Upon being shown the dress, Koger said "Oh, God, that's creepy". Koger asked that the child's 8 x 10 photograph be placed into the neck opening of the dress, at which time, after viewing the dress for 10 seconds or so, Koger said "That sure looks like it, but the colors are different. This is red and this is red", pointing to the collar and lower border. Koger then said, "Yeah, it sure looks like it".

At 0155 hours on Tuesday, 18 September 1984, I asked Koger if there was anything important that I hadn't mentioned, or if there was anything she wanted to add, Koger replying in the negative. At that time, Koger agreed to occupanying Identification Officer Bright in order to obtain an artist rendering of the woman seen with the child.

It should be noted that between the times of the interviews beginning (2320 hours) and its termination at (0155), several interruptions occurred involving telephone calls received and made by investigators, radio traffic and other matters.

No further information at this time.

W. James Barkman, #175
Deputy Sheriff
Intelligence Unit

Exhibit 12

Looking for this woman!

Pima County Sheriff's Dept.

622-3366

Exhibit 13

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On 9-18-84 this officer and Dep. M. Lepird #276, along with several other Sheriff's Deputies and F.B.I. agents, were assigned to go to the Tucson Mall, at 4500 N. Oracle Rd., and interview merchants. We showed pictures of Vicki Hoskinson and suspect drawing.

At approx. 1550 hrs. we went to the store of; and contacted the following:

Peck & Peck

Kelly Kempton = At store till 1800 hrs.. Did not see or recognize.
2302 E. Ft. Lowell
Tucson, Arizona
Phone: 881-6465

Kim Ziegler = At work from 1000 till 1800 hrs.. Did not see. Drawing of woman " Looks like the manager of the Wherehouse records store ".
4971 N. Kain
Tucson, Az.
phone: 888-7234

Janet English = Didn't works 9-17-84. Do not recognize
3737 N. Country Club#302
south
Tucson, Az.

Marco

Tricia Martinjack = Worked in store till 1800 hrs. then shopped in Mall till 1845 hrs.. Don't recognize.
2460 E. Mitchell
Tucson, Az.
Phone: 881-3907

Debbie Ault = Did not work 9-17-84
715 W. Burton
Tucson, Az.
Phone: 297-5154

Scanda Down

Louane Schaefer = Store Mgr.. Did not work 9-17-84. Do not recognize.
4225 N. 1st. Ave.#2208
Tucson, Az.
Phone: 888-7505

Seville Jewelers

Daniel Esposito = Worked 1330 to 2100 hrs.. Do not recognize.
1901 N. Wilmot
Tucson, Az.
Phone: 296-7420

Gustavo Rodriguez = Worked 1200 till 1800 hrs.. Do not recognize.
4507 S. 15th Ave
Tucson, Az.
Phone: 294-9027

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Seville Jewelers -continued

Diana Lytle = Worked 9-17-84 from 0900 till 1430
7645 E. Hampton Pl. hrs.. Do not recognize.
Tucson, Az.
Phone: 298-8732

First Federal Savings David Kanto = Worked till 1800 hrs.. Don't recall
613 W. Limberlost seeing. Subject in drawing looks
Tucson, Az. familure, possibly from downtown Br.
Phone: 887-7536

Shirley Danner = Worked till 1830 hrs.. Do not
5000 N. La Cholla #27 recognize.
Tucosn, Az.
Phone: 293-5451

Jeff Makiri = Worked till 1830 hrs.. Do not
P.O. Box 42073 recognize.
Tucson, Az.

Tania Hoyt = Did not work 9-17-84. Do not
424 E. Suffolk Dr. recognize.
Tucson, Az.
Phone: 297-3622

Brighton Station Heather Searle = Worked from 1700 till 2400 hrs..
2401 E. Glenn apt.#59 Do not recognize. Was a slow day
Tucson, Az. would have noticed kids.
Phone: 325-0713

Today's Kids Lisa Duffy = Worked. Do not recognize.
4225 E. Frankfort
Tucson, Az.
Phone: 574-0443

Merry Kay Milam = Subject (drawing) looks
3985 N. Stone Ave. apt.#1876 familure. Thinks she saw
Tucson, Az her in the " Picnic " area
Phone: 888-1978 in the Mall at approx. 1330
to 1430 hrs. 9-17-84.

Burger Express Kimberly Ann Hilbert W/F 1-4-69 (15 yrs.)
3868 E. Glenn
Tucson, Arizona Works part time. Student Catalina H.S.
Phone: 881-4281

Ms. Hilbert advised that she had seen and heard the report on television that Vicki Hoskinson had been seen in the Mall on Monday, 9-17-84.. She further advised that

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she was sure that she had seen the same lady with the Missing girl. I showed Ms. Hilbert a photograph of Vicki Lynn Hoskinson and the composit drawing of the female subject that was reportedly seen with Vicki at the Mall. Ms. Hilbert stated that she was sure that she had seen both subjects going past the " Burger Express " on Monday (9-17-84) at approx. 1645 to 1700 hrs.. She described the female subject as follows:

Female/ (Possibly a light complected Mexican) approx. 32 yrs. old
5-7 or 5-8, " Medium build "
Shoulder length " Dark brown " hair with " Gray in front "

wearing: Streight leg " Levis " with a " White Polo T-shirt "
" Sunglasses on top of her head "
Only jewelry noted was a " Neckleace " as a " Gold chain "

Carrying: a " Large brown leather purse "

Ms. Hilbert advised that she was sure that it was the same little girl as she was wearing the same striped dress that she had seen on television.

She did not hear any conversation between the lady and child. She advised that they were going past (West to East) and that the lady was kind of " Pulling the girl along ", or words to that effect. The woman was not " Dragging the girl along " but Ms. Hilbert said that now that she has heard about the missing girl she was sure that the girl was putting up a resistence.

Ms. Hilbert advised that she was sure that she would be able to recognize the girl and the lady if she saw either again.

Another employee at the Burger Express that was identified as working on the evening of Monday 9-17-84 is

Jeannie Martinez
146 E. Kelso apt.F
Tucson, Arizona
Parents Phone: 889-0700

Later I contacted Ms. Martinez on 9-19-84. She advised that she was " Working the Front " and didn't recall seeing either the girl or the lady. She advised that she worked from 1600 to 2130 hrs..

After I spoke to Ms. Hilbert, I was directed to another subject who works in the " Picnic " area that was advising that she too had possibly seen the missing girl and the female subject. The subject works at and identified herself as follows

Hot Dog on a Stick Teri Pongratz

Ms. Pongratz advised, after looking at the photo of Vicki and the drawing of the female subject, that she had seen the two in the Mall on Monday evening. She advised

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that she could recall the two because they had stopped at the " Hot Dog on a Stick " and that the child was complaining and the woman was being real strange. She went on to say that she recalled that the woman " Ordered only one hot dog " and " Two lemonades " or " Two hot dogs and one lemonade ". She advised that she (Pongratz) felt that the woman was being very harsh with the girl. I ask about some more details and Pomgratz refered me to a subject who works with her. She identified herself as

Sylvia Graham
1800 W. Linden
Tucson, Arizona
Phone: 882-8356

Ms. Graham advised that she could recall the same couple. She advised that she had just gotten off work, so advised that the time was approx. 1830 hrs.. She advised that she too felt that the woman was acting harshly to the girl. After I had shown both Ms. Pongratz and Ms. Graham the picture of Vicki and the drawing of the female they both said they felt that it was the same lady. They both advised that they felt that they have seen the female subject in the Mall on other occasions. The woman was described as

White/ Female early 30's with " Light complexion "
with " Curly brown " hair

It should be noted that the " Hot Dog on a Stick " is located in a very close proximity to the " Burger Express " food stand.

After completing the above interviews I continued contacting other merchants in the Mall. Those contacted were as follows

Kit's Cameras	Doris Robinson 6865 N. Pomona Tucson, Az. Phone: 742-4326	= Advised that she didn't work on 9-17-84. Does not recognize girl or the woman.
	Jerry Robinson same as above	= Contacted on 9-19-84. Advised that he felt that he has seen the woman before.. Does not remember seeing the girl.
Wild West T-shirts	Carol Barleycorn 345 N. Park Tucson, Arizona Phone: 884-5142	= Contacted on a follow up visit to the Mall 9-19-84. Worked on 9-17-84. Thinks she has seen woman in the drawing around the laundermat near her residence / on 6th street.
Valet Parking service	Jeff Barr & Nicholas Godbold	= Both shown the picture of Vicki and the drawing of the woman. Do not recall seeing either.

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
S/84-09-17-040	Root Ln & Pocito	51.01	C	19	5 of 5

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R.L. Van Skiver	466	10-17-84	0730	

Typed By	I.D.	Date Typed	Time	Storage Code
R.L. Van Skiver	466	10-17-84	0730	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Tucson Mall merchants continued

Cutlery World	Zach Mesel 3985 N. Stone #122 Tucson, Arizona Phone: 888-9240	= Worked from 1500 to 2100 hrs. on 9-17-84. Do not recall seeing the girl. Womans face is familure.
Foot Locker	Robert Barton	= Worked 9-17-84. Don't recognize either.
Zarfas	Veronica Reyna 6141 E. 27th Tucson, Arizona Phone: 747-7051	= Worked from 1000 to 1800 hrs. don't recognize either
	Kathy Johnson 1701 S. Burning Tree Tucson, Arizona Phone: 298-7724	= Contacted 9-19-84. Worked 9-17-84. Do not remember seeing either. The woman in the drawing looks familure.
	Michelle Johnson same as above	= contacted 9-19-84. Worked 9-17-84. Don't recognize.
Learners	Justine Jurek 2656 W. Milton #9 Tucson, Arizona Phone: 883-0676	= Didn't work 9-17-84. Do not recognize either.
	Judy Mullen 340 E. Cambridge Tucson, Arizona Phone: 297-5612	= Did not work 9-17-84. Woman in the drawing looks familure.
Kay Bee Toy Store	Tim Derrig 3730 N. Oracle RD. Tucson, Arizona	= Worked till 1800 hrs.. Knows he did not see the girl. Possibly has seen the woman before.
	Judi Mc Cormick Lot # 71 Oracle Junction, Az.	= Worked till 2130 hrs.. Does not recognize either.
	Karen Marble Phone: 745-5884	= Worked.& would have made a sale if anything was purchased. Don't recognize.
	Manuel Amado Phone: 293-8249	= Worked 9-17-84. Can't remember either subject.

No further contacts made at the Tucson Mall.

Disclosures Made JUL 5 1985 1

Exhibit 14

Case # 840917040

PX 7-1196
SED:tlk

On September 18, 1984, Special Agent (SA) SHERREE E. DOYLE of the Federal Bureau of Investigation (FBI), contacted the following people in the Tucson Mall, Oracle Road, Tucson, Arizona, to see if they had seen the victim, VICKI LYNN HOSKINSON or an unknown female subject on Monday evening, September 17, 1984. Each person was shown a color photograph of HOSKINSON and a black and white composite sketch of the unknow female subject:

1) Radio Shack:

A) ANDY JONES, negative identification.

B) MILES, 297-6300, negative identification.

C) DAVID CRUIZE, possible identification of woman as ESTELLA WILLIAMS who had written bad checks in the Radio Shack store.

2) Ricos:

A) PAULA KEPPEL, negative identification.

B) LESLIE HUNTER, negative identification.

3) Crepe Kiosk:

A) PHILLIP STEARNS, negative identification.

B) RICK NORIEGA, unable to contact, 795-2398.

4) Eric's Ice Cream:

A) JANIE KRAMER, negative identification.

5) Pappoule's:

A) JOHN COTSONES, unable to contact.

B) CAROL KRAMER, negative identification.

C) ANGIE COTSONES, negative identification.

6) Wild West T-Shirts:

A) LESLIE EVERS, negative identification.

B) LISA FUELL, unable to contact.

Case #840917040

PX 7-1196
SED:tlk

C) TOM FUTRELL, negative identification.

7) Smoker's Tavern:

A) CARL CURTIS, negative identification.

B) ROSEMARY CURTIS, negative identification.

8) Montreal Rotissierie:

A) FRANCIS AKINS, negative identification.

B) SHERRI STRONG, negative identification.

C) ED MASSEY, negative identification.

9) La Rocca's Pizza:

A) SUSAN ROSSI, around 6:30 p.m., September 17, 1984, ROSSI believed that she saw unknown female subject and victim. They bought pizza at her stand. ROSSI remembered the victims's dress and teeth. ROSSI also recalled woman had rough voice, possibly was wearing red clothing. ROSSI stated that the child did not seem upset.

B) THOMAS WITHERS, unable to contact.

10) China Express:

A) CINDY WHITEMAN, unable to contact.

B) JOSEPH LIU, negative identification.

11) Orange Julius:

A) JILL SCHLIMME, unable to locate.

B) JOHN CRISTIANA, negative identification.

12) Lettuce Patch:

A) GEORGE, unable to locate.

13) The Colander:

A) KAREN DENNY, negative identification.

14) Great Earth Vitamins:

A) JIM GARCIA, negative information.

Case #840917040

PX 7-1196
SED:tlk

15) Diamonds's Beauty Store:

A) SANDE FERGUSON, negative identification.

B) ANDY FELIX, unable to locate.

C) GEORGE VEGA, unable to locate.

16) Burger Express:

A) JEANNE MARTINEZ, being located by Tucson's Sheriff's Office.

Exhibit 15

DECLARTION OF KIMBERLY ANN SAMPSON

I declare under penalty of perjury of the laws of the United States and Arizona the following to be true to the best of my information and belief:

1. My maiden name is Kimberly Ann Hilbert. I testified at Frank Atwood's 1987 trial.

2. I was 18 years old, and a senior in high school, when I testified. I did not want to testify. It was a scary, traumatic experience for me, and I still get emotional remembering it. However, I have always been a devoted advocate for children, and have always done anything I could to protect children. I know I did the right thing by coming forward to say what I'd witnessed. I would do the same thing today.

3. I testified that I saw Vicki Lynn Hoskinson with a woman at the Tucson Mall on Sept. 17, 1984, at approximately 6:30 p.m. or 7 p.m.

4. I am positive that the young girl I saw at the Tucson Mall was Vicki Lynn Hoskinson. I remain convinced to this day that I saw her on that date and around that time.

5. On the evening I saw Vicki Lynn with the woman, I was 15 years old and working at an establishment called Burger Express, which was located in the food court of the Tucson Mall.

Initials: KS

6. I testified that I saw Vicki Lynn being led past the Burger Express by a woman with dark, scraggly hair. The woman was clutching Vicki Lynn's arm, and Vicki Lynn was following in her wake, not actively resisting but clearly being pulled along by the woman.

7. I vividly recall seeing fear in Vicki Lynn's eyes. We made brief eye contact, and I saw in her eyes that she needed help. Even today, it makes my cry to remember what I witnessed.

8. That night after I got home from work, I saw a TV news report that stated Vicki Lynn was missing. I saw a photograph of Vicki Lynn during the TV report, and immediately told my parents, who were also watching the news, that I had seen Vicki Lynn that evening at the Tucson Mall.

9. I believe my father notified the authorities of what I had witnessed. I was interviewed several times by law enforcement. The officers who interviewed me made me feel as though I was the one on trial. They acted as though they believed I had fabricated my account of seeing Vicki Lynn with the woman at the mall. It felt as though the officers who interviewed me didn't believe me, and I was being punished for doing the right thing, coming forward to tell the truth about what I had seen. I remember telling my parents I wished I hadn't said a word about what I had witnessed. But then I'd remember the look on Vicki Lynn's face, and I knew I had to do what I could to help her.

Initials: RS

10. Even when I testified in 1987, I felt as though I was the one in trouble. My parents assured me I was doing the right thing.

11. A detective named Van Skiver interviewed me twice. Both of his written narratives misstated the time I reported seeing Vicki Lynn at the mall. Van Skiver's reports indicated I reported seeing Vicki Lynn around 1630 or 1700 in military time, which is 4:30 p.m. and 5 p.m. in common time. When I testified, the prosecutor asked whether Van Skiver had made a mistake in reporting the time I had seen Vicki Lynn. I testified that the detective had in fact been mistaken, and that I was certain I had seen Vicki Lynn around 6:30 p.m. or 7 p.m., not around 4:30 p.m. or 5 p.m.

12. Since the trial, nobody had ever contacted me to discuss my role until June 2021. If they had, I would have provided the information contained in this declaration.

I declare under penalty of perjury under the laws of Arizona and the United States of America that the foregoing is true and accurate to the best of my information and belief. Signed this 27th day of August, 2021, at Pima County, Arizona.

Kimberly Ann Sampson

Initials: KS

Exhibit 16

Case #840917040

BULLOCK

ERNESTO FLORES, LOSS PREV.
293-8800
SHOE
DEPT MGR CHERNEY

MERVYNS

On 9-19-84 at approximately 1:30 p.m., SA's Sheree' Doyle and Mark Bullock contacted Cindy Cherne at Mervyn's department store in the Tucson Mall. Cherne is the Shoe department Manager at the aforementioned store.

Cherne advised that a white female fitting the description of the composite drawing of the suspect re the Vicki Hoskinson kidnapping is a regular Mervyns customer. Infact, Cherne stated that the woman visits the store approximately twice per week.

Cherne stated she last saw this woman on Monday, 9-17-84 between 2^00 pm and 2^30 pm.; the woman walked pass the shoe department and exited through the employee's exit door; Cherne advised that the woman is not an employee at Mervyns.

Cherne described the woman as:

Race/sex white/Female
skin dark completion (possibly greek)
Height 5'6"

Disclosures Made NOV 01 1984 1

at Mervyn's department store in the Tucson Mall. Cherne is the Shoe department Manager at the aforementioned store.

Cherne advised that a white female fitting the description of the composite drawing of the suspect re the Vicki Hoskinson kidnapping is a regular Mervyns customer. Infact, Cherne stated that the woman visits the store approximately twice per week.

Cherne stated she last saw this woman on Monday, 9-17-84 between 2 00 pm and 2 30 pm.; the woman walked pass the Shoe department and exited through the employee's exit door; Cherne advised that the woman is not an employee at Mervyns.

Cherne described the woman as:

Race/sex	White / Female
skin	dark completion (possibly greek)
Height	5'6"
Eyes	Brown
age	38-45
Hair	Brown, shoulder length and bushy
Other	Carries a large brown purse, wears bright red lipstick, has large hands, and wears a brown floppy hat.

Cherne was ~~asked~~ told to talk with other employees to see if anyone else knows the woman in question, and attempt to learn her name. Also, Cherne was told to call security if the women returns to the store, and have security hold her until she can be questioned.

Exhibit 17

PX 7-1196
LBA:wle

The following investigation was conducted at Tucson, Arizona, on the dates indicated by SA L. BRUCE ATKINS:

On September 18, 1984, SA ATKINS was assigned to conduct a canvass in the Tucson Mall to a number of shops on the upper level of the mall. Inquiries were made to all shop employees as to their whereabouts on September 17, 1984, and particularly if they had observed VICKIE HOSKINSON being led by a white female, possibly Hispanic, described as approximately 30 to 35 years of age, 5'5" to 5'6" in height, sturdy build, dark hair, as if it had been colored, and possibly of Italian descent. A canvass of the shops included SPENCER GIFTS, phone number 293-0150, JEAN NICOLE, phone 293-5864, THE LIMITED STORE, phone 293-7788, MANY GOATS, phone 887-0814, THE SPORT SCENE, phone 888-6328, FANFARE SHOES, phone 293-8147, and BEATONS, no phone indicated. A list of the employees and their comments are as follows:

SPENCER GIFTS employees:

1. JESSE BERNARD JACKSON,
   residence 4044 North Reno
   Tucson, Arizona
   phone 293-8049

JACKSON stated that he observed on Monday, September 17, 1984, a lady smacking a small kid around and jerking the child by her arm. He estimated this was between 5:00 and 5:15 p.m., and considered the woman to be very stocky in build. He considered her to be obnoxious in the way she was treating her child, and was not dressed very well. He described her as being dirty and dressed like in rags. He believed the subject was wearing a bandanna or a hat, and heard the child crying and screaming, attempting to get away from the woman. JACKSON stated he saw the woman leave, pushing what appeared to be a children's stroller, and jerking the child down the aisles. The subject left to the right of SPENCER GIFTS exit, and went on down the hall. JACKSON advised the stroller he observed was much like the type stroller checked out at the information booths in the Tucson Mall. At first he believed the child was throwing a temper tantrum but, on second thought, he considered the child to be fighting the lady and trying to get away. He stated that he simply thought to himself that he was glad that that lady was not his own mother. JACKSON could not remember the physical description of the child, but simply considered the sketch shown to him by this agent to be similar in nature to the woman he saw on Monday night.

PK 7-1196
LBA:wle

2. LINDA ANN STOWE
4509 East Pima
Tucson, Arizona
Home phone 881-4737

Miss STOWE responded with negative response to inquiries by this agent.

3. TINA MARIE REIDEL
3401 Wilds Road
Tucson, Arizona
Home phone 825-9205

REIDEL stated that approximately 5:00 p.m. to 6:00 p.m. on Monday, September 17, 1984, she heard screaming from a child at the same time that JESSE JACKSON was observing his previously reported sighting. REIDEL stated she did not observe the child or the subject; however, due to the screaming, she stated, "My gosh, what is she doing to that girl." REIDEL could share no other positive information regarding this incident to this agent.

JEAN NICOLE employees

1. LUCY ANN VELEZ
157 West President
Tucson, Arizona
Home phone 746-9494

VELEZ gave no positive information to this agent.

2. JENNIFER LYNN SCHOOLEY
6402 Camino de Michael
Tucson, Arizona
Phone 297-3698

All efforts to contact SCHOOLEY at her residence met with negative results.

Exhibit 18

PIMA CO NTY SHERIFF'S DE. ARTMENT DISCLOSED

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE					1 of 2
Connect-Up Report Number	**Reporting Officer**	**Badge**	**Date**	**Time**		**Reviewed By**
	R. CLARK	639 R				
Typed By	**I.D.**	**Date Typed**	**Time**	**Storage Code**		
RITA G. UZUETA	1607	09/20/84				

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

1100 hours, 18 September 1984:

In response to telephone lead, interviewed Rosa Togias at her place of employment:
Rosa Togias, 06/13/32
Home: 888-5410 - 1507 W. Windsor
Work: 792-5981 - Valley National Bank, Prince and Flowing Wells

Ms. Togias stated that when she saw the composite drawing of suspect, which had been distributed to her office, she immediately recognized suspect as a person who has been in the Valley Bank (Prince and Flowing Wells) on numerous occasions in the past four to five years, and has often caused disturbances in the bank. She reported that the physical description and facial characteristics appeared to be Anne or Annette Fries, also known to bank personnel as Farida Burns.

Ms. Togias reported that the subject's appearance is like a "wild gypsy" -- that she is extremely unkempt, and usually wears large dangling or loop-type earrings. Reportee did not recall her last visit to the bank, but stated that the subject became irritated at one of the tellers for no apparent reason and became extremely loud and verbally abusive.

Subject is reported to live in a trailer in the area of the K-Mart Store, Miracle Mile and Flowing Wells. Reportee has not seen a vehicle associated with her. Ms. Togias stated that the subject has, over two-three years, placed hand-lettered signs on the front of the bank building, advertising for rental of a room in her trailer.

Ms. Togias continued her description of the female subject stating that she has "high cheekbones" and obviously dyed black hair with light or gray roots. In describing the subject's general demeanor, Ms. Togias stated "she's a mean bitch" -- her outbursts in the bank have indicated that she "hates cops." Subject reportedly was convicted of arson in the city of Tucson within the past one-two years, and came into the Valley National Bank, branch at Prince and Flowing Wells, to obtain a cashier's check for payment of restitution.

Ms. Togias then referred me to her daughter, Kathy Togias, and a friend, Kathy Filipelli, both employees of Tucson Police Department. At approximately 1200 hours, 18 September 1984, accompanied by Det. Brennan, PCSD #506, I met with Ms. Filipelli and Sgt. Ron Penning at TPD Headquarters Building. At that time, we obtained background information, photo, and current address of 3152 N. Shawnee, for subject Annette Farida Fries (072640).

Interviewed Manger of Circle K Store, Romero and Wetmore, (see Det. Brennan's supplement) manager identified photo of Annette Fries as that of a person who comes in to Circle K Store frequently, makes small purchases (gum, sodas) and occasionally talks to school children.

Returned to Valley National Bank, Prince and Flowing Wells, where Rosa Togias identified photo of Annette Fries.

PIMA CC NTY SHERIFF'S DE. ARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE					2 of 2
Connect-Up Report Number	**Reporting Officer**	**Badge**	**Date**	**Time**		**Reviewed By**
	R. CLARK	639 R				
Typed By	**I.D.**	**Date Typed**	**Time**	**Storage Code**		
RITA G. UZUETA	1607	09/20/84				

Type	Item	Qty.	Dest.	Serial Number	Description of Property	Value

At approximately 1530 hours, 18 September 1984, I, along with Det. Brennan and Det. Dhaemers, went to Fries' residence, a double-wide trailer, located at 3152 N. Shawnee. Ms. Fries admitted us to the trailer, and was cooperative in responding to questions by Det. Dhaemers. We requested permission to walk through the trailer, and Ms. Fries stated that she "had nothing to hide" and stated that we could look through the entire property. A walk-through examination of the trailer and outside area was made by Det. Brennan and myself, with negative results.

1820 hours, 18 September 1984:

Visited Annette Fries' residence and requested that she stand outside trailer for viewing by witness from "Cartoon Junction" store (Tucson Mall). Ms. Fries willingly complied, and witness was driven by in Sgt. P. Pedersen's vehicle. Results reported as inconclusive.

Exhibit 19

TUCSON ARIZONA

Exhibit 20

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	ROOT / POCITO		57.01	C	20	1 of 6
Connect-Up Report Number	Reporting Officer	Badge	Date	Time		Reviewed By
	CRAMER, M.L.	615	9-18-84	1500		

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. **Property Disposition:** (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

0700, - LEARNED OF THIS INCIDENT. WENT TO COMMAND POST - 1526 W. PRINCE.

0745-0815 - PARKED AT SE CORNER WETMORE/ROMERO & OBSERVED VEHICLE & PEDESTRIAN TRAFFIC.

0815-0940 DROVE THRU TRAILER PARKS IN AREA.

~0940 - RESPONDED TO 1741 W. WETMORE #10. "S.A.T." PERSONNEL HAD LOCATED A SUBJECT WHO FEELS HE RECOGNIZES DRAWING OF POSSIBLE SUSPECT (SKETCH 59-84, K. BRIGHT).

Show him picture of Anselm

RELEASED TO: Thomas 407

RELEASED BY P. C. S. D. 1631

DARRIN ALAN ANSELM D.O.B. 1-6-63

#10 DEL NORTE TRLR PARK

1741 W. WETMORE NO. ALONE

WORKS: TUCSON SHOPPER-HART HANKS COMMUNICATIONS

1859 W. GRANT #111

884-9251 DAYS FOR 1 WK, STARTING 9/19.

ANSELM SAYS HE WAS WITH A TIM BECKER LAST WEDS OR THURS (9-12, 13) AT 2330 HRS, GETTING GAS AT THE (R) AT WETMORE/ROMERO. A FEMALE SUBJECT, ON FOOT, TRIED TO BUM A CIGARETTE, AND ASKED THE TIME.

P.C.S.D. RECEIVED SEP 20 1984

DESCRIPTION:

CAUCASIAN FEMALE - TANNED (WITH "SUN FRECKLES" ON SHOULDERS)

LATE 20'S, EARLY 30'S

LONG BRO WAVY, TANGLED, DIRTY HAIR

5'9" 110-123 LBS (HE GUESS MY HT & WT TOO TALL BY 1½" & TOO LIGHT BY 15 LBS)

"WEIRD CHIN" - SHORTER & PUDGIER THAN DRAWING

NOSE THIN AT TOP, WITH LARGE FLARED NOSTRILS

"LOOKED LIKE IT WAS BROKEN AT ONE TIME."

HAIRY ARMS

WORE A PRINT SUNDRESS - KIND OF LIKE A BANDANA PRINT

ANSELM ARTICULARLY NOTICED EARRINGS AS HE DISLIKES THAT KIND: STARS, WITH RED CENTERS, DANGLING ON GOLD CHAINS, JUST LIKE DRAWING.

PIMA COUNTY SHERIFF'S DEPARTMENT

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040	ROOT/ROCITO	57.01	C	20	2 of 6

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

1015 HRS. — I WENT TO Ⓡ WETMORE/ROMERO. SPOKE TO MANAGER:

Contact show picture of Annette Frey

NOREEN HEUSER
Ⓡ 888-6531 WORKS 0430-1700.
HOME: 5621 B N. LA CHOLLA
887-0630

HEUSER SAYS SHE RECOGNIZES PHOTO OF VICTIM. WHEN SHOWN DRAWING OF FEMALE SUSPECT, SHE SAID, "THAT'S THE GIRL THAT COMES IN." HAS SEEN 2-3 TIMES IN LAST COUPLE WEEKS — NOT BEFORE.

DESCRIPTION:
"MAYBE PART MEXICAN, OR MULATTO"
LATE 20'S
ALWAYS ALONE/HAS NEVER NOTICED A CAR
5'4-5"
"NOT QUITE STOCKY, BUT 150-160 LBS"
NERVOUS HABIT OF BITING HER LOWER LIP
"HYPER, — IN A HURRY"

LAST IN THE STORE LAST FRIDAY ~1430, "WHEN ALL THE SCHOOL KIDS WERE HERE." SUBJECT WAS ALONE — BOUGHT 4 PIECES PURPLE BUBBLEGUM.

LISTENING TO MY CONVERSATION WITH HEUSER WAS ANOTHER WOMAN, WHO ALSO WORKS IN THE Ⓡ, ALSO: (AND WAS THERE — OFF DUTY ON FRIDAY, WHEN SUBJECT BOUGHT GUM)

SHIRLEY CESSNA
WORKS: 2-11 AT Ⓡ 888-6531
HOME: 5505 N. SHANNON #55 888-8429

AUTO: Thomas 407
BY P.C.S.D. 163/SHE SAID INFO GIVEN BY HEUSER WAS PRETTY ACCURATE, BUT ADDED THAT SUBJECT HAS A CROOKED NOSE.

1045 HRS — I RETURNED TO COMMAND POST, AND, JOINED BY DET. P.J. LAWTON, RETURNED TO AREA WETMORE/ROMERO. WE CONTACTED GLENNA JANKE, 43 YRS old, 4213 N. ROMERO, #202, AS SAT. PEOPLE FELT SOMEONE WAS IN THE APT. BUT FAILED TO ANSWER THEIR KNOCK.

Exhibit 21

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

DISCLOSED

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040	Pocito Place/Root Lane	26.04	C	20	1 of 1

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	Sgt. P.A. Pedersen	302	03/01/85	0830	

Typed By	I.D.	Date Typed	Time	Storage Code
L. Woodruff	1522	03/06/85	1330	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

On 18 September 1984, Deputy Don Chavez and I met with Konnie Koger at her residence on West Bopp Road. Detective W.J. Barkman had met with Koger the previous night regarding a possible sighting of the victim, Vicki Lynn Hoskinson, in this case. Upon arrival at Koger's residence, I went over the description she had given Barkman and I on the previous night. The description was that of a woman who Koger said she saw in the Tucson Mall with a girl who looked very much like Vicki Lynn Hoskinson.

I asked Koger if she would be able to recognize a photo of the woman she saw with the girl who looked like Hoskinson. Koger responded "I think so."

I subsequently showed her a photo of Ann Fries, that had been provided to me by other detectives. Upon seeing the photo, Koger said the photo "sort of looks like her", refering to the woman she had seen at Tucson Mall the night before. Koger added that the nose and eyes in the photo looked like the woman she saw but the hair does not look exactly like that of the woman she saw in Tucson Mall. Upon further examination, Koger said, "it looks like her."

Prior to leaving Koger's residence we discussed the composite photo she had described the previous night. Koger said she was still satisfied with the drawing.

At approximately 1800 on 18 September, I picked up Koger at her place of work at the Tucson Mall. We subsequently drove to a residence at 3152 N. Shawnee where other officers were standing outside the residence talking to Ann Fries. We drove by the residence approximately three times. Koger told me "it looks like her" and added that the "face looks like her." She further said that the woman's "build is an awful lot like her." However, during both of these interviews she did not positively identify the woman as being that of the same person she saw at Tucson Mall on the night of 17 September 1984.

N.F.I.

P.C.S.D.
6 MAR 1985 18 16

8.

Exhibit 22

204176

Office of the Clerk of the Superior Court
Pima County

JAMES N. CORBETT
CLERK OF SUPERIOR COURT

Pima County Courts Building
(602) 792-8351
Tucson, Arizona 85701

82 SEP 2 A9:25

SHERRY KENNEDY
CHIEF DEPUTY
NONIE DABNER
ASSISTANT CHIEF DEPUTY

August 20, 1982

ANNETTE FRIES
5722 North Trisha Lane
Tucson, Arizona 85704

Re: ANN FRIES vs. GEORGE MUNN & DIANE FULLER
Justice Court No. 81-4-12539

204176

Gentlemen:

This is to advise you that we are this date, August 20, 1982, in receipt of the papers on appeal from Justice Court in the above-entitled action.

Pursuant to A.R.S. Sections 22-265 and 22-283, the Appellant must pay a fee of $45.00 within fifteen (15) days from the date of this notice. Upon payment of the $45.00 fee, the action will be filed in Superior Court, and the Appellee has twenty (20) days after this filing in which to pay his appearance fee of $30.00. (Note: The Appellee's 20 day period starts to run immediately upon payment of the Appellant's $45.00 fee, which may not necessarily be the full fifteen (15) days allowed the Appellant.)

Very truly yours,

JAMES N. CORBETT
Clerk of Superior Court
Pima County, Arizona

Margarita Rivera
Deputy Clerk

JNC:mr
CC: Michael A. Blum
3311 West Croxen
Tucson, Arizona 85741

204176

JP-1

M-N

Exhibit 23

THIS IS DETECTIVE DHAEMERS, BADGE #426. TODAY'S DATE IS 09-19-84. TIME NOW IS 1035 HOURS. THIS WILL BE REFERENCE CASE# 84-09-17-040. INTERVIEW WILL BE TAKING PLACE AT THE PIMA COUNTY SHERIFF'S DEPARTMENT 1801 SOUTH MISSION ROAD.
LEGEND: Q. = DETECTIVE DHAEMERS A. = ANN FRIES

Q. Ma'm could you pleaee state your full name?
A. Hmmmm?

Q. Could you please state your full name?
A. Annette Fries.

Q. Do you have a middle name?
A. Frieda.

Q. What Is your date of birth?
A. July 26, 1940.

Q. What Is your home address?
A. 3152 North Charlene. (ph).

Q. Your telephone number?
A. 293-4370.

Q. Your social security number?
A. 573-52-7994.

Q. Are you employed?
A. Uh, yes.

Q. And what Is your job?
A. Uh, I have a couple, take care of an elderly lady during the day, and I have a border that lives at my house and uh goes to school. And I provide the meals and do the wash and uh I'm a landlady. I need one good job that's what it bolls down to, and that's,

Q. Ma'm, we stopped by your house, yesterday and spoke to you In regards to a missing person by the name of Vickl Hoskinson. Do you recall that?
A. Yeah, uh-huh(yes).

Q. And today we asked you to come down to the Sheriff's Office, so that we could talk again. We had advised that you some information that possibly linked you to uh her dissapearance. I'd like to ask you if you could tell me what you did on 9-17-1984 which was on Monday, this last Monday.
A. Well I get up In the morning and the first thing I do, Monday? Is uhm, go up to uh take care of Sharon, off of Thornydale is what I do.

Q. And who is Sharon?

A. And then, Sharon's the elderly lady that I take care of.

Q. What's her full name do you know?
A. Uh Sharon Moon.

Q. And what's her home address?
A. I'm not sure.

Q. It's off of Ruthrauff?
A. No, It's off of Thornydale and Massengale It's on Sonth Air Place, right near Old Father.

Q. Okay, alright so tn the morning you went up to her residence, to take care of her?
A. Yeah.

Q. Okay, and how long were you there?
A. Oh, probably a couple of hours, just to get her personal hygiene taken of. And uh, then leave the house presentable and, and then I think I went back to my house, I thl, no then I went to nh apply for a better job up at Nennlna (ph) and Ina. And mhm, Ina and La Cholla, then I stopped in at the Casa Adobes rhurch, with uh, which Is, you know my church. Southern Baptist Church, and stopped In and talked to a lady there, because my boyfriend is having you know, problems as usual and uh,

Q. How long did you speak to this lady at the church?
A. Uhm about ten minutes.

Q. And do you remember what time that was?
A. Uhm, might have been about 10:00, 10:30, 11:00 around in there.

Q. And what did you do after that?
A. Uh I went to my house I think. I always have a lot to do.

Q. And do you remember what you did at your house?
A. All I know is, the several things, had lunch, my son stopped in, gave him lunch, he ate my lunch. That kind of ticked mc off.

Q. What Is your son's name?
A. Todd.

Q. And where does he live at?
A. And he lives on Prince uh, uh,, Pastime now.

Q. And his phone number Is what?
A. He doesn't have one.

Q. This phone number that you had given?
A. No that's my number.

Q. That's your number?
A. Yeah, everybody uses my number.

Q. Okay, and where does uh Todd work at?
A. Uh, up until today he was working at Emissions Control and uh he does photography.

Q. Okay, so around noon then, you had lunch with your son?
A. Yeah, or a little after.

Q. Okay, and then what did you do?
A. Probably two loads of wash and uh making, Monday, it's hard for me to think, Monday because of uh you know, only a day away, my days are are full and uh I always find something to do, because of, I don't know work is therapy for me.

Q. Okay, do you recall what you did at all in the afternoon?
A. Probably some wash Monday.

Q. Did you go anywhere then, in the afternoon?
A. Not on Monday no, Sunday I went to the malls, to Sears, because my daughter-in-law got this little thing. I thought it was pretty, for filling out an application at Sears.

Q. So you went to Sears on Sunday?
A. Yeah,

Q. And, and picked up that?
A. yeah and

Q. For filling out an application?
A. for filling out an application, yeah.

Q. Okay, so Monday you say that you were home?
A. Uhm-hmmm(yes).

Q. In the afternoon?
A. Uhm-hmmm(yes).

Q. Until what time?
A. Probably _____time, but I don't, I can't remember that well but I guess it was about till uh Mike comes and picks up his mom at uh 4:15, he picks her up.

Q. Okay, after 4:15 what did you do?
A. Monday?

Q. Yes.
A. I don't remember what I did Monday, after 4:15. I think that was the day that uh Henry moved In, I helped him put away his things. Oh I mowed the grass.

Q. Do you have that,
A. I think I mowed the front grass, Monday, or was it yesterday, the grass in the front.

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Q. do you have record of when Henry
A. I _____.

Q. moved in?
A. Yeah I have it on the calendar.

Q. Okay did you give him a receipt, did he pay you money?
A. _____. Yeah he paid me some money.

Q. And did he pay you in cash or did he write you a check?
A. He paid me in cash, $60.00.

Q. Did y, did you deposit that money?
A. No, no.

Q. Did you give him a receipt?
A. Yeah, and

Q. For the $60.00?
A. I think I did, yeah.

Q. And what Is Henry's last name?
A. Romero.

Q. And he lives at your house, he rents,
A. Now he does. He used to live at that Monterey Motel. He has a wife in Phoenix, he's going to the U of A. He's an ex, he's an ex-minister and he retired from I don't know where, I think the navy.

Q. so he just moved in on Monday then?
A. Uhm-hmmm(yes). Well I've known him, I've known him before uhm,

Q. And who else lives aat your house with you?
A. Another student by the name of Juan_____, the reason why I have these students living with me, is I went through a divorce and my attorney hae not given me any support money. All he does is collect and sit back. His name Is Harry Boxsteln.

Q. Okay, can Juan or uhm Henry verify your story, as to your whereabouts on Monday?
A. Maybe, I don't know, I don't think so. Haybe, maybe, m, maybe Juan can if he was home, I don't know. When did this happen, did this happen on Monday?

Q. Uh, yes It did.
A. Oh, uhm,

Q. Okay, so uh after 4:00 you said that you were home all day on Monday In the afternoon? And uh
A. I think I was.

Q. after 4:00 what did you do?
A. Uhmmmmmmmmmmm, I write everything down, usually what I do, everyday, and I don't have the piece of paper with me.

Q. Don't remember what you did?
A. Uh, this is Sunday, I don't know, everyday is just another day to me, I'm alwaye doing eomething, I'm always busy.

Q. You remember going anyplace, did you go to the mall on Honday night?
A. No, I wouldn't go to the mall on Monday.

Q. Did you uh go anyplace that you can recall? Or did you stay home?
A. Monday, I think I went to Gemco and I exchanged a dress, I think.

Q. Would that have been in the evening?
A. 1 went to K-Mart, I think I went to K-Mart, I think. I don't know If that was on Sunday or Monday, that I went to K-Mart's. It might have been on Sunday, that was afternoon, not evening, 1 don't make it a practice to go out late in the evening.

Q. What time are you generally home by?
A. Oh, if I don't go see my boyfriend, where he's staying at, I'm, I'm usuallly home about 7:30, somewhere in there, I don't know, I didn't, my days are different.

Q. Who's your boyfreind?
A. Uh, Jim Bonjour.

Q. And where does he live at?
A. Some, oh he lives at my house most of the time, and he goes over if he's the twin, uhm, well he can't get settled he, he doesn't have, he claims he doesn't have money enough to get his own place, so I said he could stay with me, just if he paid the water bill and he'd help me finish my car. His 32-year-old daughter is giving him alot of static, I guess, for being with me, because her husband's real lazy and he has enough money to like pay their rent and kind of support them, so she wants to disco, discourage our relationship and like we've been together for four years. He really chased me and,

Q. Okay so where else does he live at?
A. Uh, on 14'th Avenue right across the cemetary, I don't know the name of the street, but it's right near _____ motel back there In the low rent district. He has a beeper number?

Q. What's that?
A. Uh, 792 uh, I always have to look It up, I havn't memorized, It's his new beeper number, uh 791-1672.

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Q. And his name again?
A. Jim Bonjnur.

Q. Does he work?
A. Yes, he works hard, he always works very hard, he does.

Q. Where at?
A. Well actually, a refridgeration unit, he uh business, he's oh, he works for himself now. I encouraged him to go in business for himself, so he's have enough money to maintain, you know what the court wants him to pay, the child support and his lot payment and rent payment.

Q. So does he have a business? Name of a business?
A. They're just starting yeah.

Q. Do you know where that's located at?
A. Yeah, 3801 East Dodge.

Q. 3801 East Dodge?
A. East Dodge, yeah, there's a shop there.

Q. Would you have seen him on Monday then?
A. Monday night?

Q. Yeah.
A. Yeah I think I saw him Monday night. I think he slept over Monday night. Wait a minute, Monday night, or Tuesday night. Monday night he was at the Stagecoach and I went up there about 11:00 and I stayed with him.

Q. So you went to the Stagecoach?
A. Yeah.

Q. Is that a bar?
A. No.

Q. What is that?
A. It's a motel on Benson Highway, owned by Gino, you know Gino's garage.

Q. So you went there, on Monday night and stayed out.
A. Yeah, I went there on Monday night, and then I went to the Black Angus Tuesday morning for uh to keep my credits up. They're having a, they have, they have a seminar there for three weeks to get credit, real estate credit.

Q. So you stayed at the Stagecoach Motel, Monday night?
A. That night, yeah. I don't really like staying here, but he went there cause he had a job to do and it was close. Well he had a job to do on Miracle Mile and then he called me. I had waited around and waited around until he didn't show up so I just got in my car and left for a ride, and then I came back and Henry told

 1

me he called and that he was gonna stay at the Stagecoach, because I wasn't h, wasn't at the house. So he should of came to the house.

Q. So you went down to the Stagecoach and stayed with him
A. So I went down and stayed with him there, yeah.

Q. that night? Do you know the little girl by the name of uh Vickl
A. No,

Q. Hoskinson?
A. uh-uh(no). No, I've,

Q. At any time did you
A. _____,

Q. pick up Vlckl Hopklnson?
A. no, no I wouldn't pick up children anyway, unlees I knew them.

Q. Did you go to the uh Tucson Mall with her?
A. No, no. I wouldn't do that without the parent's permission anyway.

Q. If, if someone had told us that you had in fact been over there,
A. Been over where?

Q. with uh, to the Tucson Mall, with this little child,
A. Uh,

Q. what would your reaction be to that?
A. well of course, I wasn't. And I, my reaction would be of course I wasn't.

Q. If I were to tell you that more than one person had said that you were over there, what would you say to that?
A. Oh probably they're mistaken.

Q. Did you pick up thiss little girl?
A. No.

Q. If you had would you tell me?
A. If I had? Of course I would tell you. I have nothing to hide. I don't know the little girl, I'm sorry that somebody doee have her. I hope you find her. In fact, If I'm out riding and if I see the little girl, not that I know what she looks like, give me your pager number and I'll beep you, I'll page you, whatever. I really would, I'm arou, I'm out and about.

Q. My number's the Sheriff's Department number so,
A. No,

Q. that's how,
A. no, 322-3362, right?

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Q. that's how, how you can reach me at any time.
A. What Is it, 623-32__.

Q. 622-3366.
A. 3366. I lost my address book, I don't know what happened to it. I had the Sheriff'e number in there.

Q. I spoke to your renter, Juan.
A. Uhm-hmmm(yes).

Q. He told me on Monday afternoon, you weren't home at all.
A. Uhm-hmmm(yes). I wae at the Sharon'e house.

Q. So now you're saying yu were up at Sharon's house?
A. And then, I don't know, I don't remember where I was. I usually go there in the morning, I'm there, I'm seldom home. I wae up at Nannini's interviewing for a job. You could check there. They have the wrong address in the paper.

Q. Okay, that was in the morning, correct? Is there anybody that I can check with in the afternoon, to verify where you were?
A. What, uh how, what time in the afternoon?

Q. Uh, start at 12:00 on.
A. Uhm-hmmm(yes). At 12:00?

Q. At 12:00 you were with your son. Now I can call you son and he can verify that, correct?
A. Yeah, I think so.

Q. Okay, alright.
A. If he remembers.

Q. Okay,
A. Now just a minute, you're going to fast.

Q. alright,
A. cause like I said, I have alot of things I usually do. Ask my neighbors, my neighbors are pretty nosey. I mean which is good. I feel safe that they're you know,

Q. right,
A. looking at me, you know?

Q. right.
A. Because I do have people coming and going like you know,

Q. Uhm-hmmm(yes).
A. like I said if my attorney wouldn't screw up, my life would be alot better.

Q. You'd have eome money?

A. But, with thie alter, right, well not only money, I have a little money, but just I, I need the Income. Not only that, if my boyfriend would move In, you know?

Q. And help out with the,
A. Well he would be, he would be there and he, and he's a, he's a really a a good pereon, basically a good person. He's very, very affectionate that's about it. That can get the best of em sometime, but you know, other than that, and he,

Q. okay, let's see if we can try to figure out, eomebody that can tell us where you were,
A. on the afternoon?

Q. on Monday.
A. This lady Is senile, I was with her, she's with me all the time, every single day. Well my neighbor knows I'm there. They may not say anything. I've asked them to help me once when my tires were flat, and

Q. What time did you go to the motel? It wae late at night?
A. Yeah, It was about 11:00.

Q. Okay, before that were you home the whole time?
A. Yeah,

Q. You said that when you
A. l was home. I was home

Q. came home,
A. Romero, Romero, Henry Romero was home.

Q. okay but you said that he had called. Your boyfriend had called and Henry told you that he was down at the Stagecoach.
A. Yeah, but I was home all evening, just missed him, five minutes, as usual, just missed,

Q. Where did you go then?
A. Jim's call.

Q. Where were you?
A. I drove to Fourteenth Avenue to see if he was there, then I drove to uh 3120, which is his ex-wlfe's house and then back home. It just gives me piece of mind If I know if he's there or there, if he's you know, and I was getting tired of just sitting and waiting and waiting. I wish he wouldn't of gotten me in this situation, cause it hurts, I don't, I I was going with him for a long time and uh and uh,

Q. Okay, so there's nobody I can check with?
A. Yeah Henry.

Q. Where your whereabouts are?

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A. Henry Romero.

Q. Henry was there?
A. He was there all evening, yeah he was there.

Q. He wouldn't talk to us yesterday?
A. Well,

Q. Does he have,
A. he doesn't think that people have a right to walk In the house, with stuff like. He says well I have nothing to hide. I brought em through the houee. Everybody else is mad, even this lady's uhm this lady has a whole, this lady's son has a whole different view. What the hell are they doing here? Tell em to get lost. You know, people people don't want to cooperate, you know because the reason It's a hassle. I can't even uh remember everything, you know?

Q. oh, that's why I'm trying to verify it, I mean, to verify it where you're at?
A. _____.

Q. You know obviously if we can verify that then
A. Yeah.

Q. that's good for you.
A. Well,

Q. That's why I'm trying to do
A. Henr,

Q. that.
A. well Henry will probabl, Henry, I'll tell Henry, say you have to know where she was in the afternoon. He wasn't there, I don't think he was there In the afternoon, but he was there a little bit later. I was with the lady in the afternoon. I can't very well go to many places with a lady who can hardly walk. I don't make it a habit of running around, picking up children, unless I of course if I, if I have a friend or something, I might. Donna wants me to go pick Joshua up or something, I go out there, and try to,

Q. You're just talking about relatives, then?
A. yeah, yeah, basically relatives.

Q. And have you ever been arrested for anything?
A. Yeah.

Q. Well what have you been arrested for?
A. I was arrested for uh eomething that uh I'd rather not talk about It.

Q. Well let's just coyer it eo

A. _____I'd prefer to not, _____.

Q. that we got It over with.
A. Uh, actually I can't really pinpoint it but, uh I rented my room out to uh, to uhm, what do you call it? What do you call those guys, security guard?

Q. Uh-huh(yes).
A. And uhm, he's married and he uh he wanted to take me to bed and I kind of, I refused and and uh this was coming out of uh, out of a divorce. I'm an alcoholic and I started to tell my personal affairs, and he used against me and what it all boiled down to is, to make a long etory short, is I got mixed, not mixed but, he got stories and everything turned around and and I was supposed to be an arsonist and it was really my husband, and it destroyed my Income property that I was getting $350.00 a month for, which I owned before I married him.

Q. So you were arrested for an arson?
A. And,

Q. And what happened to that case?
A. uh it'e supposed to be dropped. It hasn't been dropped yet. Susan Kiddle will take forever,

Q. Oh it,
A. this,

Q. okay, this is
A. has been since 1981,

Q. okay, okay what, when did this,
A. or 82.

Q. happen? When did you get arrested?
A. I don't even remember. I think it was 82.

Q. Alright, so you haven't gone to court on It?
A. Or 83 or something. No, she's supposed to drop It.

Q. Alright, have you been
A. That's why I've been calling her everyday.

Q. arrest,
A. No, no.

Q. okay, have you been arrested for anything else?
A. No.

Q. Okay,
A. No, that's what I'm saying,

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Q. have you,
A. the people are just gonna, uh you know, drive me crazy.

Q. how meny children do you have?
A. I have one.

Q. You have a daughter??
A. No, a son.

Q. Okay, a son?
A. A son.

Q. Okay and how about your uhm, ex-husband, where ie located at?
A. He livee on Tucson Mountain's. I don't know the exact address and I'm not gonna give it to Mr. Boxsteln. That's his job, he'e getting paid for it.

Q. What, what is his name?
A. Mr. Boxsteln? Harry Boxetein,

Q. No, your,
A. crooked Jr?

Q. no, no, your ex-husband's name?
A. Francis X. Fries, he likes to be called Frank.

Q. And he lives In Tuceon Mountains? What, what about, I've got to ask you this again. What about Juan telling us that you weren't home In the afternoon. In fact, you didn't get home until late at night, around 8:00 on Monday?
A. He doesn't know whether I got home late at night, 8:00 on Monday.

Q. He said he was home all day.
A. Oh he did?

Q. Yes, and that you weren't, weren't at your home, until 8:00 at night?
A. I don't know If he'e right, I can't remember, but uhm I don't know I stop In and out usually. In fact I, I'm out usually so, I don't know about that. You know, I have groceries to get. I'm the one that's running the show down there. I have to buy the food, pay the bills, clean the yard up and everything. But I have other things to do.

Q. So, your answer to that question is you just don, you're not sure where you were?
A. I don't know exactly, I don't remember, 8:00 I was home before 8:00.

Q. He eays you weren't home.
A. _____there on Tuesdays?

Q. You weren't home all afternoon, is that what he, that's what he

told us,
A. No,

Q. on Monday.
A. oh well big deal. He's not home sometimes either.

Q. Well what I'm concerned about is trying to to be able to
A. Pinpoint where I was?

Q. pinpoint where you were.
A. That's what I'm trying to figure out. Maybe at home I have it written down. Like I usually write everything down, that I'm, of my agenda, what I'm going to do.

Q. Okay I want you to check for that. And I'm gonna give you my card and ask you to give me a call back okay? If you have that, If you have notes on what you did on Monday. This not only helps me, it helps you too. You know that Ann.
A. Oh I'm trying to think, my goodness, who keeps track of every single thing. And someb, uh my address book is missing. My appointment book is missing, otherwise I'd have something you know, that I can relate to. You know, I mean thie is terrible.

Q. Anna do you,
A. Ann.

Q. Ann,
A. Whet, what date was it on Monday?

Q. do you uh, it was the 17'th. Monday was the 17'th.
A. The 17'th?

Q. Yes.
A. Oh, I didn't go to the bank. Monday,

Q. Let me ask you, do you, do you have pierced ears? Do you regularly wear earrings?
A. Sometimes, little ones.

Q. What type of earrings?
A. Just little, little white things.

Q. Little white ones?
A. I just took em out last night, 'cause It was hurting my ear on this side.

Q. Uh-huh(yes). Do you have any uh other types of earrings, that you,
A. Yeah, I have some other types, but I've been wearing these little white ones for a long time, because they're simple, they match everything.

Q. Do you have any star earrings?

A. Any who?

Q. Star earrings?
A. No, I don't have any star earringe, no little star earrings, no. No big star earrings either.

Q. Do you like to wear just the small-type earrings that just fit on your ear or
A. Don't make any difference,

Q. the long types?
A. depends on where I go.

Q. Depends on where you go?
A. And what I'm doing.

Q. Okay,
A. You know If I go out, and it matches, If I'm wearing an Indian outfit, I like the beaded stuff, but uh as I eaid, for the past couple of weeks, I've just been wearing those little,

Q. little ones? Like the studs?
A. little pearls, little pearls,

Q. Stud types?
A. and I got this thing, yeah.

Q. Okay,
A. And sometimes I wear my hair down and not up.

Q. Anna do you have any
A. Ann.

Q. Ann, excuse me,
A. That's okay.

Q. do you have involvement in the miss, dissapearance of this little girl Vickie Hoskinson at all?
A. No.

Q. Would you be willing to take a lie detector test?
A. Yes.

Q. Uh would you be willing to give us samples of your hair?
A. Yes.

Q. Would you be willing to give us fingerprints?
A. You have my fingerprints. I'm a real estate agent, they have em on record.

Q. Okay, would you be willing if we needed to do It again?
A. _____yeah.

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Q. Would you be willing to be photographed?
A. Yeah, I guees uh,

Q. Alright. Ann ah, has this been a true and factual etatement?
A. Yes It has.

Q. Given of your own free will and volition, without threat, duress or promise of reward?
A. I feel duress. I feel threatened because sometimes I know people lie. I know people make mistakes. I know a lot of people.

Q. Alright,
A. I know a lot of young people.

Q. what I'm asking is
A. I don't have faith In people,

Q. okay, what I'm asking you, have I,
A. they lie.

Q. have I threatened you?
A. You've been very nice Gary.

Q. Okay, uh have I
A. Except that my memory isn't the

Q. tried to put
A. greatest.

Q. right, have I put you under duress, I've been trying to be comfortable with you. I'm asking you if I did that to you. Did I do any of those things to you?
A. Well when you, when you asked mc about Monday, I don't know exactiy every place I've been. I have good character.

Q. Right, all I'm asking you at that point is,
A. It's these other crumbums,

Q. just, if we would try to,
A. other crumbums,

Q. right,
A. that If I could just get out of this whole damn world. Away from liars, away from people that thrive on the sores of humanity, I'd just be fine.

Q. okay. So again, I juet want to ask you, just for, for this statement, and just for the way that I treated you today. Old I threaten you at all?
A. I don't know how you're using the word threat but,

Q. Threaten you meaning that if yoo don't,
A. if I happen to find out,

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Q. Okay, alright, do you have anything else that you'd like to add to this etatement? Anything else? Anything that I didn't ask you, anything that you think might be helpful. Is there anything else that you would like to add?
A. whoever those people were, that said I did It, maybe they're guilty. Maybe they ehould be questioned, but I don't know uh where uhm, I hope you find the girl, now that I know what she looks like.

Q. Okay, we'll conclude,
A. I found out that much

Q. this,
A. I'm juet with that elderly moet of the time, but when I'm uh, when I'm looking for work, then I'm out quite a bit.

Q. okay, we'll conclude the taped statement now at 1103 hours, on today's date, which is 9-19-1984.

I HAVE READ THE FOREGOING SIXTEEN PAGE STATEMENT AND FIND IT TO BE MINE AS GIVEN TO DETECTIVE GARY DHAEMERS ON SEPTEMBER 19, 1984.

ANNETTE FRIES DATE

WITNESS:

DETECTIVE GARY DHAEMERS DATE

TRANSCRIBED BY:

ANDREA JOYCE DENNIS DATE

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Exhibit 24

THIS IS DETECTIVE DHAEMERS. THIS WILL BE REFERENCE CASE NUMBER 840917040. THE TIME NOW IS 1007 HOURS. THE DATE IS 9/19/84. I'M AT THE INTERSECTION OF SHAWNEE AND GRETCHEN DRIVE, TUCSON, ARIZONA. THIS WILL BE A STATEMENT REFERENCE THIS CASE.
LEGEND: Q = DETECTIVE DHAEMERS; A = JUAN FLORES

Q. Sir could you please state your full name?
A. My name is Juan P. Flores.

Q. What is your date of birth Juan?
A. Date of birth is 1/27/64.

Q. What's your current address?
A. Current address is uh 30, 31-5, 3152 uh Shawnee Drive.

Q. Sir the reason that uh we stopped here was to uh stop here was to speak to the owner of the residence that you're staying at. Uh how long have you been staying here?
A. I stayed here aboutt a month.

Q. Uh recalling the date of 9/17/84 were uh staying at this residence at this time?
A. Uh, yes I was.

Q. And who do you rent from?
A. I rent from Ann Fees.

Q. On that date do you remember if she was home at any particular time?
A. Uh she was home in morning but she wasn't home in the afternoon and she was not home in the evening.

Q. Do you know about what time she would have gotten home?
A. She got home about eight-thirty, nine o'clock in the, in the evening.

Q. When she got home uh that evening, uh do you remember what kind of vehicle she was driving?
A. Yeah she was driving her brown stationwagon, Datsun.

Q. Did you see anybody with her at that time?
A. Uh no there was nobody with her.

Q. Have you seen uh any type of child with her, uh boy or a girl, uh since the 17th?
A. Uh no, no, no, none at all.

Q. Uh has she talked about any child during this time?
A. Yeah she has kids come over and work on her, on her house once in a while, cut, you know mow the lawn and stuff like that. But not, not real young they're like eighth grade you know, older kids.

Q. So you've nev, you haven't seen any young children over then?
A. No, not young children.

Q. Has she said anything to you in regards to a missing child?
A. Yeah she told me about it the first day it came out in the paper and then she told me about it when uh, yesterday when you folks and uh wanted to uh view the house.

Q. To your knowledge does she have any involvement in that particular case?
A. Not to knowledge she does not.

Q. What is uh your opinion about uh her character?
A. Well her, her character, well she, she, she's not exactly a criminal but uh she, she's eccentric and uh she's got her uh, she's got, she's pretty much uh, she's not uh, she's not a psychopath but she's like uh, what would they call those people? Uh not, she's a, she's a little eccentric, that's all I'd like to say really.

Q. Okay. Uh, do you have anything at all that you think might be helpful for our, our investigation on this missing little girl by the name of Vicky Hopkinsson?
A. Uh no, unfortunately not, not at all.

Q. Uh, okay. Has this been a true and factual statement given of your own free will and volition without threat, duress or promise of reward?
A. Uh, yes it has.

Q. We'll conclude the taped statement at 1011 hours on today's date 9/19/1984.

I HAVE READ THE FOREGOING TWO-PAGE STATEMENT AND FIND IT TO BE MY STATEMENT AS GIVEN TO DETECTIVE DHAEMERS ON SEPTEMBER 19, 1984.

JUAN FLORES DATE

WITNESS:

DETECTIVE DHAEMERS DATE

JUL 5 1985

Disclosures Made NOV 0 1 1984 1

TRANSCRIBED BY:

Carlene Dickerson 9-1984
CARLENE DICKERSON DATE

Disclosures Made NOV 01 1984 JUL 5 1985 11

Exhibit 25

INDEX TO:

CASE NO. 219227 bc

DATE FILED	
9-14-84	1. PETITION FOR INJUNCTION PROHIBITING HARASSMENT
9-14-84 PP	2. Injunction Prohibiting Harassment
9.20.84 PS	3. Aff. Service of Process
11/14/85	4. Dismissed Not (2)
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18-62

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

FILED
SUPERIOR COURT
CLERK SUPERIOR COURT
1985 NOV 14 PM 4:39
BY: L. PECKTOL; DEPUTY

DATE: 11/15/85
CASE: CO219227

Freita Annette Fries
3152 N. Shawnee
Tucson, Az. 85705

****

PLEASE TAKE NOTICE THAT THE FOLLOWING CASE HAS THIS DATE BEEN PLACED ON THE INACTIVE CALENDAR UNDER THE PROVISIONS OF SUB-SECTION (D) OF RULE 5 OF THE UNIFORM RULES OF PRACTICE OF THE SUPERIOR COURT.

JEFFERY F. ERSKINE
COURT ADMINISTRATOR

****

PLAINTIFF		VS	DEFENDANT	
RECHTIN	JOHN	FRIES	FREITA	A
BONJOUR	JAMES			

M-N

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

FILED
JAMES N. SORLEY
CLERK SUPERIOR COURT
1985 NOV 14 PM 4:39

DATE: 11/15/85

BY: L. PECKTOL; DEPUT CASE: C0219227

John & Linda Rechtin and James Bonjair
PO Box 729
Tucson, Az. 85702

****

PLEASE TAKE NOTICE THAT THE FOLLOWING CASE HAS THIS DATE BEEN PLACED ON THE INACTIVE CALENDAR UNDER THE PROVISIONS OF SUB-SECTION (D) OF RULE 5 OF THE UNIFORM RULES OF PRACTICE OF THE SUPERIOR COURT.

JEFFERY F. ERSKINE
COURT ADMINISTRATOR

****

PLAINTIFF		VS	DEFENDANT	
RECHTIN	JOHN	FRIES	FREITA	A
BONJOUR	JAMES			

RA-N

IN THE superior COURT pima COUNTY
STATE OF ARIZONA

JOHN, LINDA RECHTIN & JAMES BONJOUR,

Plaintiff(s),

VS.

FREITA ANNETTE FRIES,

Defendant(s).

FILED
JAMES N. CORBETT
CLERK SUPERIOR COURT
1984 SEP 20 PM 2:46

NO. 219227

BY: B. LEE, DEPUTY

AFFIDAVIT OF SERVICE OF PROCESS

STATE OF ARIZONA)
COUNTY OF PIMA) SS.

MARK S. DICKERSON being first duly sworn according to law, states: That affiant is a registered private process server, is an Officer, in good standing, of the Court. That affiant received the following judicial documents: copies of Injunction Prohibiting Harassment; Petition for Injunction Prohibiting Harassment from JOHN & LINDA RECHTIN & JAMES BONJOUR ~~[illegible]~~ the plaintiffs, on September 14, 1984 at approximately 4:00 p.m. That affiant personally served, on those named below, a copy of the same, in the manner, on the date and at the time and place shown; that, except where noted all such services were made within Pima County, State of Arizona.

NAME	DATE	TIME	PLACE	MANNER
FREITA ANNETTEFRIES	September 19, 1984,	2:13 p.m.	3152 N. Shawnee, Tucson,	her usual place of abode, in person.

That inquiry was made of each person listed above under "Name," to whom the judicial document hereinbefore described with particularity was delivered, or with whom said judicial document was left if said person is listed above under "Manner." That, in any event, each said person ipse confirmed to this affiant such identy or status.

Subscribed and sworn to before me

September 20, 1984

Terry Dickerson (Jeff Dingham)

NOTARY PUBLIC: MY COMMISSION EXPIRES
TERRY DICKERSON AUGUST 18, 1985

The above is covered by 41-314 & 11-445, as amended, and Rules 4, 5, & 45, Arizona Rules of Civil Procedure, as amended.

MARK S. DICKERSON AFFIANT

Charges:

Services	1	$ 7.50
Mileage	5	6.25
Fees paid Handlilng & Notary fees		3.00
Total		$ 16.75

M-B

ARIZONA LOCATOR & LITENING MESSENGER SERVICE

FILED

219227

SEP 14 2 49 PM '84

Superior Courts Bldg.
111 W. Congress St.

PIMA COUNTY SUPERIOR COURT

CLERK Tucson 85701
BY

INJUNCTION PROHIBITING HARASSMENT

CASE NO. 219227

Name JOHN, LINDA RECHTIN & JAMES BONJOUR
Address P.O. BOX 729 TUCSON AZ. 85702
PLAINTIFF

VS

Name FREITA ANNETTE FRIES
Address 3152 NORTH SHAWNEE TUCSON, AZ. 85705
DEFENDANT

WARNING: THIS IS AN OFFICIAL COURT ORDER. If you disobey this order, the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

NOTICE TO DEFENDANT: 1. This injunction is effective on you immediately upon service of a copy and it expires six (6) months after the date of service unless renewed. 2. You are entitled to a hearing on this injunction. If you want a hearing, you must file a written request with the Court named above.

☒ The Court has reviewed:
☒ The Plaintiff's petition ☐ Other pleadings ☐ Other evidence offered by the Plaintiff

Upon finding that there is reasonable evidence of harassment of the Plaintiff by the Defendant and that great or irreparable harm would result to the Plaintiff if the injunction is not granted before the Defendant or his attorney can be heard in opposition,

☐ After hearing and the Court finding good cause,

IT IS ORDERED pursuant to A.R.S. § 12-1809:

☐ THAT the Defendant stop the following acts of harassment against the Plaintiff:

☒ THAT the Defendant stay away from the following locations (addresses provided):
☒ Plaintiff's home: 2829 N 15TH AVE #21
☒ Plaintiff's place of employment: BONJOUR'S ELECTRICAL REF 3801 E KLEIN DAVE
☐ Other person(s) or location(s):

☒ GRANTING Other Relief: DEFT. SHALL NOT CALL, PHONE, ANY OF NAMED PLTFS.

9-14-84
Date

Judge

Defendant's Description:

Sex	Race	Date of Birth	Height	Weight	Hair Color	Eye Color	Soc. Sec. No.
F	W	?	5'8 IN	120 ABOUT	BR	BR	?

C-37 / 7-84

BOOK 2551 PAGE 297 M-W

219227 SEP 14 8 50 AM '84

Superior Courts Bldg.
111 W. Congress St.

PIMA COUNTY SUPERIOR COURT

JAMES N. CONROY
CLERK SUPERIOR COURT
Tucson, Arizona

CASE NO. [illegible]

PETITION FOR INJUNCTION PROHIBITING HARASSMENT

Name John+Linda Rechtin, And James Bonjour
Address P.O. Box 729 Tucson Az. 85702
Telephone Mes 326-2513 PLAINTIFF

VS

Name Freita Annette Fries
Address 3152 North Shawnee
Tucson, Az. 85705
Telephone 293-4370 DEFENDANT

Plaintiff alleges that this Court has jurisdiction over this matter, pursuant to A.R.S. § 12-1809.

1. I have been harassed by the Defendant as follows:
(REMEMBER: Harassment involves a series of acts. Be sure you are specific about what things happened, when they happened, and where they happened.)

ON 9/11/84-THE Above persons (PLAINTIFFS) have posted A NO TRESPASSING SIGN-with A FENCED IN YARD.
9/11/84 - DEFENDANT CALL Job LOCATION Found where we were And came To sight FOR NO REASON Then JUST To AGERVATE US.
ON 9-12-84 - MS. FRIES RETURNED to PLAINTIFF'S PROPERTY TO HARASS MY FATHER IN LAW WHO WAS SICK AT THE TIME SHE STILL CANIT TAK NO FOR ANSWER EVEN C POSTED FENCED YARD.
ON 9-13-84 MS. FRIES RETURNED TO PLAINTIFF'S PROPERTY C FATHER IN LAW STILL SICK C TEMP OF 100° TO HARASS HIM.

2. If this petition is not granted immediately, the following serious harm may occur: THE DEFENDANT WILL CONTINUE To SEEK LINDA RECHTIN+JAMES BONJOUR ON Job LOCATIONS IN TUCSON MAKING IT ALMOST IMPOSSIBLE TO GET ANY WORK DONE. WILL LOSE ACCOUNTS OF WORK FOR US BY CALLING DIFFERENT LOCATIONS OF WORK OR JOB ASKING WHERE WE ARE, WHAT WE'LL DOING, AND YOU IS WITH US, CALLING ON PAGER FOR NO REASON JUST TO RUN BILL UP. SO BAD OF RUNING BILL UP HAD To CHANGE COMPANIES FOR PAGER-COST WAS To HIGH. COMING OVER TO OUR house AT 2928 NO. 15th AVE when EVER SHE FEELS LIKE POR NO good REASON MAKING A SEEN. REVERSING to LEAVE when ASKED OR told. THIS ALL WILL CAUSE ALOT MORE EMOTIONAL STRAIN AND DISTRESS AND LOSS OF MONEY. Is there now pending or has there been any proceeding or order in any Court related to the conduct described above ? ☐ Yes ☒ No If yes, name the Court and kind of proceeding or order.
ON Job LOCATIONS WITCH WE CAN'T AFFORD. AND I REALLY don't KNOW IF SHE WOULD TRY To do ANYTHING ELSE. MY SON GETS VERY UPSET when he SEE HER AND SO do WE AND IF THIS CONTINUES MORE PROBLEMS with MONEY WILL COME OF IT AND OUR house WILL BE IN A CONTINUED UPSET. THERE IS SO much STRAIN ON Job LOCATIONS AND AT SAID ADDRESS ABOVE. WE CAN'T HAVE THIS ANY LONGER SOMETHING has To be done. we JUST CAN'T TAKE THIS ANY LONGER.

10.0 10.0 10.0 5/14/85

DATA ENTRY

C-38 / 7-84

M-C

Superior Courts Bldg.
111 W. Congress St.

PIMA COUNTY SUPERIOR COURT

Tucson
Ariz. 85701

PETITION FOR INJUNCTION PROHIBITING HARASSMENT

CASE NO.

Defendant's Description:

Sex	Race	Date of Birth	Height	Weight	Hair Color	Eye Color	Soc. Sec. No.
F	W	?	5' 8"	120LBS ABOUT	BROWN	BROWN	?

Plaintiff asks that the Court issue an Order providing:

☐ That the Defendant stop the following acts of harassment:

☐ That the Defendant stay away from the following locations (provide addresses):

☒ My home: 2928 NORTH 15th Ave - SPACE #21.

☐ My place of employment: _____

☒ Other location(s): ALL JOB LOCATION & TO STOP CALL ALL JOB LOCATION.

☒ Other person(s): JAMES D. BONJOUR

VERIFICATION

State of Arizona)
County of _____) ss.

Being under oath, I affirm that I am the Plaintiff in this action. I have read this petition and find that the statements are true to the best of my knowledge.

John R. Rechtin SR.
Plaintiff-Affiant

SUBSCRIBED AND SWORN to before me this date: 9-14-84.

My Commission Expires: _____

Lawy E. Perkins
Notary Public

C-36 / 7-84

M-c

Exhibit 26

8208247001
10-12-82 291 lab

I-4 (Rev. 7-18-77)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D. C. 20531

683 924 H

Use of the following FBI record, NUMBER , is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Tucson AZ	Farida Anette Burns §57109/56477-H	12-13-70	to comatt prost	$112/10
PD Tucson AZ	Annette Farida Fries 8208247001/ 56477-H SID 223314-2	8-31-82	Attempted Arson (F) Fraudulent Schemes (F) Conspiracy (F) Poss Narij (M)	

56477

Dissemination is restricted to Criminal Justice Agencies and authorized Non-C.J. Agencies ONLY. Secondary dissemination to unauthorized agencies is PROHIBITED by Privacy & Sec. Laws: 20 CFR
Rel/to: STRAUSS 11/2/82
Rel/by TPD#: John 11/2/82
App/by TPD#: Joe Subpoena

Exhibit 27

CASE 82 08 24 7001

THIS WILL BE A TAPED STATEMENT REFERENCE CASE NUMBER 82 08 24 7001. STATEMENT IS TAKEN ON AUGUST 24, 1982 AT 1415 HOURS. GIVEN TO DETECTIVE CRAIG, IN THE PRESCENCE OF FIRE INVESTIGATOR JEFF COREY. STATEMENT IS TAKEN FROM EDWARD COLE AT THE TUCSON POLICE DEPARTMENT.

Q EDWARD, would you state your full name, please?
A Hy full name is ED...EDWARD EVERETT COLE.

Q And your address and phone number?
A 1845 North Dragoon, telephone number is 628-1032.

Q And how old are you, ED?
A 49.

Q How long have you been in Tucson, ED?
A We pulled in Tucson the afternoon of April 2nd.

Q Of this year?
A This year.

Q How much education do you have, ED?
A High school.

Q Did you graduate high school?
A ST. LOUIS HIGH SCHOOL

Q OK, and you read, write and understand the English language?
A Without a doubt.

Q OK, we've been talking about an incident involving a lady by the name of ANN FRIES, F R I E S, and you indicated to me that sha has approached you with a certain proposition. Could you explain in your own words what happened?
A She had called me over to her house, I had met her the first time about the 23rd of July at Stone and Speedway, the bank, to put money in the bank. And she called me up, we talked and everything about doing building and stuff and she needed some plans drawn up to take care of some property and things, and she called me up and wanted me to talk to her about it. And she had a lot of other things in mind, she told me that she had talked to numerous other fellows and everything about trying to get either her place burned or blown up. And I found out that its already a half burned trailer located at 1602 West Prince in the back of the lot. And she didnt care how it was blown up or burned down or what. She wanted it completely demolished. And that she had...drove with me around town and show me where the place was, you know, to West Prince. Also out to an insurance place by the name of DROZ Insurance at 8601 Pine..Pine Place.

Q Is that near La Canada?
A That's right off of La Canada and Ina Road.

Q You drove her out there?
A No, she drove me out there.

Q OK, what happened?
A I drove out ther in my car.

Q At her request?
A (inaud)

Q OK.
A She had trouble with hers.

Q Was this before or after she showed you where the trailer was located?
A Sho took me out and showed me where the trailer was at first.

Q Do you remember the date?
A Approximately two weeks ago.

Q And when you drove out there, what did you do when you drove out there to where the trailer was?
A Where the trailer was? She just drove..drove in, drove in and drove right back out, she didn't wanna be seen out there.

Q OK, did she point the trailer out?
A That somebody was going to recognize her right quick.

Q Did she point it out to you?
A Uh, she drove back, to the back of the trailer house Tucson Mobile Nomes and everything's back there. And went back to the gate back of, back of the lot, where you could see the trailer in.the back of it, tell how bad it was burnt and I saw the back of it.

Q You saw it had already been burned a little bit?
A Yeah.

Q And then how much later, how much after that did you go out to the insurance company?
A I went out to the insuranee company I think, two days after that, the following day cause she found out the insurance company had lapsed or they dropped her or something like that. She was mad about that and she's gonna get hold of some other insurance company (inaudible).

Q Did you go into the insurance company office with her?
A No, I stayed outside while she was in the insurance office.

Q And what did she say she did or what kind of insurance did she give when she went inside?
A She said that she had insurance that cost her $10 a thousand, it cost her 7, for $70 for seven thousand dollars worth of insurance.

Q Okay, And do you know whether or not she got this insurance policy?

A Uh, at the time and everything she said that it was already set u and she gave a check for the $70 to take care of, and I asked for....played along with her to see if she was gonna do this thing. I said you better wait and tried to stall so that I didn't have to do it and everything. To stall to wait until she got the insurance papers so the policy and everything was in effect. And she called me this morning and told me that she had the policy and insurance papers and it was in force.

Q OK, now can we go back and tell us why she wants to get this insuranee money?

A Well, sha got a piece of property located on Shawnee Street, and she got somebody in there with a real old beat up little trailer about 20, 24 feet long, and mostly a little dinky, a little-bitty short trailer that these people are renting out to somebody, some friends or something there...he's charging so much rent. And she said in two months (inaud) a couple weeks ago (insud) that her lease is gonna (inaud) and she's gonna (inaud) put this (inaud) that she's got located at 50, 5722 Trisha Lane, (inaud) that piece of property (inaud) closer to town and she's gonna buy this house from the government at ASARCO

Q ASARCO?

A ASARCO; however, you pronounce that. And for $6,000 a three bedroom house it's gonna cost her $3000 to move down here but pay the movers monthly so much a month. But she don't have to have a, the full $3000 on that, she needs $6000 to move that house down here. And the foundation and everything in there, she had me over there to draw up the foundation and everything and all thet stuff and everything before she even mention anythin about about wanting somebody to burn or blow up this trailer. And that's what I went up there and started with first. She didn't know I was a security officer or anything else.

Q Yeah.

A. And that's what I want up (inaud).

Q Uhmm, OK. She she wanted, she wants the insurance money to help move the house from ASARCO down to on Trisha Lane?

A Yeah.

Q And do you know whether she's contacted anybody at ASARCO about the moving of this house, or about her buying the house?

A She said something this morning about she had another, I think another week that she had to make the plans, I think with them. She's gotta get the money down on it.

Q OK, you showed me a card from ASARCO with the name of BRUCE K. MALONE on it. How did you get that card?

A I had to drive her out there because she had car trouble and she asked if I would use my car to driver her out there, and I didn't have nothing else to do so I, I drove her out there (inaud).

Q OK, and did he, did MR. MALONE give you this card?
A He's the one that gave me that card, yeah.

Q And he's the one that she talked to about buying this house?
A Right. And she talked, she the one that had all the..she's doing everything and I told her I says well, unless we get something worked out I says don't figure on me, you know on this deal and everything (inaud).

Q Alright. And what did she offer you for burning the the trailer down?
A Well, she started off on different things but then she (inaud) gotta have her own way and about everything, she's offered sex and a bunch of other things. But thon she said well, I'm not (inaud) wait until we get this settled and it's off my mind and everything and then I'll be in a good mood and we'll both enjoy it s lot more and everything.

Q Old she mention anything about going anywhere?
A Uh, she has mentioned that as soon as she gets the insurance money that she wants to spend a week up in Las Vegas and she'll pay for the while trip.

Q OK.
A Including going to bed and everything.

Q Do you have any idea when she wants this done?
A As soon as possible.

Q And the original idea of burning the trailer, was that your idea?
A No. No way at all. And the reason I'm here is to stop anything, (inaud) it ever happening.

Q Do you know...
A And to get rid of her permanently out of my life cause she's hounding me something terrible.

Q She's giving you some problems?
A All kinds of problems, she won't leave me alone.

Q Do you know if she's asked anybody else to do the same thing?
A She had mentioned a number of people.

Q And do you know personally any of these people that she's asked, by name?
A Not by name, no.

Q JEFF, do you have anything?
JEFF Yeah, how did you first meet her again? She was working?
A My wife had moved out and she had moved out six times before, and threatened to file for divorce and she..had money in the saving accounts there at Stone and Speedway at Interstate Bank. And I went there to put some money in the bank and then I got to thinking well, if she left some money in the bank, then I better

A (CONT) check and see if she left some money and she'd left $8.40. So then I asked (Inaud), I said what will happen if (Inaud) sign the paper and everything, take out the (Inaud) money, say 50 or $100 and (Inaud) check, could she do that. They said yes. I said well, I'm, I'm gonna play safe then so she don't gat to me for a lot of money, if she decided to do it, close the whole thing out, pick up $8.40. And that's why I was in there, (Inaud) the church on Speedway. And I talked to him and (Inaud) and I turned around and I looked (Inaud) her name at that time but she told me her name was (Inaud). That she had put down quite a few things, she had a handful pieces of paper that she had written down that she was trying to find a boarder to rent a bedroom in a three bedroom mobile home, $300 a month, all utilities, laundry, meals cooked and everything, he doesn't have to (Inaud) And I had told her thst I was, done construction work (Inaud) and she had some plans that (Inaud) she asked me if I would come over (Inaud) and everything and talk about it and (Inaud) and everything. She (Inaud) the (Insud) and it wasn't, had (Inaud) that first (Inaud).

JEFF So she was a customer in the bank then? When you ran into her?
A I don't think that she's a regular customer at that bank. She had just gone in there (Inaud).

Q That's on North Tricia?
A Yeah, 5722 North Tricia.

Q OK

JEFF So have you had any other contact with ber other than the time you met her at the bank and the time you went out to draw up her lot and.....
A ...Well, tho first, the first time when I went out there when she had wrote, drawn up some plans and everything and then there another time she called up and she wanted to show her property over there on Shawnee and she had to get information on gas and water and lights and everything to hook up this trailer and everything over there and (Inaud) So I went over there with her and everthing and went to her place on Shawnee and showed me tbe place on Shawnee. But the day that we went (Inaud) see the homes out there, 35 miles out there at the Silverbell Coppermine, we had went, she had went back over to Shawnee Place (Inaud) and also over there to Romero and Prince where the trailer's located at and showed me where the trailer was at. And also she got the (Inaud)

Q OK, have you ever dated her, have you ever gone out with her?
A Uh, I called her up and I says I'm all alone and everything, I said I need somebody to talk to snd uh would you meet me someplace and have a drink. And she said the Black Angus over there at River and Oracle. And I said well I don't know where

it's at but I can find it, so I told her that I'd meet her over there and she was about a half hour late, she was supposed to have been there about 6:30, she showed up like 7:00. And so we sat there and I think we had two drinks, and we had a few drinks and we talked to the girls that had spoke to us first but then she had bumped in to, she had struck up an aquaintance and everything with six other guys just. She will say anything, the guy, the guy had a shirt on, had a stripe about that wide around there, and she said something to him, I don't know if that's what it was but something about his shirt. But she comes up to me and she said.

Q Is she pretty well known in there, did it appear thst she was known by these people?

A I would say so. I didn't know nobody at all, but she, she knew all the, all the waitresses down there too, she'd been there quite often.

Q OK. Nas everything that you've told us, ED, been the truth to the best of your knowlidge without any promise or reward or threat or duress as far, as far as you know?

A No promise at all, even the promise that she's given and everything, I don't figure she was gonna follow through with any of that.

Q Do you think she intends to have the trailer burned?

A By somebody, and whenever she can get somebody to do it.

Q You believe that's her intent?

A Right.

Q OK. STATENENT WILL BE CONCLUDED AT 1433.

INTERVIEWED BY

Det. D. Craig

DET. CRAIG 1653

WITNESSED BY

JEFF COREY, TFO

TRANSCRIBED BY

BERTA VALENZUELA CID 6762

Ade Vogel

ADE VOGEL CIO 13905

25 August 1982/1000 HOURS

Exhibit 28

CITY OF TUCSON

The Sunshine City

Department of Police
P. O. Box 1071
Tucson, Arizona 85702

REFERENCE:
CID-8208247001-DC

January 3, 1983

Mr. Edward Cole
1312 Lakeview
Olathe, Kansas 66061

Dear Mr. Cole:

In response to your letter of December 23, 1982, the location of Ann Fries is unknown. She was released from custody after her initial appearance in court.

We have no information as to how she might have obtained your present address. If the card you described is still in your possession, Detective Craig would like to have a copy of it for his file. If you should receive any further correspondence of suspicious nature, please keep Detective Craig advised.

Thank you for your cooperation in this matter.

Very truly yours,

Peter Ronstadt
Chief of Police

Capt. M. R. Ulichny
Commander
Investigative Services Bureau

PR:MRU:DC:bv

Exhibit 29

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

51-GJ-119 The 14th day of SEPTEMBER 19 82

STATE OF ARIZONA, Plaintiff,

vs.

ANNETTE FARIDA FRIES

Defendant(s)

INDICTMENT

CAUSE NO. CR09084

The grand jurors of the County of Pima, in the name of the State of Arizona, and by its authority accuse

ANNETTE FARIDA FRIES

and charge that in Pima County:

COUNT ONE (CONSPIRACY TO COMMIT A CLASS TWO FELONY)

On or about the 1st through the 31st day of August, 1982, ANNETTE FARIDA FRIES conspired with Edward Cole to commit Arson of an Occupied Structure and Fraudulent Scheme or Artifice, in violation of A.R.S. §§ 13-1003, 13-1704, 13-2310, 13-701, 13-702, 13-801 and 13-803.

COUNT TWO (ATTEMPTED ARSON OF AN OCCUPIED STRUCTURE, A CLASS THREE FELONY)

On or about the 1st through the 31st day of August, 1982, ANNETTE FARIDA FRIES attempted to commit arson by attempting to damage an occupied structure, to wit: a 12' x 60' Vahon moble home, model number D000686, serial number 12538655002, by knowingly causing a fire or explosion, in violation of A.R.S. §§ 13-1001, 13-1704, 13-701, 13-702, 13-801 and 13-803.

COUNT THREE (ATTEMPTED FRAUDULENT SCHEME OR ARTIFICE, A CLASS THREE FELONY)

On or about the 1st through the 31st day of August, 1982, ANNETTE FARIDA FRIES attempted to commit a crime, to wit: Fraudulent Scheme and Artifice, by attempting to obtain a benefit, pursuant to a scheme or artifice to defraud, from AMERICAN BANKERS INSURANCE, by means of false or fraudulent pretenses, representations, promises or material omissions, in violation of A.R.S. §§ 13-1001, 13-2310, 13-701, 13-702, 13-801 and 13-803.

STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

By John W Dobrowolski
Dated 14 Sep 82

A True Bill

Richard E White
Foreman of the Grand Jury

CA-12 (3/82)

ORIGINAL

MG

Exhibit 30

LAW OFFICES
PIMA COUNTY PUBLIC DEFENDER
45 WEST PENNINGTON STREET, THIRD FLOOR
TUCSON, ARIZONA 85701
TELEPHONE: [602] 791-3300
DAN H. COOPER #10848
ATTORNEY FOR DEFENDANT
DHC/dll 1-7-83

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA, Plaintiff, vs. ANNETTE FRIES, Defendant.	NO. CR-09084 MOTION FOR MENTAL CONDITION EXAMINATION AND STAY OF PROCEEDINGS

The defendant, by and through his/her attorney, and pursuant to Ariz.R.Crim.P. 11.1, hereby respectfully moves this court to have the defendant examined to determine if she is able to understand the proceedings against her or to assist in her own defense, and to investigate her mental condition at the time of the offense, pursuant to Rules 11.2; 11.3(e).

1. The facts upon which this mental examination is sought are the following? Defendant has come in contact with numerous people in this case, all of whom are of the opinion defendant is mentally ill; counsel for defendant has had several conversations with defendant and is unable to communicate with defendant because her train of thought is such as to indicate her thinking is perhaps psychotic.

1/17/mot

CR9084

2. The defendant further moves pursuant to Rule 11.4(a) that any statement or summary of the defendant's statements concerning the offense charged shall be made available only to the defendant.

Furthermore, pursuant to Ariz.R.Crim.P. 8.4(a) defendant moves all proceedings in the instant case be stayed pending disposition of the mental examination and hearing.

For purposes of the mental examination and pursuant to Ariz.R.Crim.P. 11.3(c) the defendant submits the names of Doctor_____

_____Tucson, Arizona.

Doctor_____

_____Tucson, Arizona.

RESPECTFULLY SUBMITTED this 7th day of January, 19 83.

Law Offices
PIMA COUNTY PUBLIC DEFENDER

By_____
DAN H. COOPER
Attorney for Defendant

LAW OFFICES
PIMA COUNTY PUBLIC DEFENDER
45 WEST PENNINGTON STREET, THIRD FLOOR
TUCSON, ARIZONA 85701
TELEPHONE: [602] 791-3300

Exhibit 31

FILED
Oct. 4 1983
JAMES N. CORBETT, Clerk
L. Cottrell Deputy

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: THOMAS MEEHAN CASE NO. CR-09084

Court Reporter: none DATE October 4, 1983

STATE OF ARIZONA ( )

( )

VS. ( )

( )

ANNETTE FARIDA FRIES ( )

EVENT SUMMARY				
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:

M I N U T E E N T R Y

UNDER ADVISEMENT RULING:

The Court having reviewed all medical reports filed,

THE COURT FINDS defendant is not competent to stand trial or to assist counsel at the time of trial.

Based on the medical reports,

THE COURT FINDS that with treatment that there is a reasonable probability that defendant will become competent to stand trial.

IT IS ORDERED defendant be committed to the Kino Community Hospital for not more than ninety (90) days; Kino Community Hospital to advise the Court at such time that it determines defendant is competent to stand trial or that there is no reasonable probability that defendant will become competent.

Sharon Cottrell
Deputy Clerk

M-E

BOOK 2432 PAGE 01

MINUTE ENTRY

Page No. 2 Date October 4, 1983 Case No. CR-09084

IT IS FURTHER ORDERED that defendant report to Kino Community Hospital on October 11, 1983, at 10:00 A. M.

JUDGE

cc: County Attorney - John Dickinson
Public Defender - Susan Kettlewell (1 certified)
Kino Community Hospital (Dr. David Stoker) - 1 certified
Hon. Thomas Meehan
Under Advisement Clerk

Sharon Cottrell
Deputy Clerk

BOOK 2432 PAGE 02

Exhibit 32

SAK:jes
8/15/84
F-82-2384

LAW OFFICES
PIMA COUNTY PUBLIC DEFENDER
45 WEST PENNINGTON STREET, THIRD FLOOR
TUCSON, ARIZONA 85701
TELEPHONE: [602] 791-3300
SUSAN A. KETTLEWELL #31060
ATTORNEY FOR DEFENDANT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA, Plaintiff, vs. ANNETTE FRIES, Defendant.	NO. CR-09084 MOTION TO DISMISS (Honorable G. Thomas Meehan, Division 16)

COMES NOW the Defendant, ANNETTE FRIES, by and through her attorney undersigned, and moves this Court for a dismissal of the above-captioned matter. A Rule 11 had been filed in this matter and pursuant to that Rule 11, Judge Meehan ruled that Ms. Fries was, in fact, incompetent and unable to stand trial. As a result of that finding, Judge Meehan also ordered that Ms. Fries undergo treatment to determine whether or not, in fact, she could be competent.

At this time, the defendant moves to have the case dismissed on the basis that she is not competent and cannot be restored to competency.

/ / /

#38

M-M

CR 9084

RESPECTFULLY SUBMITTED this 16th day of August 19 84.

Law Offices
PIMA COUNTY PUBLIC DEFENDER

By _____
SUSAN A. KETTLEWELL
ATTORNEY FOR DEFENDANT

Copies of the foregoing
mailed/delivered this date to:

DEPUTY COUNTY ATTORNEY

LAW OFFICES
PIMA COUNTY PUBLIC DEFENDER
45 WEST PENNINGTON STREET, THIRD FLOOR
TUCSON, ARIZONA 85701
TELEPHONE: (602) 791-3300

M-M

#39

Exhibit 33

10/31

LAW OFFICES
PIMA COUNTY PUBLIC DEFENDER
THIRD FLOOR
45 WEST PENNINGTON
TUCSON, ARIZONA 85701
TELEPHONE (602) 791-3300

FILED
31 October 84
JAMES N. CORBETT, Clerk
Q. Linnetz Deputy

FREDERIC J. DARDIS
PIMA COUNTY PUBLIC DEFENDER

THOMAS G. HIPPERT
CHIEF DEPUTY

October 9, 1984

OUR FILE NO. F-82-2384

Honorable G. Thomas Meehan
Pima County Superior Court
Division 16
111 W. Congress
Tucson, AZ 85701

Re: State v. Annette Fries
No: CR-09084

Dear Judge Meehan:

Enclosed please find the report from Dr. Garland in connection with the above-captioned case.

Sincerely,

Law Offices
PIMA COUNTY PUBLIC DEFENDER

SUSAN A. KETTLEWELL
Assistant Public Defender

SAK:jes
Enclosure

M-E

KINO COMMUNITY HOSPITAL
2800 E. AJO WAY/TUCSON, AZ 85713
PHONE 294-4471

CR9084

October 1, 1984

Susan Kittelwell
Public Defenders Office
45 West Pennington, 3rd Floor
Tucson, Arizona 85701

Dear Ms. Kittelwell:

As you know, I evaluated Ms. Annette Fries in November of 1983. Ms. Fries came to me on your referral regarding ability to understand and assist in her defense. Mr. Fries at the time of my evaluation, was best diagnosed as Schizoaffective Disorder, Hypomanic. This is a severe and chronic mental disorder, and it is my opinion that Mr. Fries is unlikely to regain her competence.

I would like to recommend Ms. Fries to outpatient psychotherapy on an ongoing basis with the recommendation that the patient be tried on Navane which she tolerated fairly well back in November of 1983 as well as a trial of Lithium, which the patient at least initially expressed great disinterest in.

If further information is required regarding this patients competence or likelyhood to regain competence, please contact me at Kino Community Hospital at the above number, ext. 3010.

Respectfully,

Donald J. Garland, Jr., M.D.
Attending Psychiatrist

DJG/sc

cc: file

ME

Exhibit 34

4 /

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: Thomas Meehan — CASE NO. CR-09084

Court Reporter: Deirdre Mugall — DATE November 13, 1984

State of Arizona	( )	John Dickinson
vs.	( )	
Annette Farida Fries	( )	Susan Kettlewell
	( )	
	( )	

EVENT SUMMARY				
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:

MINUTE ENTRY

Rule 11 Hearing / Defendant's Motion to Dismiss:

Ms. Kettlewell waives the presence of the defendant at this hearing.

2:15 P.M. Donald G. Garland Jr., is sworn, examined and cross-examined. 2:30 P.M.

Counsel stipulate the Doctor's qualifications.

The Court finds from prior medical reports stipulated to by counsel, and the witnesses testimony, that the defendant is not competent to assist in the preparation of a trial, therefore

It is Ordered that the Indictment in CR-09084 is dismissed without prejudice.

copies to:
Hon Thomas Meehan
County Attorney - John Dickinson
Public Defender - Susan Kettlewell
Pretrial Services
Sheriff of Pima County

Lindy Linnertz
Deputy Clerk

Exhibit 35

Dissemination is restricted to Criminal Justice Agencies and authorized Non-C.J. Agencies ONLY. Secondary dissemination to unauthorized agencies is PROHIBITED by Privacy & Sec. Laws:
Rel/to: Colette ID
Rel/by P.C.S.D. 1579

PIMA COUNTY SHERIFF'S DEPARTMENT
ARIZONA TRAFFIC TICKET & COMPLAINT

Complaint No. A018301 | Soc. Sec. No. 573-52-7994 | Report No.

COMPLAINT | Driver's License No. T298463 | State AZ | Class 4 | ☐ Oper. ☑ Chauf. | Military ☐ Yes ☑ No

STATE OF ARIZONA vs DEFENDANT | First Name FARIDA | Middle ANNETTE | Last FRIES

Address (Residence) 5152 N. SYCAMORE | Town TSN | State AZ | Zip 85705

Origin M | Sex F | Birthdate 072646 | Height 504 | Weight 126 | Hair BLK | Eyes BRO

Address (Business) UNEMPLOYED | Town | State | Zip

VEH: Year 78 | Make DATSUN | Model 810 | Style SW | Top BRO | Bottom BRO | Interior BRO

License No. UHF536 | State AZ | Expiration 1284 | VIN JNHLD21052S154

NOTICE TO APPEAR before ☐ Juvenile Court ☑ Justice Court No. 1

located at 115 N. CHURCH AVE, TSN, Arizona

on the 21 day of SEPT 84 at 8:30 ☑ AM ☐ PM

☐ without admitting guilt, I promise to appear as directed hereon.
☑ without admitting responsibility, I acknowledge receipt of this complaint

A-7
Signature

☑ Civil Traffic ☐ Criminal ☐ Criminal Tr...

COMPLAINT

☐ Juvenile Court ☑ Justice Court Precinct:

PIMA COUNTY, STATE OF ARIZONA

The undersigned says: The defendant did

On Month 09 | Day 11 | Year 84 | Time 1134

At (Location) River Road & Camino Real (EB to NB)

Commit a ☐ Misdemeanor ☑ Civil Traffic Violation | Accident ☐ | Aprx. Speed 15 | DWI ☐ Y ☐ N ☐ U ☐ BA

In violation of Section ☑ ARS ☐ City Code 28-722 | Psid Speed 45 | R & P Speed | Conte 0.

As Follows: FAIL to YIELD while MAKING A LEFT TURN

I certify that upon reasonable grounds, I believe the defendant committed the act described contrary to and I have served a copy of this complaint upon the defendant.

COMPLAINANT: L. Coxford

Docket No. | Date of Disposition

Disp. Code | Fine $ | OR | Days | Jail

Entered Data JUL 5 1985

8871100

335

Exhibit 36

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE				1 of 1

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R. CLARK	639 R			

Typed By	I.D.	Date Typed	Time	Storage Code
RITA G. UZUETA	1607	09/20/84		

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

1400 hours, 19 September 1984 - Flowing Wells Community Service Building.

Interview: Abraham Rodriguez, 06/22/62
Home: 1949 W. River View - 623-3087
Work: St. Mary's Hospital - 622-5833, Ext. 1038

Rodriguez is employed as a mail clerk with St. Mary's Hospital. He stated that in the course of his job, he frequently carries cash, and as a matter of habit, is very aware of person around him. Rodriguez reported that at approximately 0930 hours, 14 September 1984, Friday, he was walking in the area of the First Interstate Bank of Arizona Office in the 100 block of N. Stone Avenue. At that time, he saw a female, who appeared to be watching him, standing on the sidewalk next to a brown Datsun 280-Z. He stated that he is interested in that type of car, and his attention was directed to the car, and the fact that it was his impression that the subject "did not fit" with the car. When the subject became aware of Rodriguez, she got in the car and drove away.

Subject was described as a white female, approximately 30 years, 5'6", 140 lbs., wearing a flowered blouse and blue jeans with tennis shoes. She had light brown, shoulder-length hair, and a brown, woven sun hat with a brim. Rodriguez stated that subject's overall appearance was "dirty".

The vehicle is described as a dark metallic brown ("Root Beer Brown") Datsun 280-Z, with California license plates ___ 198 (gold/blue plates, and a plate frame, possibly from a dealership, which was lettered with the word "Montebello". The car also had a dark interior, tinted windows, and spoke-type wheels. The car is reported to be very dirty with a scratch on the rear passenger side.

Rodriguez further stated that he saw the same car and person, at approximately 1100 hrs., 14 September 1984, in the area of Howell Elementary School (401 N. Irving). He advised that the car appeared to "cruising" near the school, with the person inside watching the children in the playground.

Disclosures Made NOV 01 1984 1

Exhibit 37

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040		51.01	C		1 of
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	O.R. MIRANDA	485-R	09-18-84	1430	

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. **Property Disposition:** (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

accurate

PERSON INTERVIEWED : GERRIE CORNETT
ADDRESS : P.O. BOX 149 (NO STREET NO.)
VAIL, ARIZ. 85641
TELEPHONE : 791-7663
BUSINESS : CIRCLE K
11271 E. TANQUE VERDE RD.
749-4658
WORK HOURS : 0600-1400 HOURS.

ON 09-18-84 AT APPROXIMATELY 1345 HOURS I WAS CONTACTED BY MRS. CORNETT AT HER BUSINESS ADDRESS. MRS. CORNETT INFORMED ME THAT SHE WAS LOOKING THROUGH THE CITIZEN NEWSPAPER WHEN SHE SAW THE COMPOSITE OF A WOMAN. SHE ADVISED THAT THE PHOTOGRAPH WAS SIMILIAR IN CHARACTERISTICS AS A WOMAN SHE SAW AT THE STORE ON 09-16-84.

ON 09-16-84 AT APPROXIMATELY 0890 TO 0900 HOURS A DARK BROWN DATSUN 280-Z PARKED BY THE GASOLINE BAY IN FRONT OF THE STORE. SHE STATED THE CAR HAD TINTED WINDOWS AND HAD GOLD COLORED FANCY WHEELS. THE CAR ALSO HAD CALIFORNIA PLATES. THE CAR WAS ALSO PARKED FACING WEST. A LADY CAME to THE STORE AND PURCHASED $6.00 to $7.00 DOLLARS IN GASOLINE. MRS. CORNETT SAW NO OTHER PERSON WITH THE CAR. SHE ADVISED THAT THE LADY WAS SIMILIAR IN FEATURES AS THE COMPOSITE; BUT THAT HER HAIR WAS MORE MESSED UP, AS IF SHE HAD JUST WOKEN-UP. SHE FURTHER DESCRIBED THE LADY AS 5'04" IN HEIGHT, 150 to 155 LBS, DARK BROWN HAIR, PROBABLY BROWN

Disclosures NOV 01 1984

PIMA COUNTY SHERIFF'S DEPARTMENT

Report Number	Incident Location	Class	Dist.	Beat	Page
840917 040		57.01	C		2 of 2

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

EYES, 35 YEARS OLD, WHITE FEMALE, OLIVE OR TAN COMPLEXTON, ITALIAN OR JEWISH, NO NOTICEABLE ACCENT, AND WEARING A SHORT-SLEEVE SUMMER DRESS WHICH HAD SMALL SQUARES IN A MULTI-COLOR PATTERN OF SHADES OF BROWN. THE VEHICLE LEFT WEST BOUND ON TANQUE VERDE FROM THE STORE. DET. DHAEMERS, 426, WAS CONTACTED AND ADVISED.

MRS. CORNETT ALSO ADVISED THAT SHE HAD NOT SEEN THIS LADY IN THE STORE OR THE AREA, AND THE LADY PAID FOR THE GASOLINE IN CASH.

N. F. I.

Disclosures Made NOV 0 1 1984 1

Exhibit 38

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
S/84-09-17-040	Root Ln. & Pocito (4200 North)		51.01	C	19	1 of 1
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By	
	R.L. Van Skiver	466	10-15-84	1400		

Typed By	I.D.	Date Typed	Time	Storage Code
R.L. Van Skiver	466	10-15-84	1400	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

On 9-18-84 at approx. 1415 hrs. this officer made contact with the U.S.Postal Service letter carrier at the corner of Root Ln. and Pocito Pl.. The subject advised that he is the regular Mailman for this area and advised that he was delivering in the area on Monday 9-17-84. The subject identified himself to me as

Lorenzo Monarrez
109 W. Prince Rd. Apt. AA
Tucson, Arizona
Phone: 293-7956

Mr. Monarrez advised that he knows Vicki Hoskinson, that her house is on his mail route and that he knows her by sight as she used to come up to wait outside for the mail last summer. He advised that he was in the area of Root & Pocito at approximatly 1430 hrs. on the 17th.. He did not remember seeing Vicki. I ask if he had seen a " 280 Z " in the area. He advised that he didn't remember seeing one.

I ask Mr. Monarrez if he had seen the composit drawing of the possible suspect. He advised that he has. I ask if he has seen any female subjects in the area that were either acting strangely(as there had been a report of a woman trying to kidnap a child at the appartments at Root & Romero) or out of place. He advised that yesterday when he stopped at the Circle K store at Wetmore and Romero he saw a woman that he felt was a little strange. He advised that this was at approx. 1400 hrs.. She was just, " Eating a Drum stick " icecream bar. Monarrez advised that she was a

White/ Female mid 30 yrs., 5-2 , " Chunky " built
with Blondish Brown hair

The car she was in was described as a

Dark Brown " Root Beer " Large (Possibly a Plymouth)

Monarrez advised that he thought he has seen someone that looks like the woman in the composit drawing before. He said he wasn't sure but thinks he may have seen them in the " Stockman's " Bar.

Disclosures Made JUL 5 1985 1

P.C.S.D. 503 INCIDENT REPORT — D.D.S. NARRATIVE 8/1/82

Exhibit 39

8:05? CALLER: DONNA WHEATON
9/20 747-7718 6451 N. CALVIN
SAW WOMAN WHO LOOKS LIKE
OUR PICTURE IN A BROWN 2DR
AT SANDARIO + PICTURE ROCKS
ON MONDAY BETWEEN 5:00 &
6:00 P.M.

Age 11 1 of 2

Tina Peltier —
4680 W. Massingale

Going down Massingale toward railroad tracks at 5:30 PM on 9/20/84. In brownish tan Full Sized Car, going real slow as if looking for an address. Said driver looked like female Suspect.

T. Adams, 0750 - 9/21/84

Michele Branch (744-1563)
Called and advised she with
Tina Peltier on Citing of
Female Suspect as enumerated
on Page 1.

[signature] 0750-9/21/04

Exhibit 40

8909170400

DISCLOSED

PX 7-1196
ERH/seb

-1-

The following investigation was conducted by SA Edward R. Hall at Tucson, Arizona:

Mr. Leon Rivera, 610 W. Calle Medina, 294-4451, work telephone 622-6724, called into the Sheriff's Hotline and advised he had seen a 280Z, brown in color, on Monday in the area of Wetmore and Romero or Wemore and Oracle. He did not see the occupants of the car but he recalls the lieense as being California 3EA-748.

A run of the California DMV records reflects that the California license 3EA-748 is an invalid license number and that the 3 should be a letter not a number. A run of the letters A through Z in place of the 3 in the license given was done without effecting the registration of a 280Z.

Mr. Rivera was contacted at which timo he advised that the license plate which he called into the Sheriff's Hotline was the license on the 280Z he observed, however, he did not write the license plate down, he only recalled it from memory. He advised he did not notice the driver of the vehicle and that he could provide no further information concerning the brown 2802 he observed on Monday.

JUL 5 1985 1

Exhibit 41

PIMA COUNTY SHERIFF'S DEPARTMENT
P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	1920 W. Hadley/ Root Ln. & Pocito Pl.		26.04	C	20	1 of 5
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By	
	D. Aubry	329C	9/17/84	1635		
Typed By	I.D.	Date Typed	Time	Storage Code		
		9/18/84	1000			

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

At 1635 hrs., Dep. Kalahar, #209C, was dispatched to a lost child call at 1920 W. Hadley. I also responded as a follow-up officer to assist in the search. I was the first unit to arrive at the 1920 W. Hadley address.

I spoke with Mr. Carlson, the step-father of the missing child, and he stated that VICKIE HOSKINSON, age 8, white female, approximately 4 feet tall, weighing 50 lbs., with brown or auburn short-cut hair, wearing a red, white and blue dress, the predominate color being red, had been sent to the Circle K, Wetmore and Romero, to mail a letter, and had not returned. Mr. Carlson stated that Vickie had gone to the store on her bicycle at approximately 1530 hrs., and at approximately 1550 hrs., the bike was found at Root Lane and Pocito Place by a lady living in that area.

At this time, Dep. Kalahar, along with Dep. Walsh, #410C, arrived at the residence, and Dep. Kalahar began to interview Mr. Carlson and DEBBIE CARLSON, mother of the child. Refer to Dep. Kalahar's case report.

I asked Mr. Carlson for some current photographs of Vickie. Dep. Walsh handed me two (2) photographs to use in the search. I then left the home and responded to the front of Homer Davis Elementary School, 4250 N. Romero Road, and met with Det. Sgt. Witte, #411, Dep. Enfield, #328C, and Traffic Officer Creech, #424. After giving the officers a quick run down of the events that had transpired, Dep. Creech responded to the Circle K, Wetmore and Romero, Dep. Enfield began a sweep of the school ground area, and Sgt. Witte and I began checking the area of Root Lane and Pocito Place. Refer to said officers Supplements for further details.

Using the intersection of Root Lane and Pocito Place as my starting point, I began to do a sweep of the residental area, calling out Vickie's name over my outside speaker and telling her to come outside, if she was in someone's home playing. I drove a criss-cross pattern through the development, with negative results. I then returned to the intersection.

At the intersection, I met with Sgt. Kilpatrick, #139C, and Sgt. Paul Pederson, #302. I advised Sgt. Kilpatrick that I was going to do a door-to-door search of the Park-El-Monte Apartments located at Root Lane and Romero Road, street address, 4213 N. Romero.

Disclosures Made JUL 5 1985

DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES AND TO UNAUTHORIZED PERSONS IS PROHIBITED BY PRIVACY & SEC. LAWS.

At 1720 hrs., I began going door-to-door, asking people if they had seen anything or heard anything, with negative results.

Disclosures Made NOV 0 1 1984

P.C.S.D. 503

INCIDENT REPORT — D.D.S. NARRATIVE

Thomas 407 163 5/82

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	1920 W. Hadley/ Root Ln. & Pocito Pl.		26.04	C	20	2 of 5
Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By	
	D. Aubry	329C	9/17/84	1635		
Typed By	I.D.	Date Typed	Time	Storage Code		
		9/18/84	1000			

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

The apartment complex consists of five (5) buildings, each two (2) stories high. Downstairs units are numbered 101 through 118, and upstairs are numbered 201 through 218. The present manager lives in apartment 106. At the time I did door-to-door, the manager was not home, but her daughter was, and she had no knowledge of the child. At the time I did the door-to-door, several residents were not at home, and approximately eight (8) apartments were vacant. I did a window check of the vacant apartments, with negative results.

At 1810 hrs., I returned to the Command Post, which had been set up at Homer Davis School. I advised Sgts. Kilpatrick and Pederson of the results of the apartment search. I was then requested by Sgt. Pederson to check the homes from Root Lane to Wetmore on Romero, which are directly across the street from the school. The first three (3) homes yielded negative results, but at the fourth home, which is 4259 N. Romero, I met with the following people, all who live at the home: LOREN D. MILLS, NORMA ATKINSON, TERRY ATKINSON and CHRISTINE ATKINSON, all of whom are adults, along with approximately 6 to 8 children. The home phone number there is 888-2776. Mr. Mills advised me that his nephew, JOHN ATKINSON, age 4, had told his mother a story that I might be interested in hearing, and I asked if I could speak to John. John's mother, Christine, brought John out front, and told him to tell me what he had been telling her. John said that he had seen a girl hit by a car on Root Lane just off of Romero. He identified the two (2) streets by pointing to Romero and saying the car turned off of that street on to that street, pointing to Root Lane, and heading that direction, pointing West. He said the car was a race car, brownish-orange in color, and that it had hit the girl when she came on to Root Lane. I asked John if he saw what happened to the little girl after she was struck by the car, and at this point, John became confused and excited, and said she was picked up by the helicopter, point to DPS Ranger 32, which was landing in the Homer Davis schoolyard. I then got John's attention again, and asked him if the girl ran out or walked out in front of the vehicle. He said she was on a bicycle, and the bicycle had been left there. I then asked him if he could tell me what she was wearing in the way of clothing. He pointed to a little girl who was standing nearby, who was wearing a dark blue jumper dress type outfit, and he said, "Like that, except red and blue". I then attempted, again, to ask him if he saw what happened to the little girl after she had fallen down. He started to say that the woman driver had put her in her car, but then again became distracted and said no, she rode in the helicopter and then again pointed to DPS Ranger 32, which was now taking off from the Homer Davis schoolyard. At this point, John became too engrossed in the helicopter for either me or his mother to get him to say anything more. I advised Mrs. Atkinson to please

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P.C.S.D. 503

INCIDENT REPORT — D.D.S. NARRATIVE

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
840917040	1920 W. Hadley/ Root Ln. & Pocito Pl.	26.04	C	20	3 of 5

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	D. Aubry	329C	9/17/84	1635	

Typed By	I.D.	Date Typed	Time	Storage Code
		9/18/84	1000	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

stay at home and either myself or a detective would be getting back with her. She stated that the family was going to stay either at home or across the street at the school, and help out any way they could, and that she would keep talking to John about what he saw.

As I started back across to report the above information to Sgts. Pederson and Kilpatrick, two (2) men from the apartment complex walked up to me, and one of them identified himself as STEVE NAVEZ from apartment 211, and that after I had left the apartment complex, he and his brother-in-law, had remembered an incident with his brother-in-law's wife that had occurred at the laundromat area at the complex approximately one (1) week ago, reference a woman trying to abduct his nephew. I called Det. Sgt. Witte across the street, and he came to my location, and Mr.Navez relayed the information to him. Refer to Sgt. Witte's Supplement.

I then continued across the street and advised both Sgts. Pederson and Kilpatrick of the information I had received from John Atkinson, and what information Det. Witte was obtaining from Mr. Navez. I was then requested by Sgt. Kilpatrick to take the 8 x 10 photograph of Vickie down to I.D. and have several copies run off. Sgt. Pederson advised me that I.D. was standing by and, once the photographs were completed, to return them to the Command Post. I left the area at 1850 hrs. and arrived at I.D. 1910 hrs., and met with I.D. Tech Paul Freeman, and we began to run off 30 Polaroid copies of the picture. At 1935 hrs., I returned to the Command Post with 28 photographs and the original 8 x 10. The photographs were turned over to Sgt. Kilpatrick.

At 1955 hrs., Sgt. Kilpatrick instructed me to assist Det. Barkman, #175, in doing a second door-to-door interview and search of the apartment complex at 4213 N. Romero. Det. Barkman advised me that he would do the interviewing and my purpose was to be high profile because of my uniform. Det. Barkman and I began the door-to-door of the complex, while K-9 Unit Dep. Clark, #569C, with the assistance of the manager's daughter, did a search of all vacant apartments in the complex. The interview and search of the complex was completed at approximately 2135 hrs. REfer to Det. Barkman's Supplement for details of interviews. We then returned to the Command Post, at which time Det. Barkman went over the results of the interviews in the presence of Sheriff Dupnick, Maj. Douglas, Sgts. Witte, Callen, and Pederson, and myself.

At 2145 hrs., Maj. Douglas requested that I go with him and the school principal, JOHN MC CARTHY, to the classroom where Vickie's desk was. Maj. Douglas and I did a search of the desk, and all books and papers in the desk. The only article found of any interest

PIMA COUNTY SHERIFF'S DEPARTMENT

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Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	D. Aubry	329C	9/17/84	1635	

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was a circular-cut yellow piece of paper with a pencil-written phone number of 888-0236. After leaving the classroom, we returned to the main office and checked this phone number to the student information card in the office on Vickie. The phone number was not one of the ones listed. I then advised Det. Barkman and turned the slip of paper over to him.

At 2210 hrs., I went back to the easement alleyway running north off of Root Lane, between Romero and Pocito Place, and searched the area. At approximately 100 yards in from Root Lane, under an overgrown bush, I found the remnants of a white and blue checkered shirt, and next to it, what appeared to be an old cap, tan in color. In the middle of the cap were approximately 4 to 5 newborn kittens. Just north of the bush was an empty bottle of beer, which appeared to have been dropped in the last 24 hours. The rest of the alley yielded negative results.

At 2230 hrs., I returned to the Command Post, and met with Lt. Starr, #262C, and Dets. Popp, #630C and VanSkiver, #466C. I went over the information that had been relayed to me by John Atkinson, and was instructed by Lt. Starr to get the names of the family, and have John's parents speak with Dets. Popp and VanSkiver.

At 2255 hrs., I had Mr. Terry Atkinson and his wife, Christine Atkinson, respond to the office of Homer Davis Elementary School, where I introduced them to the detectives. Refer to detectives Supplements and taped interviews for further details.

At 2300 hrs., I responded to 1920 W. Hadley to see if I could assist Dep. Kalahar. While at the residence, Det. Popp arrived and advised Sgt. Kilpatrick that he had received some information that was developing into a strong lead, information that Vickie had been seen at the Tucson Mall. Sgt. Kilpatrick advised Det. Popp that he and I would assist the detectives in any way necessary or useful. At 2345 hrs., Det. Popp requested that Sgt. Kilpatrick and I meet with himself and Det. VanSkiver at the upper level, north entrance of Mervyn's Department Store in the Tucson Mall.

At 0005 hrs., we met with Det. Popp and a Security Officer for Mervyn's, who let us into the department store. We began going through the employee time book to determine how many employees had been working in the store between 1600 hrs. and 2100 hrs. on 9/17/84. Det. Popp then began calling the employees. Phone calls were completed at approximately 0100 hrs. Refer to Det. Popp's Supplement for details.

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P.C.S.D. 503 **INCIDENT REPORT — D.D.S. NARRATIVE** 5/1/82

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	1920 W. Hadley/ Root Ln. & Pocito Pl.		26.04	C	20	5 of 5
Connect-Up Report Number	Reporting Officer	Badge	Date	Time		Reviewed By
	D. aubry	329C	9/17/84	1635		
Typed By	I.D.	Date Typed	Time	Storage Code		
		9/18/84	1000			

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

At 0110 hrs., I returned to 1920 W. Hadley, where I briefed Dep. Kalahar of the results at Mervyn's,and also advdised him, per instructions of Sgt. Kilpatrick, that both he and I were to clear the Hadley address, and after getting some rest, complete our paper work. After Dep. Kalahar had spoken briefly with the parents, he, the Crisis Unit and I, all cleared the area. Approximate time 0130 hrs.

This Supplement completed 9/18/84, 1230 hrs.

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P.C.S.D. 503 **INCIDENT REPORT — D.D.S. NARRATIVE** 8/1/82

Exhibit 42

THE FOLLOWING WILL BE THE STATEMENT CHRISTOPHER ALLAN BECKLEY. THIS STATEMENT WILL BE TAKEN AT CHRISTOPHER'S RESIDENCE WHICH IS 4637 NORTH EDGEBROOK PLACE, TUCSON, ARIZONA. IT INVOLVES SHERIFF'S OFFICE CASE #84-09-17-040. THIS STATEMENT IS BEING TAKEN BY DETECTIVE ROGER POPP, BADGE #630 AND DETECTIVE VAN SKIVER BADGE #466. THE DATE OF THE STATEMENT IS 09-17-84. THE TIME OF THE STATEMENT IS 1907 HOURS.
LEGEND: Q. = DETECTIVE POPP A. = CHRISTOPHER BECKLEY

Q. Christopher, could you tell me your full name and give me your date of birth, when you celebrate your birthday?
A. My name is Christopher Allan Beckley and uhm I was born April 25'th, 1975.

Q. What's your home address?
A. 4637 North Edgebrook Place.

Q. Where do you go to school?
A. Homer Davis.

Q. What grade are you in?
A. Fourth.

Q. Do you know your phone number at home?
A. 293-9773.

Q. Did you go to school today?
A. Yeah.

Q. Do you know a Vickie Hoskinson?
A. Uhm-hmmm(yes).

Q. How long have you known her?
A. Uhm probably about a week or something, uh last Friday uhm I went to Travis' house, and I saw her and then uh,

Q. Okay, uh you were friends with Travis Spencer?
A. Uhm-hmmm(yes).

Q. How long have you known Travis?
A. Since second grade, middle of second grade, uhmmmm,

Q. You're in fourth grade now, a couple of years then huh, you guys are pretty good friends?
A. Inaudible.

Q. Okay,
A. Yeah.

Q. Where did you go after school today?
A. I walked home with Travis.

Q. Okay, which route did you take home from school?
A. Inaudible.

Q. Whi, which way did you come home from school?
A. Well he was just going, I went, I went across the street, in this cross uhm area and then I went a little ways and then I went on uh, a little path and then I was going through the little bushes, and stuff into Mack's house.

Q. Now Travis lives on Pocito Place, which is one street over from Romero, that big street where the school's on, right?
A. Inaudible.

Q. Remember what time this was?
A. When I saw the, the car?

Q. Yeah, what time you were walking to Travis' house?
A. Probably about uhm 2:30.

Q. 2:30?
A. or 2:20 around there.

Q. You sure it wasn't a little bit later?
A. Uhm-hmmm(yes). We come home from school around 2:00 and then we, that's uh then we get, we're out, all out about 2:10.

Q. About 2:10?
A. And then we, uh I got, this this around there about 2:20, maybe 2:15, around there somewhere.

Q. Uhm-hmmm(yes). Okay, do you remember when I talked to you earlier when we were over Travis'?
A. Uhm-hmmm(yes).

Q. Okay, and then you said it was a little bit later, it was probably around 3:30, something like that.
A. Uh-uh(no).

Q. Are you sure?
A. Nu-uh(no). That was a long, long time ago. I mean, that was far, far away.

Q. Uh-huh(yes).
A. That was before uhm we even, someone even told us about it, uhm, uh about that she was missing or anything.

Q. Way before? When you were walking with Travis did you, did you see Vickie?
A. What?

Q. Did you see Vickie?
A. When?

Q. Did you see her when you walking to Travis'?
A. Uh-huh(yes).

Q. Where did you see her?
A. Up by the in, well she was probably in the middle of the street, uhm riding her bike, not that fast, and then we

Q. Did you,
A. saw the car.

Q. okay, do you remember what, what she was wearing?
A. Not really. I think it was pink and white.

Q. Was it uh jeans?
A. No, it was just uhm sort of like a skirt, about to here.

Q. Okay, did you see any cars?
A. Any other cars?

Q. On the street, any cars on the street?
A. Yeah.

Q. What kind of cars?
A. Well a couple of parked on this side of the road.

Q. Uhm-hmmm(yes).
A. And uhm and and I uhm, that's all the cars I saw except that brown car.

Q. You saw a brown car?
A. Uhm-hmmm(yes).

Q. How far away was the brown car from you?
A. Probably,

Q. Can you tell how many houses maybe? Or how far up from,
A. about three houses or four houses away.

Q. Three or four houses away? What side of the street was he parked on?
A. Which car?

Q. The brown car.
A. It was driving.

Q. It was driving?
A. A little, it it was real slow.

Q. Okay, where was Vickie when this car was driving real slow?
A. She was about uhm the third house over and she was driving kind of uhm slow and then that's when the car went there like this, and then uhm and then she slowed down and the car, it wa, it was

real slow and then it sort of stopped. She, she uhm stopped about here and then just saw her, look over, that's when we went in the house and then we came back out and she was gone and the car was gone.

Q. You saw her kind of look over to the car?
A. Inaudible.

Q. Okay, did she stop her bike at all?
A. Uh-uh (no). She just went real slow.

Q. And you guys went real slow? Did it look like the person in the car was looking at her?
A. Sort uh.

Q. Sort uh? Okay, then you guys went in the house?
A. Uh-huh(yes).

Q. Both of you?
A. Uh-huh(yes).

Q. How long did you and Travis stay in the house?
A. About twenty minutes.

Q. Twenty minutes? And when you came back out did you see Vicki?
A. Uhm-mmm(no).

Q. Did you see the same brown car?
A. Uhm-mmmm(no).

Q. Now, let's talk about the brown car a little bit.
A. Okay, right.

Q. I see you drew me a nice picture here. Brown, now there's all kinds of colors brown, right, so there's light brown, and there's kind of dark brown, like this, it was a,
A. Some,

Q. I don't want to put words in your mouth, it's so hard, would it be a light brown or a dark brown to start?
A. Well it was sort of in the middle. It was sort of lightish, uhm,

Q. Can you point out anything
A. lighish-dark,

Q. in the house here that would be almost the same color?
A. probably the dark wood on the stool, ar, around like that.

Q. On the stool here?
A. Uhm-hmmm(yes), not the top part but the the other part.

Q. Uhm-hmm(yes).
A. The legs.

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Q. Was it a shiny paint job?
A. Not really.

Q. Were there any marks on the cars that you could tell? On the paint?
A. A couple of light spots.

Q. A couple of light spots? Like maybe when you'd uh have a dent or something, and you wanted to _____the dent out? So the spots were lighter than the color of the car?
A. Uhmmmm, a little bit lighter.

Q. Where were the de, where were the light spots on the car?
A. There was one on the hood, I I mean not on the hood but the uhm trunk, was on the trunk. And there was one by this light right here, that's all I saw

Q. Where, where on the trunk would you say?
A. probably about here on the top of the trunk.

Q. How far away do you think you were from the car?
A. About uh, uhmm maybe ten yards or or eight yards.

Q. And that's three or four houses down from Travis'?
A. Uhm-hmmm(yes).

Q. Possible it could be a little farther?
A. Maybe.

Q. Do it have any stickers on the bumper or the back or on the window or anything?
A. No.

Q. Like a radio station or anything like that? A college?
A. No,

Q. What about the license plates? What did they look like?
A. Well it was kind of a maroon color, the new Arizona plate and it was Arizona.

Q. Okay, do you know anything about the back tail lights?
A. They were just uhm I, I don't think there was really five lights, uh there might have been but,

Q. Uhm-hmm(yes).
A. there was a couple of lights and I think one reflector on the back.

Q. Two? Anything about the bumper stand out, catch your eye?
A. No.

Q. Could you see inside the car?

A. Sort of.

Q. Why sort of?
A. Uhm, because it has sun, sunblocked uhm windshield, no I mean back windshield?

Q. Just on the back?
A. Well,

Q. Could you see, you couldn't
A. I couldn't really tell on the front.

Q. seem to tell could you? I mean, you just saw the car from behind right?
A. Uhm-hmmm(yes).

Q. Okay, how old would you say this car was?
A. Probably maybe one year, two years old.

Q. Do you know sports cars?
A. What?

Q. Do you know what sports are?
A. Yes.

Q. Was it a sports car?
A. Uhm, it was did you see that that big yellow car outside?

Q. Uhm-hmmm(yes).
A. Uhm, the big one? That was probably about like that? It was a fancy kind of car sort of, and it was kind of old.

Q. Kind of old? Older than that one in the garage?
A. Uhmmmmmm, I don't know. I don't know how old that one is in the garage.

Q. Okay, did it have any antennaes on it or anything that you could sticking out?
A. Oh yeah, there was a radio antennae, he had.

Q. Radio antennae?
A. Uh-huh(yes).

Q. In the front though right?
A. Yeah.

Q. You could see it? How about the tires, did you, what kind of tires were they?
A. They were uhm, they were tracks that had this shape like this and then it had another one here and then another one here and then this went down like that, three like sort of straight curvy lines down, sort of they looked like three straight lines, going down, but

Q. Uhmmm(yes).
A. I don't think there's any tires like that.

Q. Uhm-hmmm(yes).
A. So it's probably as little is,

Q. Have you ever seen a car like that before?
A. Maybe a different kind of brand, and a different color.

Q. Uhm-hmmm(yes).
A. Not that one.

Q. Okay, anybody, any of your your friends or your mom or dad or their friends or any neighbors, you ever seen a car like it?
A. Uhm,

Q. Or close to it, maybe not the exact same kind of car, you know what I mean close?
A. Let's see, uhm, I think so.

Q. Okay, Rich do you have any questions about the car?
V. Uhm, we, we seem to be a little confused about the, the uh age of the car, okay? You said it was kind of an older car and then you said maybe a couple years older. Uh a couple of years old isn't really an old car you know?
A. Yeah.

V. Do you uhm do you follow cars? Do you like hot rods and stuff like that? You don't, you don't get into cars too much at all so, you, you really don't know, how old it was. Was it kind of beat-up looking?
A. Sort of.

V. It was a little beat-up so do do you think it was maybe kind of an older car, or it wasn't taken good care of?
A. I guess.

V. I guess, okay, uh but it was, it was a bigger car, like, like the one out there in the garage?
A. Yeah, it it, was a little

V. The big Chevy?
A. uhm smaller, wide car.

V. It was smaller than the the Chevy Impala?
A. Yeah.

V. Are you talking about the Chevy Impala?
A. Yes.

V. It was smaller than that?
A. Uhm-hmmm(yes), it was a little smaller and wideness.

V. In width, yeah, okay. It didn't have, did it have fancy wheels on it or anything like that?
A. Uhm-mmmm(no).

V. Was it just kind of like a a regular car? It didn't have, it didn't have the mag wheels or the the sporty stuff like that on it?
A. Uhm-mmmm(no).

Q. How many doors did it have?
A. Two on each side.

Q. Two on each side? Anything else Rich?
V. Have, have you ever seen that car before?
A. Uhm-mmm(no), no.

V. Have you ever seen a car like it before? Kind of a a popular car, did you ever see one,
A. No but I seen a couple like it before.

V. You seen a couple so there's a few of em around? Uh, the guy, did you get a much of a look at the guy?
A. Not really.

V. Not really? Did you, did you think maybe you recognized him or have you ever seen him around anywhere before?
A. Uhm-mmmm(no).

V. How long have you lived here where you're at?
A. Uh, since the middle of second grade.

V. The middle of second grade? So you just kind of moved into this house, right? How where did you live before?
A. In Phoenix.

V. You lived in Phoenix? And then you moved, moved to Tucson? In, in this house here?
A. Uhm-hmmm(yes).

V. Okay, so you've been here for how long?
A. About two and a half years, no uh
U. About a year and three quarters.
U. December of 1982.

V. So you've been around the neighborhood for a while?
A. Uhm-hmmm(yes).

V. You just have never seen that car before?
A. Inaudible.

V. And you saw this, just after you got out of school, you and your friend were walking home,

A. Uhm-hmm(yes).

V. and when you were coming up to Pocito, where your friend lives, that's when you saw the car?
A. Yep.

V. So and you get out of school at about uh 2:10, so you think maybe it was around 2:20 or so when you saw em?
A. Uhm-hmmm(yes).

V. How do you know Vickie? Does she go to your school?
A. Yeah.

V. Was in your class?
A. Uh,

V. Was she in a older class or?
A. younger,

V. Younger?
A. she's in Travis' sister's class.

V. Travis' sister's class? So you know her to see her, to talk to her and stuff like that? So there's no doubt in your mind that that this is the same girl that we're talking about? Yeah?
A. I don't know what you mean by that.

V. Well, uh is is is this Vickie that you saw riding the bicycle?
A. Uhmmmmmmmm(yes).

V. Okay, so you're sure it wasn't some other girl?
A. Yeah.

V. You know Vickie and uhm,
Q. The only think I have a little question on is the time again uh, you're saying about 2:30 and according to Vickie's mom and Jennifer's uh Travis' sister, it was around 3:30, she was there.
A. yeah but we didn't get home, we didn't get home that late. Uh we only saw it when we came home.
U. Maybe I can help out a little. When I called you at Travis' because you didn't call me after school? That was about 3:15, now was this after or
A. Before.

U. it was before.
V. About how long before, any any idea?
A. Probably maybe an hour or thirty minutes before.

V. Okay, so again too, you're talking about right after you got out of school and you didn't, you didn't play at the school ground or anything else?
A. What happened, we got out of school and me and Travis were walking to get here with the rest of the class that walks and or

rides bikes and we went past the classroom. We went down the street and down the path and to his house.

Q. _____you're not gonna get in no trouble if it was you know, if you were a few minutes late, don't worry about that. Nobody's gonna get you in trouble. We just have to be sure about the times. Cause see, we have, we have a little problem with the times. You're saying a little bit earlier than it actually really, supposedly happened. So if it was, if it was a little bit later, don't worry about you know, your mom's not gonna yell at you. I'm certainly not gonna yell at you.

U. Yeah.

Q. Your dad isn't gonna yell at you. He ain't gonna yell at you. So if it was a little later, you know, like I said before, when I first talked to you at the house there, you guys said it was a little later than that. It was about 3:30 you told me. So if you goofed around at the school ground or didn't str, directly to Travis', nobody's gonna care.

U. Yeah, I asked him on the way home if it was before or after the call to him, and he said it was before.

V. Okay, well the the reason that we're asking you Chris, is because we think that it happened, we think that maybe she vanished or got lost after that, cause we've had other people that saw her maybe around 3:30 or so, 3:15. Okay, so that's why we think maybe it was around 3:30. And that, that's why it's kind of important to know exactly what time you saw her.

A. But what might have happened is, maybe the car went by by her and she got scared and she dropped her bike and ran away.

V. Uhm-hmmm(yes). And y, you stayed in your house, in your friend's house for awhile?

A. Uhm-hmmm(yes).

V. And then you came back out, and did you see her bike in the road or anything? Or did you ever see her bike?

A. Well not really we just, I just, uhm glanced at it, I just turned my head and saw uhm just the street and then, and I didn't really look closely. Then, I I told Travis I wanted, let's play inside his house. And so we went back in.

V. So you never saw her bike laying there or anything else?

A. Inaudible.

V. Okay,

Q. What can you tell us about the man?

A. Well he had a moustache and I couldn't really tell the color of his hair or anything and we was probably about twenty-nine years old, around there.

U. Pretty good huh, twenty-nine, he's twenty-nine.

Q. Was he a white guy?
A. _____.

V. How how long of hair?
A. It was probably about the same as my dad's.
U. Pretty short.

V. Kind of short? See what kind of shirt he had on?
A. Dad turn around, show him the back of your hair, yeah probably about there.
U. Did it, did it look like that?
A. It wasn't down straight, it was cut, it looked shaggy _____.
U. More shaggy in the back.
A. Okay, you can turn back around dad.

Q. Could you see what kind of shirt he had on?
A. Uh-uh(no).

Q. Like Rich asked you before, you never seen him before?
A. Uh-uh(no).

Q. Okay, Rich anything else? I don't have anything else. Chris is there anything uh that I forgot to ask you, that might be important?
A. I don't think so.

Q. Okay, this statement will be concluded at 1926 hours. 9-17-84.

I HAVE READ THE FOREGOING ELEVEN PAGE STATEMENT AND FIND IT TO BE MINE AS GIVEN TO DETECTIVES POPP AND VAN SKIVER ON SEPTEMBER 17, 1984.

_____
CHRISTOPHER ALLAN BECKLEY DATE

WITNESSES:

_____
DETECTIVE POPP DATE

_____
DETECTIVE VAN SKIVER DATE

Disclosures Made NOV 0 1 1984 1

TRANSCRIBED BY:

Andrea Joyce Dennis 9-26-84

ANDREA JOYCE DENNIS DATE

Exhibit 43

FD-302 (REV. 3-B-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 9/21/84

Travis Spencer, 4279 N. Pocito, was contacted by Special Agent Reuben V. Martinez and Pima County Sheriff's Office Detective Sue Seligman at the Davis School, 4250 N. Romero Rd. They respectively identified themselves and indicated that he was being contacted regarding the 9/17/84, disappearance of Vicki Hoskinson. In this regard, Spencer furnished the following information:

Spencer, who is nine years old, advised that he is well acquainted with Vicki Hoskinson, indicating that they both attend the same school.

He advised that on 9/17/84, at approximately 2:30 pm, he and Chris Beckley were walking home from school when they saw a car being driven by a female very slowly. He then noticed Vicki Hoskinson who was riding her bike. He explained that both of them was quite a ways away from him, but he felt certain that the girl on the bike was Hoskinson. He indicated that it appeared that the vehicle was being driven alongside Hoskinson.

Spencer advised that he continued on home and did not see a confrontation between Hoskinson and the vehicle's occupant.

Spencer advised that he recognize this vehicle as having seen it before near his house.

He described the vehicle as being brown in color and possibly having four doors. He remembered that the vehicle had some gray spots on the rear of the vehicle.

Spencer was unable to furnish a description of the lone occupant, other than the driver was a female.

JUL 5 1984

Investigation on 9/19/84 at Tucson, Arizona File # PX 7A-1196

by SA Reuben V. Martinez
Detective Sue Seligman RVM/rvm Date dictated 9/21/84

Exhibit 44

Page + Nimeyer

#216 Eric Riegler 9 + 293-8501
Shawn " 10
Sue " 33
Eric yesterday & Thurs saw a brown car 4 dr. dark med. size which traveled slow around him in a suspicious manner - about 1430 hrs. windows were dark tinted - near (K) and mobile park on Romero Rd.

#215 Kathy Bondi 25 293-6884
James " 25 (very bad smell at this place)

#212 Pocito Will volunteer to help.
Henry Scheytt 62 887-3538
Elfreada " 55
Dean " 27

#131 N. Romero Rd. - no response
#131B Larry Dolan 26 293-4462
Melissa " 25
Jessica " 4
Christopher " 2

M. S. Mitchell no # Romero Rd - no response.

#157 Gregorio Cr. Diana Roberts 41 888-2489
Marcia Roberts 14

Wallace Jones 83 887-3779
Irene " 74
#172 Gregorio Cr.

Disclosures Made NOV 01 1984 1

Disclosures Made JUL 5 1985 1

Exhibit 45

9/24/84
4:50

Steve Low
Motor Vehicle Dept
628-1331 - Ext 19

Ann Fries, answers description of lady in composit, said to sell newspaper subscriptions to people getting licenses. Very strange acting, lives in Summit + La Cholla area.

9-29-84 TAK
9:30 A.M.

Vivian Athey
6631 N. Paseo de Gabriel
Ph: 297-4928

Saw at Livelo K a lady that looked like composite picture (drawing) but had blond hair - Car license BTW 618 - Red car

Then while driving on La Cholla 8:45 A.M.
over

saw a brown station wagon again a woman looked like picture wearing floppy hat w/a little girl also had same type hat on her head - Brown S/W did not see license plate
Driving from Omar to La Cholla
NFI

Exhibit 46

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE					1 of 1
Connect-Up Report Number	Reporting Officer	Badge	Date	Time		Reviewed By
	DEP. LONGORIA	626	09/18/84			
Typed By	I.D.	Date Typed	Time	Storage Code		
RITA G. UZUETA	1607	10/03/84				

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

On Tuesday, September 18, 1984, I met Mr. Don Gruver at the Acacia Mobile Park on Shannon Road. Mr. Gruver is the manager, and has information on two subjects that have certain features that resemble the composite he was given by the Sheriff's Auxiliary Volunteers. The composite of the female subject is the composite referred to by Mr. Gruve

Subject No. 1 - J.R. Hover or Lydon P. Hover, 18 - 19 years of age, W/M, 5'9", 145 lbs., brown hair, shoulder length. Has moved out of the park to unknown place. Possible address: 14320 Massingale. Subject doe wear earrings. Unable to locate.

Subject No. 2 - Jimmy (Brown) Canal, 20 years of age, black hair, wears earrings, drives 1978 Dodge or Ford. No further information. Possible license number, PKD-807. Mr. Gruver states Catalina Deputy Calahar, #209, knows this subject, J. R. Hover.

Information: Space No. 9, Acacia Gardens Mobile Home Park. Mrs. Nettie Saint, phone number 887-1165, related the following. On Monday, September 17, 1984, at approximately 1430 hours, she saw an Indian female on the park property looking at the children playing. Mrs. Nettie walked toward the Indian female, and she drove off at a high rate of speed leavi the park area. Subject was driving a brown and white station wagon, unknown model, no further description on vehicle. Female is described as an Indian female, 30 - 50 years of age, dirty blue jeans, dirty shirt, approximately 140 lbs. The female subject was very nervous and acting ve suspicious. The vehicle made a loud noise, as it left the park. It rattled, as if something was loose, when it went over speed bumps.

JUL 5 1985 1

Disclosures Made NOV 0 1 1984 1

Exhibit 47

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	POCITO AND ROOT LANE					1 of 1
Connect-Up Report Number	Reporting Officer	Badge	Date	Time		Reviewed By
	DET. K. BRENNAN	506 SX	09/19/84	1700		
Typed By	I.D.	Date Typed	Time	Storage Code		
RITA G. UZUETA	1607	09/20/84				

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Contacted Gail Murphy, 5332 N. Royal Palm Dr., 293-4159, who stated that a white male and female in a tan SW followed her from school. She last saw the vehicle 1½ hours before contact. NFI.

Disclosures Made NOV 01 1984

Disclosures Made JUL 5 1985 1

10.

P.C.S.O. 503 INCIDENT REPORT — D.D.S. NARRATIVE 5/1/82

Exhibit 48

THE FOLLOWING WILL BE THE STATEMENT OF MRS. CHARLENE DENISE NANEZ. SHERIFF'S OFFICE CASE #S4-09-17-040. THE DATE OF THIS STATEMENT IS 9-18-84. THE TIME OF THE STATEMENT WILL BE 1204 HOURS. TUE STATEMENT IS BEING TAKEN AT THE SHERIFF'S OFFICE COMMAND POST LOCATED ON WEST PRINCE ROAD. PRESENT ALSO IS DETECTIVE RICH VAN SKIVER, BADGE #466 PIMA COUNTY SHERIFF'S OFFICE. QUESTIONS BEING ASKED BY DETECTIVE ROGER POPP BADGE #630, PCSO.
LEGEND: Q. = DETECTIVE POPP A. = CHARLENE NANEZ
V. = DETECTIVE VAN SKIVER

Q. Charlene could you state your full name for me?
A. Charlene Denise Nanez.

Q. What Is your date of birth?
A. 03-19-1964.

Q. What is your home address?
A. It's 4213 North Romero, apartment 211.

Q. How long have you lived at that address?
A. For a little over a month now.

Q. Okay, what's the name of the last school you attended?
A. Pima College, Community College.

Q. Okay what's the highest grade you attained?
A. Uhm two years in college.

Q. Two years in college? Okay, who do you live with Mrs. Nanez?
A. I live with my eon Joseph Nanez, and my husband Johnny Nanez. And a brother-in-law, Sammy Nanez.

Q. Sammy?
A. Yes.

Q. We received Information, Charlene, that at approximately two weeks ago, on a Sunday, Sunday evening that you had an altercation, with a, a a woman, in the apartment complex?
A. Uhm-hmmm(yes).

Q. Over your son Joseph. Can you tell me ap, uh uh uh approximately when that was?
A. It was, it was less than that, It was a month ag, I mean a week ago Monday.

Q. A week ago Monday?
A. Cause I was doing laundry.

Q. Okay it was a Monday?
A. It was a Monday, was that my last day off, Sunday?
V. I think Bo.

Disclosures Made NOV 0 1 1984 1

Disclosures Made JUL 5 1985 1

A. Yeah, it was a Monday.

Q. What time of the, day or evening was it?
A. It was about 8:00, between 8:00 and 8:30.

Q. Okay and you were in the laundry room of the apartment complex?
A. Uhm-hmmm(yes).

Q. Where is the laundry room located?
A. The laundry room was located on uh the far east side of the building.

Q. Uhm-hmmm(yes).
A. In the center of the complex.

Q. Was your little boy with you then?
A. Yes he was.

Q. Was there anybody else in the laundry room?
A. Going in and out, at that time, there was nobody in there, when this happened.

Q. Did anything unusual happen while you were doing your laundry?
A. Yes I had a crazy lady go In there, as my son was playing with the knob on the door, of the laundry mat, he was putting in the key in there and the crazy lady come around the corner, grabbed him and started taking him outside, and then I grabbed him.

Q. Okay, you're saying a crazy lady came in and grabbed him?
A. Grabbed him, actually, physieally just,

Q. Okay he was inside the laundry room?
A. picked him up. He was inside the laundry room, about five feet away from me.

Q. She picked him up?
A. She picked him up.

Q. And then she tried to leave the laundry room?
A. She tried to leave the laundry room, in fact, she was going out tbe door as I stopped her.

Q. Okay, can you describe this woman to me?
A. She was a mexican lady, I believe in her early twenties, with bangs in the front, hair to the shoulder length, uhm dark, dark hair, light-colored skin. I mean she it wasn't a darkness, but she had a tan-colored skin, complexion.

Q. Uhm-hmmmm(yes).
A. Uhm, she had the high-cheekbones, and very full lips, and sh, was skinny, was wearing culottes, brown culottes,

Q. What color were they?
A. brown culottes.

Disclosures Made NOV 0 1 1984 1

Q. Okay,
A. and uhm eome sort of blue shirt.

Q. okay.
A. And she was drunk. I could smell that a mile away.

Q. You could smell,
A. Yeah.

Q. okay. Did you see any jewelry?
A. No I did not. I the only thing I can vaguely remember is a turquoise watch, and that was only cause I was looking at her hands.

Q. Would you say she was an attractive woman?
A. I would say she was.

Q. About how tall would you say she was?
A. About 5'4", 5'5".

Q. How about her build?
A. She was skinny built, but not skinny, skinny, average built.

Q. Had you ever seen her before?
A. No, I have never.

Q. Did your, had your,
A. I guess I did before that, as a matter of fact, she had, had gotten up, gotten up and walked across the laundry room, there before, maybe twenty minutes before she had tried taking him.

Q. that same day?
A. Yeah, she had gotten out of a little blue car and walked across and was going somewhere.

Q. A little blue car?
A. A little blue car, like a,

Q. Do you,
A. like a one of the Datsuns, the 910's, the longer ones. Like one of the,

Q was it a newer car, or an older,
A. it was an older car.

Q. an older car?
A. Probably in the early seventies.

Q. Had you ever seen the car In that, in the complex before?
A. No.

Q. That particular car, have you seen it einee?

Disclosures Made NOV 01 1984 1
Disclosures Made JUL 5 1985 1

A. No, I have not, but she said she wouldn't, I told her she was real crazy and everything, when she tried to pick up Joseph. I told her, I go something's wrong with you, you got problems, cause she started screaming that that was her little boy and that her little boy didn't get run over by a police officer, a month before that,

Q. Did get run over by a,
A. like she said, she said that he got run over by a police officer, and the police said that the little boy was dead, but that was her little boy. So she was definitely crazy. And I just took him away from her and told her she's got problems, to get out of there. I was real Irrate about It.

Q. did you have to fight her in any way to get your child back?
A. I had to like you know, pull the arms off of Joseph, and her arms away from him, tear em away like that.

Q. Did she say where she lived?
A. No she didn't, the only thing that gave me any sort of idea that she lived at, this when she said she had to, she was gonna finish going upstairs and finish her beer. That's the only thing,

Q. Did yoo s, did you see her going any,
A. that maybe, I seen her walking up,

Q. partleu,
A. toward the stairs. I wanted to make sure she left, so she was walking towards the uh,

Q. did you see her go up the stairs?
A. no.

Q. Have you seen her since this happened?
A. No I haven't.

Q. Uh at this point, you don't know If she lives there or or was visiting?
A. No I don't, I have no Idea.

Q. Did she, did you notice, did you detect any facial scars?
A. No. I do, well the thing about her Is she had the bangs, the bangs that flip down in the front.

Q. Uhm-hmmm(yes). How was her hair parted?
A. She had it, it was down the center, flipped down like this, uh let me think, and then longer straight, I mean straight, I mean straight to the shoulders.

Q. Did she speak with any type of accent?
A. No, she spoke perfect English.

Q. Perfect English? After you got your son back, did you continue to do your laundry?

Disclosures Made NOV 0 1 1984 1

A. I took him back up and set with his, like my brother-in-law, and said you watch him.

Q. Did you call the Sheriff's Department?
A. No I didn't, I just thought it was a drunk, crazy lady, that's all I took it as. Said she was drunk and when she got drunk, she starting thinking of her little _____.

Q. Uhm-hmmm(yes).
A. That's all I thought of It.

Q. Uhm-hmmm(yes). Did she mention the uh the little boy's name?
A. No she didn't.

Q. Any names?
A. She said it happened a month ago, that the police said that there had they were uhm chasing somebody and her little boy's ball ran out into the road, and and a police officer hit him.

Q. Did she say where it happened?
A. I took Is as Tucs, I she didn't. I don't know why I said that.

Q. Did you notice anything particular about her hands, did she have long fingernails or would they be working person's hands?
A. They looked like working person's hands. They were real rough, coarse.

Q. Okay, the blue car you saw her get out of again, you say It was po, uh uh possibly a Datsun?
A. Uhm-hmmmm(yes).

Q. Am I correct? What shade of blue?
A. None of these even have it, it was an old ding, oh that man over there in the blue jeans,

Q. Uhm-hmm(yes).
A. like his turquoise blue, like that.

Q. Oh yeah, turquoise blue.
A. Yeah, but a old, kind of, it's not shiny,

Q. Just faded?
A. or anything it's faded.

Q. Faded color? Did you notice the license plates?
A. Inaudible.

Q. Rich, Detective Van Skiver, is there any questions you'd like to ask, Mrs. Nanez?
V. I, I can't think of anything right now.

Q. Has your boy hurt in any way?
A. No he wasn't. He was shook up a little bit.

JUL 5 1985 1

Disclosures Made NOV 0 1 1984 1

Q. If you were to see this woman again,
A. I would definitely recognize her.

Q. You, you think you'd be able to recognize her?
A. Definitely.

Q. Is there anything that I may have failed to ask you that you think's important at this time, about the Incident?
A. Uhmmm that I think she's got some mental problems and uh,

Q. Has this statement been truth to the best of your knowledge and belief?
A. Yes.

Q. Has anyone forced you or promised you or tricked you in anyway to give me this statement?
A. No.

Q. Uhm, this statement will be concluded at 1214 hours on 9-18-84.

I HAVE READ THE FOREGOING SIX PAGE STATEMENT AND FIND IT TO BE MINE AS GIVEN TO DETECTIVES POPP AND VAN SKIVER ON SEPTEMBER 18, 1984.

CHARLENE DENISE NANEZ DATE

WITNESSES:

DETECTIVE ROGER POPP DATE

DETECTIVE R. VAN SKIVER DATE

TRANSCRIBED BY:

Andrea Joyce Dennis 9-25-84

ANDREA JOYCE DENNIS DATE

Disclosures Made JUL 5 1985 1

Disclosures Made NOV 0 1 1984 2

Exhibit 49

SUE UTAIR
742-6402
6261 N. TEA LEAF

Approached Monday a.m. by woman matching description - Woman met Ms Utair @ car & asked to watch her little boy @ K-mart @ Orange Grove/Thornydale

Exhibit 50

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Location of Incident					District	Beat	Page
84092055	Ina & Thornydale - Lucky Store					C	22	1 of 3
Connect-Up Report Number	Date Occurred	Time	Date Reported	Arrival Time	Clear Time			
	9/20/84	1830	9/20/84	1950	2105			

Reporting Officer	Badge	Follow-Up Officer	Badge
D. Aubry	329C		
Officer Name & I.D.	Agency	Officer Name & I.D.	Agency
Officer Name & I.D.	Agency	Officer Name & I.D.	Agency
I.D. Tech. Responding	Badge	I.D. Service Performed ☐ UNK ☐ Photos ☐ Fingerprints ☐ I.D. Advised ☐ Composite ☐ Other	

Additional Forms
☐ Accident Report
☐ Addendum
☐ Arrest Information
☐ Closure
☐ DWI Continuation
☐ D.D.S. Narrative
☐ Juvenile Complaint
☐ Juvenile Paper Referral
☐ Narrative
☐ People Continuation
☐ Property Continuation
☐ Vehicle Continuation

Forward Copies of This Report to:
Sgt. Paul Pederson, #302

Attending Physician	Phone	Who Transported	Hospital/Medical Facility

Person Code: V-Victim/W-Witness/D-Driver RP-Reporting Person/IL-Investigative Lead
Relationship Code: SP-Spouse/PA-Parent/GU-Guardian/CH-Child/OR-Other Relative/FR-Friend/BF-Boyfriend GF-Girlfriend/NE-Neighbor/EM-Employer or Employee/CW-Co-worker/STR-Stranger/UNK-Unknown

Code	No.	NAME: Last/First/MI (Nickname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Sub No.
V	1	KALINSKI, Arron	2/19/77	7	W	M	Str.	1

Home Address: Number/Street/Apt./City/State/Zip	Home Phone	Work Phone	Days/Hours
3455 W. Turkey Lane	744-4541		M-F 0800-1430
Work/School: Name/Address	**Injury**		
DeGrazia School	None		

Code	No.	NAME: Last/First/MI (Nickname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Sub No.
V	2	KALINSKI, Ginger		9	W	F	Str.	1

Home Address: Number/Street/Apt./City/State/Zip	Home Phone	Work Phone	Days/Hours
3455 W. Turkey Lane	744-4541		M-F 0800-1430
Work/School: Name/Address	**Injury**		
DeGrazia Cshool	None		

Premises ☑ N/A
Residential
☐ Apartment
☐ Hotel/Motel
☐ Mobile Home/Camper
☐ Single Dwelling (House, Townhouse, Duplex)
☐ Other Residential
Non-Residential
☐ Convenience/Groc.
☐ Dept. Store/Mall
☐ General Office
☐ Drug/Medical
☐ Fast Food
☐ Restaurant
☐ Bar
☐ Financial
☐ Mfg./Construction
☐ Public Building
☐ Service Station
☐ Other Structure
Non-Structure
☐ Fenced Yard
☐ Open Yard
☐ Park
☐ Other
Vehicle
☐ Auto
☐ Truck
☐ Cycle/Scooter
☐ Other

Structure
☑ N/A
☐ Occupied
☐ Unoccupied
☐ Uninhabited
☐ Abandoned
☐ Other

Structure Entry Point
☑ N/A
☐ Rear
☐ Front
☐ Side
☐ Roof
☐ Skylight
☐ Doggie Door
☐ Door
☐ Window
☐ Vent
☐ Wall
☐ Other
☐ Unknown

Means of Entry
☑ N/A
☐ Cutting
☐ Prying
☐ Gripping
☐ Picking
☐ Phys. Force
☐ No Force
☐ Other
☐ Unknown

Instrument
☑ N/A
☐ Key/Slip
☐ Prying Tool
☐ Hands/Feet
☐ Brick/Rock
☐ Bolt Cutter
☐ Unknown

Vandalism Means
☑ N/A
☐ Brick/Rock
☐ Bullet/BB
☐ Sharp Instrument
☐ Paint/Chemicals
☐ Other

Suspect's Actions
☑ N/A
☐ Victim Beaten
☐ Victim Blindfolded
☐ Victim Gagged
☐ Victim Handcuffed
☐ Victim Tied (rope/etc.)
☐ Demanded Money
☐ Other
☐ Followed Victim
☐ Telephoned Victim
☐ Threatened to Kill
☐ Used Notes
☐ Took Money from Register
☐ Victim Told Not to Call Police
☐ Used Vulgarity/Profanity

Vehicle Entry Point
☐ N/A
☐ Top
☐ Trunk
☑ Door
☐ Window
☐ No Forced Entry
☐ Other
☐ Unknown

Safe Info
☑ N/A
☐ Attempt
☐ Not Locked
☐ Pried
☐ Explosives
☐ Taken Away
☐ Combination Known

Weapon Type
☑ N/A
☐ Revolver
☐ Automatic
☐ Shotgun
☐ Rifle
☐ Sharp Instrument
☐ Club/Rock/etc.
☐ Hands/Fists/Feet
☐ Other
☐ Observed ☐ Implied

Firearm Descrip.
☑ N/A
☐ Unknown
☐ Blue Steel
☐ Chrome/Nickel
☐ Short Barrel
☐ Long Barrel
☐ Double Barrel
☐ Single Barrel
☐ Bolt Action
☐ Pump
☐ Sawed-Off
☐ Other
Caliber

Second Weapon Type
☑ N/A
☐ Revolver
☐ Automatic
☐ Shotgun
☐ Rifle
☐ Sharp Instrument
☐ Club/Rock/etc.
☐ Hands/Fists/Feet
☐ Other
☐ Observed ☐ Implied

Drugs/Narcotics ☑ N/A
☐ Opium/Cocaine
☐ Marijuana/Hashish
☐ Synthetic Narcotics/Glue/Paint
☐ Dangerous Drugs
☐ Peyote
☐ Other

Summary of Property All values in U.S. dollars S—Stolen R—Recovered

Clearance Code: 61.02 Miscelleanous Public

Value of Damage, Total $

Currency	Jewelry/Precious Metals	Clothing/Furs	Locally Stolen Motor Vehicles
S $ R $	S $ R $	S $ R $	S $ R $
Office Equipment	**TVs/Radios/Cameras/etc.**	**Firearms**	**Household Goods**
S $ R $	S $ R $	S $ R $	S $ R $
Consumable Goods	**Livestock**	**Miscellaneous**	**TOTAL**
S $ R $	S $ R $	S $ R $	S $ R $

Date Entry I.D. **Date & Time**

☐ Stolen Vehicle ☐ Missing Person ☐ Found Person ☐ Fugitive Arrest
☐ Recovered Vehicle ☐ Runaway Juvenile ☐ Returned Runaway ☐ Stored Vehicle

Reviewed by

P.C.S.D. 500A

INCIDENT REPORT — BASIC CASE

10/1/83

PIMA COUNTY SHERIFF'S DEPARTMENT

Report Number	Subject Code: A—Arrestee/M—Missing Person / S—Suspect / D—Driver / F—Found / RJ—Runaway Juvenile	Relationship Code: SP—Spouse/PA—Parent/GU—Guardian/CH—Child OR—Other Relative / FR—Friend / NE—Neighbor / BF—Boyfriend / GF—Girlfriend / CW—Co-worker / STR—Stranger / UNK—Unknown	Page
840920055			2 of 3

Code	No.	NAME: Last/First/MI (Nickname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Vic.No.
S	1			40		F	Str.	1&2

Height	Weight	Hair Clr.	Hair Length	Hairstyle	Facial Hair	Eye Clr.	Glasses	Eye Defects	Complexion	Build	Social Security No.
Med.	stky.	blk.	shoulder	curly	none	unk.	unk.		brown	meduim	

Jewelry	Gen. Appear.	Clothing (give Color/Type)	Driver's License No.	State
unk.		blue shorts, brown & white checked shirt, tennis shoes		

Scars/Marks/Tattoos (give Location/Content/Description)	Amputations/Deformities/Injuries/Handicaps

Speech	Hand Used	Demeanor	Traits	Home Address: Number/Street/Apt./City/State/Zip

Home Phone	Work Phone	Work/School: Name/Address	Days/Hours

Parents/Guardian's Name	Relationship	Juv. Disp.	Adult Booking No.	Charges: ARS/City Code No.

Vehicle Code: V—Victim / A—Arrestee / S—Suspect / ST—Stolen / AB—Abandoned / AC—Accident / REC—Recovered

Code	No.	License No.	State	VIN	V. Year	Make	Model	Style	Color Top	Color Bottom	Inside
S	1	Unk.	unk				compact	small	brown		

Markings	Condition	Damage	Location of Vehicle

Owner	Address	Owner Notified ☐ Yes ☐ No	by

Code	No.	License No.	State	VIN	V. Year	Make	Model	Style	Color Top	Color Bottom	Inside

Markings	Condition	Damage	Location of Vehicle

Owner	Address	Owner Notified ☐ Yes ☐ No	by

Critique of the Initial Investigation

1. Is a suspect named?	☐ Yes	☐ No	☐ UNK	7. Are there any uncontacted witnesses?	☐ Yes	☐ No	☐ UNK
Can the suspect be identified?	☐ Yes	☐ No	☐ UNK	8. Is the suspect vehicle license number known?	☐ Yes	☐ No	☐ UNK
3. Is the suspect's location known?	☐ Yes	☐ No	☐ UNK	9. Is there a suspect vehicle description?	☐ Yes	☐ No	☐ UNK
4. Is there a suspect description?	☐ Yes	☐ No	☐ UNK	10. Are there a limited number of possible suspects?	☐ Yes	☐ No	☐ UNK
5. Is there useful physical evidence?	☐ Yes	☐ No	☐ UNK	11. Are there related similar incidents?	☐ Yes	☐ No	☐ UNK
6. Is the stolen property traceable?	☐ Yes	☐ No	☐ UNK	12. Is there a significant MO?	☐ Yes	☐ No	☐ UNK

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. **Property Disposition:** (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

I spoke with Mrs. STARLENE KALINSKI, mother of the listed victims, and she advised me that while she was in the Lucky Store at Ina & Thornydale, the above-listed female approached her car and started talking to her two (2) children, and then attempted to abduct Arron, who Mrs. Kalinski described as extremely attractive, fair skinned, blond haired, blue eyed boy. I asked to speak with with Arron. Arron stated that the lady said, "I want to take you home with me, and I have a very nice house". He then said that she opened the door of the car and started to get in, and as she attempted to grab him, he punched her in the nose. She then got out of the car, and drove away. He stated he was scared the whole time, but his sister wasn't.

I spoke to Ginger indirectly, through her mother, and Ginger said the woman never tried to get into the car at all, but did say what Arron had stated. She could give no other description on the vehicle, other than brown compact, but she disagreed with Arron in that she felt that the woman was a black American, with short, curly black hair, and Arron felt the woman was brown-skinned, with medium length curly brown hair. She also disagreed on the clothing description. She stated the shirt was brown and white checked, with blue shorts, and Arron stated that it was a brownish type top with brown shorts.

RECEIVED JUL 5 1985

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
840920055	Ina & Thornydale - Lucky Store	61.02	C	22	3 of 3

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	D. Aubry	329C	9/20/84	2050	

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. **Property Disposition:** (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Mrs. Kalinski advised me that she believed Ginger's information a little more than Arron's, but that one thing both children agreed on is what the woman said. Mrs. Kalinski did not see the incident, due to the fact that she was in the store shopping, and was unaware of anything happening until she came out and the children relayed the story to her. Mrs. Kalinski had no other leads or suspect information than what has been stated here.

NFI

JUL 5 1985 1

Exhibit 51

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
S/84-09-17-040	Root Ln. & Pocito (4200 North)	51.01	C	19	1 of 1

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	R.L. Van Skiver	466	10-24-84	1030	

Typed By	I.D.	Date Typed	Time	Storage Code
R.L. Van Skiver	466	10-24-84	1030	

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

On 9-20-84 this officer and others went to the Flying H Trailer park at 4202 N. Romero Rd. to interview the residents there. I went to the following trailer spaces and contacted the following people.

Space #38 — No one home (Managers residence)

Space #37 — Kathy Jansen
Phone: 888-5093

Son: Richard
age 10 yrs.

= was home all day Monday 9-17-84. She advised that she didn't have any information about Vicki, however, 1 week ago her son was followed home from school by a suspicious person.
Suspect: W/M unk age Bro-Blo hair w/mustache Levis , no shirt

incident occurred in morning 0730 to 0800 hrs. Was reported to school

Space #36 — Tyleen Gragg

Brothers:
Darrin Myers 21
Jimmy Herrin 18
Bob DeCheske 8

= Was home Monday 9-17-84. Didn't see any suspicious persons or vehicles. She advised that last night her brother was at Tucson Mall & saw woman that matched the woman in drawing. He advised the security people at the mall. Occurred 1900 to 2030 hrs.

Space #35 — Bertha Bakke
Phone: 293-3539

= was at home baby sitting on Monday. With her daughter Mona Paxton. Neither have seen any suspicious vehicles or persons.

Space # 34 — No one home

Space #33 — No one home

Space #32 — No one home = Residence of James & Larry Paxton. Both work till 1830 hrs..

Space #31 — Sherry VanHoff
Phone: 293-9129

= Advised that she was probably at home Monday. Did not see any suspicious people or vehicles.

Space #30 — No one home

Space #29 — Susan Carlton
Phone: 888-4363

= Advised that she was at home Monday, however, is " Legally blind ". Has 4 kids. One told her that the drawing of woman looks like a person who is friend of the family. Subject is a Jean Nelson. Also could be another friend " Annette " who is an alcoholic- belongs to " V.I.P. club & " Cope " rehab center on Broadway.

Disclosures Made JUL 5 1985 1

Exhibit 52

88 CRIME

CALLER STATES THAT PICTURE IS ANNETTE PRICE 5-5 120 BLK-BRN. ADDRESSES ARE
5722 N TRISHIA
3152 N SHAWNEE 293-4370

Caller: Juanita Moreno
2518 N. Jordan Drive
882-0293

Worked with woman at
Skill Center -
Grant Rd. 1869 W. Grant Rd.
*Annette Fries - 293-4370
age 43 - 5'3" - #130
Olive skin - 3100 N. Shawnee
got very upset with the people around
OVER

her.

Nancy 742-5456

She works at K-Mart on Miracle Mile & sees this woman all the time. She is very weird, even security keeps an eye on her. She is 5'6, stocky + grubbily dressed. Olive complexion.

9/24/84
4:50

Steve Low
Motor Vehicle Dept
628-1331 - Ext 19

Ann Fries, answers description of lady in composit, said to sell newspaper subscriptions to people getting licenses. Very strange acting, lives in Summit + La Cholla area.

9/25/84
8:42 pm

LINDA VREN
882-2820

woman @ motor vehicle
matching composite

Annie Fries
lives in Sunset Road area
on Tricia Lane

Ed Foote heard it!

Exhibit 53

Declaration of Joshua Jay Slagle

I, Joshua Jay Slagle, declare under penalty of perjury, the following to be true to the best of my information and belief:

1. I am the biological son of Todd Fries and Tammy Slagle Watson. I am the grandson of Annette Fries, Todd's mother. I was born in September 1983 in Tucson, Arizona.

2. I didn't know who my father was until I was 13 years old. Until then, I believed my biological father was my mother's husband, Earl Riggs. This is what my mother always told me.

3. I met Todd Fries around 1996, after my mother divorced Riggs. Julie Lainhart, Todd's wife at that time, learned of my existence and wanted to get to know me and include me in some of their family activities. Julie was nice to me, very welcoming. I sometimes went to visit Todd and Julie at their home on Alameda Street in Tucson but I never lived with them.

4. It was a shock to discover that Earl Riggs, to whom I was very close and for whom I have much love and respect, was not in fact my biological father, and that Todd Fries was my biological father. Earl Riggs has since died.

Initials

5. Over time, as I got to know my dad, his behavior became very disturbing to me. Todd Fries was never enthusiastic about spending time with me and the time we did spend together was often dangerous, demeaning and confusing to me. He did nothing to provide monetary, emotional or parental support to me or my mother. She married Riggs when I was three years old, and Riggs raised me as his son. My mother never spoke of Todd until I was 13.

6. My mother was 17 when she became pregnant with me in 1982. My mother told me that Todd took her to multiple abortion clinics and demanded that she terminate the pregnancy. My mother refused. My mother left the relationship with Todd Fries and raised me on her own until she met and married Riggs when I was three years old. Before she married Riggs, my mother told me, we were homeless for a time and living out of her car.

7. I estimate that in the 25 years since I learned the identity of my father, and began to spend some time with him, I have spent a cumulative six months in his presence. When I was younger, I lived with my mom and would drift in and out of Todd's life, usually when his wife at the time Julie tried to include me with their family. When I was older, I worked for Todd occasionally, but other than that our interactions were never constant. We would spend some time together, and then we'd have some inevitable blow-up and I would recede and stay away from him. Sometimes, I didn't see him at all for as long as two years.

 Initials

8. I have had more exposure to my grandmother, Annette Fries. Over the years, I have at times lived at properties she owned, so I had more frequent contact with her because of that, but I do not consider myself to be close to her, either. She and Todd are both odd, toxic people who have been negative influences. They are both just very mean people. I consider them to be soulless. I believe both have serious mental health issues. Todd was, and is, a good talker but is a master manipulator. He took advantage of anyone he could, including me. He did a lot of nasty things – he's the most vindictive person I've ever known – but he usually had somebody else do his dirty work for him. He seldom got his hands dirty.

9. My father is currently serving a long prison sentence for terrorizing some of his clients. He was arrested for some truly spectacular crimes in 2011. Todd is clearly dangerous. I heard about Todd's legal troubles from my mother. I did not attend his trial.

10. I got in trouble with the law myself in 2008, when I was arrested for marijuana trafficking. I was a driver, and I was living with Annette at the time in a four-bedroom place she owned on Mechica Court, paying her $400 a month in rent. At the time, Todd knew that I was driving loads of marijuana; Annette didn't know about it. Todd never counseled me to stop; he just mocked me and told me that he was smart enough to get away with something like that, but that I would get caught. When I was arrested, neither Todd nor Annette did anything to help me out. I pled

Initials

guilty and was sentenced to 30 months in federal prison for my crime, and have had no legal problems since.

11. When I was a teenager Todd would sometimes pay me to commit petty crimes. He referred to the payments for such crimes as "subsidized income" for me, because he would pay me cash for performing them.

12. Once, during the night, Todd drove me to a home in Midvale Park and directed me to crawl under a car and drain its oil. He had sold the car to the owner and claimed the owner had not fully paid him. He hoped to ruin the engine.

13. On other occasions, Todd paid me to vandalize and spray paint people's property, including instructing me to paint swastikas. I cannot recall the locations where these activities occurred.

14. One day not long after we met, Todd said he was taking me to work with him but instead created a sign that said, "Help. Sister Needs a Transplant," and put me out on Speedway Boulevard to panhandle. The sign was a lie, of course. It put me in danger. I was embarrassed and ashamed. And it was even more hurtful because I had lost a younger half-sister who had been unable to get a transplant. I was out there panhandling for about two hours. Somebody called the police, and the police called my mother to come get me. My mother was justifiably furious at Todd for doing this to me.

 Initials

15. Todd had an obsession with killing birds. He put birdfeeders in his yard but then would shoot the birds that came to feed. He would hang their carcasses upside down in his back yard as grotesque trophies. Most of them were woodpeckers. I never understood this. It repulsed and disturbed me. He boasted that when he merely injured a bird, he would finish it off by blowing it up with an M-80 firecracker. I never saw him do this, but he spoke proudly of doing so. Todd had a fixation for explosives, and would often talk about building bombs or making Molotov cocktails. Todd made me watch a video of the atomic bomb being dropped on Hiroshima.

16. Todd would make me bare-knuckle box neighborhood kids when I visited him and Julie on Alameda. He videotaped these matches and enjoyed watching us kids pound on each other. The other kids involved in these fights – Brandon, Porky and Chapo – were disadvantaged and had nobody in their lives to tell them this was wrong. None of us knew we ought to resist Todd's commands.

17. After Julie divorced Todd, I recall going with him to the home of a girlfriend of his named Jan, who was a psychologist or counselor. She seemed nice enough, though she was much older than Todd and was overweight.

18. Todd once bragged to me about having a sex tape of one of his girlfriends. He also told me he had naked videos of my mother. I found all of this disgusting. Who tells somebody that about his mother?

Initials

19. I was always suspicious that Todd cheated on the women with whom he was in relationships. I didn't see it firsthand, but I saw him interact flirtatiously with women and overheard him talking to women on the phone, and it seemed to me that he was behaving like a cheater. Once, when I was in my late teens or early twenties and had a girlfriend, he asked me if he could have sex with my girlfriend. I thought this was sick.

20. I worked for Todd off and on when he owned Burns Power Wash. He paid me $7 an hour, and if we had lunch, the price of my lunch would come out of my pay. Todd generally employed three men, and as many as five, and always paid them in cash. Todd was a mean boss, especially to me. He demanded more from me and paid me less than the others. He also expected me to spy on the other guys and tell them what they were saying about him. I refused to do this.

21. Todd liked cars and would buy them and fix them up and flip them; he especially liked flashy sports cars. When I met him, he had a 1972 Mach 1 fastback, maroon and black. He also had a sky blue 1971 Mach 1.

22. He liked to flash his money to make people think he was rich. But whenever I needed something or asked for assistance, he always pleaded poverty. He never gave me any gifts or offered to help me out.

23. For most of the time I have known them, it seemed like my father and Annette hated each other. Todd expressed nothing but contempt and disrespect for

Initials

his mother, often treating her as though she were a child, talking down to her or ignoring her.

24. But their relationship seemed to change after Todd was arrested and charged. From what I saw, Annette suddenly became supportive of Todd and did all she could to help him. She paid for his criminal defense. She now sends him money in prison. She lives in Todd's house on Camino del Cerro and is paying it off. Annette says Todd will have the house waiting for him when he is released from prison, though I wonder whether Todd will live that long. I'm told by Annette that he has some serious medical issues. In the wake of Todd's conviction, I finally heard both Todd and Annette speak of one another with some semblance of respect.

25. Todd is an intelligent man but he's also very cunning, methodical and vengeful. For example, Todd once tried to stir up trouble with an employer of mine. I had called in sick and was at home. Todd went to the business where I was employed and called me on speakerphone in front of my boss, and tried to get me to agree to go out shooting with him. I refused. My boss told me he thought this was bizarre behavior on Todd's part. He had no reason to do such a thing.

26. I know Todd has worn a beard at times, though I can't really recall precisely when.

27. Annette has her own history of troubling behavior. She is very selfish and, like Todd, very vindictive and very frugal. I think she's the living incarnation of

Initials

Cruella Deville. She's just a mean person who cares only for herself. Her one good trait is that she's a hard worker. But if you upset her, her first reaction is to threaten to call the police on you. She's threatened to call the cops on me. She recently went into a phone store and threatened the employees, telling them she would have me come and beat them up. It's crazy.

28. Annette owns a number of rental properties. At one time I believe she had 10 or 11 of them. I have been with her when she just walked straight into an occupied rental unit and yelled at the tenants. This was strange and inappropriate behavior. The tenants yelled back, telling her she had to respect their privacy.

29. My ex-wife Natasha and I have three children together. But we never wanted them around Todd or Annette. Natasha and I just got a bad vibe from Annette and wouldn't allow her ever to supervise our kids – her great-grandkids – alone.

30. When Natasha was attending beauty school in the mid-2000s, Annette would go into the school to get her hair done at a discount. Natasha and I were not yet married. Natasha wanted to help her boyfriend's grandmother, so she would do her hair for her. But one day, Natasha came home from school and told me a fellow pupil had chastised her for helping Annette. Natasha told me her fellow pupil had reported that Annette had molested her and a sibling when she was small. I don't know anything else about his episode, but I do recall Natasha telling me about it.

Initials

Natasha stopped accepting hair appointments from Annette. Later, this allegation only added to our determination to keep Annette away from our children.

31. I met my girlfriend Crystal Blakely a few years ago when we both lived in Montana. When we moved to Tucson in March 2020, Annette let us stay at one of her rental properties – but not inside it. The property was for sale. Annette wouldn't give us a key to get inside, so we camped on the patio, where we also showered. We were expected to maintain the yard. We both thought Annette's attitude was selfish. She had multiple properties but offered us a campsite.

32. About a year ago, my girlfriend Crystal and I were with Annette. I was rummaging about in an ice chest of Annette's. For some reason this offended Annette. She lunged at me with a pair of scissors, lost her balance and nearly fell down. We were both shocked that Annette would do this. Neither of us understands why she behaved in this way.

33. Crystal told me of an incident that occurred shortly after we moved to Tucson. Annette was speaking to Todd, who was in prison, on speaker phone. When Annette told Todd that Crystal was my new girlfriend and that she was listening in to the phone conversation, Todd immediately said that Crystal should get away from me as soon as she could, that I wasn't worthy of her. Annette agreed with Todd. Crystal was shocked to hear my father and grandmother conspiring to sabotage our relationship.

Initials

34. I have tried and hoped over the years to have a positive and cordial relationship with Todd and Annette. But that hasn't occurred. To this day, I regret calling Todd "Dad" the first time I met him. I wanted to please this guy I was just meeting for the first time, but I almost immediately decided it was a mistake to call him "Dad" or consider him to be my father. I felt guilty, like I'd disrespected Earl Riggs, the man who was a true father to me, and did it to please Todd, who I very soon realized was not a good guy.

I have read the foregoing declaration consisting of 10 pages and 34 paragraphs. I declare under penalty of perjury under the laws of the States of Arizona and the United States of America that it is true and correct. Signed this 20 day of April, 2022, at Pima County, Arizona.

Joshua Slagle

Initials

Exhibit 54

Declaration of Julie Ann Lainhart

I, Julie Ann Lainhart, declare under penalty of perjury, the following to be true to the best of my information and belief:

1. I am the ex-wife of Todd Fries and the ex-daughter-in-law of Annette Fries. Todd and I have a daughter together. Todd and I were married in 1988. We divorced in 1997.

2. Todd Fries is currently serving a federal prison sentence. When he completes that sentence, he will serve a long prison sentence in the Arizona Department of Corrections.

3. The FBI interviewed me twice about Todd. The first was when our daughter was a baby, about 1993, when we lived in a single-wide trailer belonging to Annette off Shawnee Avenue in Tucson. Todd wasn't home. The agents asked me if I knew anything about Todd building bombs. I didn't. They asked if they could look around the place, and I let them. When I asked Todd why the FBI was asking about him, he downplayed it and said somebody was trying to set him up. I never heard any more about it.

Initials

4. The second time I spoke to the FBI was around 15 years ago when he was under investigation for a campaign of harassment and other crimes against people for whom he worked. The agents asked me to write down all the terrible things Todd had done, and I did so, and gave it to them. This document is on a computer I no longer have, so I do not have a copy of it.

5. During the second interview, one of the agents asked me if I believed Todd was capable of murder. I replied that I did think he was capable of murder, and I still believe that.

6. I believe Annette Fries is also capable of committing heinous crimes. She has very serious mental problems, and I would not put anything past her, including kidnapping or murder. And if Annette was involved in criminal activity, Todd would have been involved, too. If it was significant to one of them, they did it with the other.

7. Todd and Annette Fries had a tempestuous relationship and fought incessantly with one another. They were constantly arguing and yelling at one another, usually about trivial things, but they were also absolutely devoted to one another. If either of them needed something, the other would drop everything and immediately

 Initials

come to the aid of the other. Despite their boisterous arguments, their bond was unshakeable. Todd and his mother kept many secrets between them. I would ask Annette about something in their past, and she would tell me I didn't want to know about it.

8. I met Todd in 1987 in Sierra Vista, Arizona, where I lived at the time. I had grown up in a small town, Safford, Arizona, but my father, who was in construction, moved us to Sierra Vista in the mid-1980s for better work opportunities.

9. Todd and I met at a Mailboxes Etc. store in Sierra Vista, where I worked and where Todd kept a mailbox. I was 21 years old. I had had no serious relationships. At the time we met, Todd was living with a woman in an apartment in Sierra Vista. He said she was his cousin. I later found out she was his girlfriend, and that she moved away after we started dating.

10. I agreed to accompany Todd on a trip to California. I had a new Camaro, and he drove my car. On our drive to San Diego, Todd acted strangely and became very controlling. He kept the air conditioner off because he said it wasted gas. Then he stopped the car and stripped down to his tighty-whitey underwear because he said he

 Initials

was hot. For the longest time, he wouldn't stop to let me use the bathroom. He urinated in a bottle instead of stopping to use a restroom himself. Finally, when we got near San Diego, he stopped and let me use a restroom at a convenience store. He went inside the store and watched as I went into and came out of the restroom. Then he made some calls from a pay phone. While he was on the phone, he watched me as I sat in the car.

11. We drove to the home of a friend of Todd's who owned a flower farm. I do not recall the location or the name of the owner, but his home was a mansion on a hill. I don't know how Todd was connected to the man, but clearly they were close enough that Todd could stay with him. The man was probably in his mid-40s.

12. When we got to the mansion, I was surprised to discover that the bathroom had mostly glass walls that could be seen through. I wanted to take a shower and clean up, and Todd told me he would grant me my privacy. But when I emerged, I saw Todd watching me through the glass. He had taken my clothes and towels. I was naked. The homeowner was not home. Todd took me into a bedroom, threw me on a bed and viciously raped me. I was a virgin. I screamed for him to stop, but he merely laughed. I passed out. When I awoke, the homeowner had returned to the house. I was

 Initials

in a lot of pain. I thought I was dying. I asked Todd to take me to a hospital, but he laughed and said, "It's just sex."

13. We left the mansion after one night and checked into a cheap hotel in San Diego. Rather than sightsee or go to the beach, Todd, who had a photography business, took me to apartment complexes to knock on doors and drum up family portraiture business. We stayed in San Diego for a week, and Todd raped me repeatedly the whole time.

14. I wanted to flee but he kept my purse and car keys in his possession and would not let me out of his sight. This was in the days before cell phones, so I wasn't able to call for help. He insisted I leave the door open when I used the bathroom. One night I tried to take my keys from him as he slept, but he woke up and confronted me. I told him I needed to buy menstrual pads. Todd wouldn't let me buy the pads – he went to the store and bought them himself.

15. When we left San Diego, we went to see Annette's sister, Patricia, a college professor in Los Angeles. Patricia, who is now deceased, was very smart and seemed like a nice, normal person. I told Patricia I was ill. I hadn't defecated in days. When


Initials

Patricia showed me to the bathroom, Todd said he would accompany me. I protested, but Todd came into the bathroom and stayed in there for an hour as I finally defecated with some difficulty.

16. It embarrasses me to disclose these facts, because I ultimately married Todd, had a child with him and stayed with him for a decade. But I was young, inexperienced and confused. It did not dawn on me until much later that he had held me captive and raped me. If I had told my parents what Todd had done to me in California, he would have been arrested. But I told nobody.

17. I wanted to break away from Todd, but he was persistent and wouldn't leave me alone. The trauma of the California trip faded, and I agreed to marry him in 1988.

18. We lived in Sierra Vista until 1989 or 1990, when we moved to Tucson and stayed with Annette in her double-wide mobile home off Shawnee Avenue. We moved because Todd got a job with CTI, a concrete company. Annette was renting her spare bedroom to two older gentlemen, so Todd and I slept in the living room. We moved back to Sierra Vista in 1991, and our daughter was born there in 1992.


Initials

19. Todd was often violent. If I questioned him about anything, or if he took offense at something I said, he would throw me across the room. If we were around other people, and he disapproved of something I said, he would reach over and pinch me hard. It was very painful.

20. If Todd was angry with me, he would violently shove me out of bed and make me lie on the floor with no blankets. Or he would leave the bedroom and take the blankets with him.

21. I recall an incident at our home in which Todd severely damaged our minivan with a tire iron. The Sierra Vista police let Todd leave with his car, and I was left behind with a baby and no transport. We moved back to Tucson in 1994, where we lived in the trailer owned by Annette, off Shawnee Avenue. Todd was working at CWX, a freight company. One time during this period, Todd told me he got into a fight with a co-worker but he got revenge by urinating in the man's car. He thought it was hilarious.

22. Once a friend of mine from Safford came with her husband to visit us in Tucson. We went out to dinner. Everything seemed OK, but as we drove from the


Initials

restaurant back to our place, Todd complained about something I'd done during dinner and without warning backhanded me across the face, bloodying my nose. When we got to our place, my friend and her husband were shocked to see that I was bloodied. I told them what Todd had done, and they called the police, who came and talked to us. But they didn't arrest Todd. They asked me if I was OK, and I said I was, and that was the end of it.

23. We were able to buy a house on Alameda. Because I knew Todd had served in the military before we met, I tried to get a VA loan for the house, but I learned that Todd had been dishonorably discharged from the Marines. I have seen an official document confirming this. Todd told me it was because he'd been caught smoking pot. Annette told me it was due to some conflict between Todd and a superior in Japan.

24. On Alameda, we had a frail Latino neighbor who had lived there for many years. Todd came in one day laughing and bragged that the man was napping in his yard but Todd has put a firecracker between his toes and lit it. The man woke up so he wasn't hurt by the firecracker, but I heard it explode. He was a sweet old guy, but Todd enjoyed being mean to him.


Initials

25. Another day on Alameda, Todd was painting a car. I said something – I don't recall exactly what – that offended him. He threw a full can of spray paint at me. He threw it so hard it knocked a hole in the stucco so deep I could see the chicken wire. If the can had hit me I would have been badly hurt.

26. Todd was so controlling that there were times when he would remove the phone cord, take my shoes, and disable my car when he left for work. This would leave me marooned all day. Then he'd come home from work and apologize.

27. Our house on Alameda had a flat roof, and I'd sometimes find Todd up on the roof and ask him what he was doing. He wouldn't say. I think he was spying on the neighbors from up there.

28. Todd had no regard of laws. He never had car insurance and would make me type up fake auto insurance cards he would keep in his car.

29. Todd was cruel to animals. I once caught him with Annette's small dog in the bathroom, where he had it cornered, spraying it in the face with perfume. He thought this was amusing.

Initials

30. When my daughter was a toddler, she wanted a kitten. So Todd took her to get one for her birthday. But Todd put the kitten in the bed of his pickup for the drive home. The kitten was terrified and could have fallen or jumped out of the truck. Even though she was only four years old, my daughter knew what Todd had done was wrong. She knew the kitten was in danger and frightened. I would later catch him tormenting the kitten, cornering it and pinning it against the wall. Todd would laugh and say he was playing with it.

31. After the incident with the kitten, I realized how cruel and indifferent Todd was, and I never let him take our daughter anywhere unless I went with them. I didn't trust him to keep our daughter safe.

32. New homes were being built across Alameda, and the Tucson police came by to ask if I knew anything about graffiti and vandalism that had occurred on the construction site. I knew Todd was responsible, but I didn't say so. I knew it was Todd because before the police arrived, he had come into the house, laughing, with spray paint all over his hands.

Initials

33. Other neighbors on Alameda were a couple of gay men who were very nice people. One day, a sister of one of the men who was visiting from out of town came to our door and told me that Todd had offered her a ride in a car he was fixing up to resell. She said he had taken her up A Mountain, exposed himself to her, and demanded sex. The woman said she refused him. She told me she thought I should know about it. Todd told me she made it up.

34. Over time, I learned how to avoid Todd's wrath. I wouldn't ask him where he'd been when he was away for 15 hours with no explanation. I wouldn't question his bizarre behavior. I'm sure he was unfaithful to me, but I don't know specifics. I chose to focus on other things and pretend it wasn't happening.

35. Todd had a horrible childhood. He was so abused by his biological father and so feared him that he actually slept in a doghouse. Annette told me Todd had been a victim of sex abuse as a child but I was never told what it entailed or who was responsible.

36. It was Annette, not Todd, who told me that Todd had a son named Josh. I wanted to meet Josh, who was 13 at the time, and include him in family events, but

Initials

Todd was dubious. He said we didn't have to do anything with or for Josh if I didn't want to. I wanted to, and Josh began to spend some time with us. Josh actually spent more time with me and my daughter than he did with Todd. But one day, Todd announced that he was taking Josh to work with him, which I took as an encouraging development. Later, I was shocked to learn from Josh's mother that Todd had dropped Josh off on the side of the road to panhandle all day with a sign that said, "Help! Sister needs a kidney." Todd shrugged it off and told me he thought it would be a good experience for Josh.

37. I recall an incident in which Todd drove to an elementary school. I stayed in the car while he got out and spoke to a man I didn't recognize. To my surprise, they began fighting and wrestling. Todd came back to the car and we left, but he wouldn't tell me what provoked the fight. That night, he left with no explanation. When he came home late that night, he was clammy, out of breath and white as a sheet. I wondered: What just happened. I never learned what had happened that night, but I wondered then and I still wonder whether he killed that guy.

Initials

38. Todd always had weapons. But he had a conviction for credit card fraud that made it illegal for him to buy guns. We once went to a gun show and he had me buy him a Glock handgun, but it was in my name. Todd also had a shotgun.

39. Todd had to pay restitution because of the fraud conviction. He made me go to the court every month for five years to make his payment, and I did so.

40. Again, over Todd's objections, I took in and cared for Todd's ailing biological father, Trevor Burns, who was around 80. I later learned from Burns' daughter that he had molested her when she was small. She called to tell me because she knew that Burns was living in our house, and I had a little girl. This appalled and frightened me.

41. Burns would take the Handi-Car, a transportation service for people with disabilities, to an adult daycare center. One day the police came and told us that Burns had exposed himself to a disabled teenage girl as they rode in the Handi-Car. Burns laughed about it both to me and the police. No charges were filed, but Burns was barred from both the adult daycare center and the Handi-Car.

Initials

42. I also took in an elderly woman named Virginia to care for. I was compensated by the state for caring for both Burns and Virginia. This was in the mid-90s.

43. My life and my daughter's life with Todd became unbearable. He often told me he hated me, and I believed him. I was determined to get out of the marriage. I got placements in care homes for the two elders, but Todd was so determined to keep me from leaving he slept outside the bedroom door with a loaded shotgun.

44. When I was finally able to break away, I returned the next day to retrieve some belongings and discovered Todd had moved a new woman into the house. After one day! All her things were there. They had even changed the curtains. I moved in with my parents in Sierra Vista, and later got my own place where my daughter lived with me.

45. After our divorce, I received three separate phone calls from women who had dated Todd since our breakup. One told me he had tried to kill her by pinning her against a wall with his truck. The second said he had fired a gun at her but missed. The

Initials

third said Todd had threatened to harm her children. I do not recall the names of any of these women. But none of what they said surprised me.

46. When we divorced, I asked Todd about the pistol I had purchased in my name. He claimed he no longer had it but wouldn't tell me what he'd done with it.

47. I took no child support or alimony. I wanted to be free of the Frieses. Todd and Annette could see my daughter on supervised visits in Sierra Vista.

48. Todd showed up for a couple visits with a woman he described as his counselor. She told me they were lovers. Once when Todd was out of the room, this woman told me she had diagnosed Todd. She told me Todd was not bipolar but was unipolar. I had no idea what that meant, or if that's even a real thing. In any case, she was older, overweight, and unattractive. I have no doubt Todd was using her for money or resources.

49. Annette, meanwhile, would show up unannounced and say she was there to see her granddaughter. Sometimes, Annette would have convinced some guy she met at Circle K – I assume it was the store on Wetmore and Romero, which was near her residence – to give her a ride all the way from Tucson. So that person would be hanging

Initials

around as well. What made this even odder was that Annette always had a car of her own. I do not know why she had strangers drive her instead of simply driving herself.

50. Annette once sent my daughter a children's book. My daughter was surprised to discover dollar bills tucked between the pages. It was less than $30. But I got my daughter on the phone with Annette to tell her what we'd found. Annette told my daughter, and later she told me, to send her the money. We never did.

51. When my daughter was in second or third grade at Village Meadows Elementary in Sierra Vista, she came home one day and asked me why Annette had been in her classroom. I went to the school and was told Annette showed up at the school and was allowed to sit in my daughter's classroom. My daughter told me Annette was inappropriately dressed and disruptive. My daughter was embarrassed by the episode. I impressed upon the school that nobody but me was to have contact with my daughter. I called Annette and told her she was never to do such a thing again, and that she could no longer show up unannounced. I never heard from her again after that.

52. This was surprising, because Annette was always enthusiastic to see my daughter, and would surely have taken her as her own if she could have.

Initials

53. Annette would often dress inappropriately, wearing low-cut blouses and short shorts with her butt hanging out. This was a 50-year-old woman! She sought and attracted the attention of men. She was very flirtatious.

54. Annette was eccentric and frugal. She told me her mother was Bermudan and her father was Egyptian, and that he was murdered when he was caught cheating in a card game. I don't know if this is true. Annette was always self-conscious about her dark complexion and said she wished her skin was lighter.

55. Annette's neighbors hated her. If you waved at one as they drove past, they'd return a glare. She was a difficult person to live with, or near.

56. Annette had a realtor's license. Her car had a sign on the back that said: "Let me sell your house and I'll clean your carpets for free."

57. Annette owned a couple of rental properties, both mobile homes. One day she asked me to go with her to her property on Trisha Lane. When we got there, Annette just walked right into the home, though her renters were there. She just didn't care about others' privacy or feelings. She had no boundaries.

Initials

58. In the 1990s, Annette had a boyfriend named Ken Cape for about five years. Cape played guitar, and he and Annette would try to entertain. But he couldn't play and she couldn't sing. He was quite a bit older than Annette. I'm sure she was using him for money or resources.

59. About a decade after I divorced Todd, when the FBI was asking about him again, he called and told me he knew where our daughter was living and working, and even knew her work schedule. He told me, "Now would not be a good time to do anything dumb." He was fishing for information about what I had told the FBI, but I also considered it to be a threat.

60. Based on my experiences with Todd and Annette, I am still fearful of them. I want nothing to do with either.

61. I have seen the police composite sketch of a woman who was a suspect in the Vicki Lynne Hoskinson case, and I am absolutely convinced that the woman in the sketch is Annette.

62. Todd is cruel and has no regard for others. He gets joy from the pain of others. If he saw somebody trip and fall and get hurt, he would laugh.

Initials

63. Todd is also extremely bigoted. He used the N-word all the time in private.

64. Todd is a lifelong conman. He is highly intelligent but uses his intellect to manipulate and harm others and take advantage of them. He never kept any close friends because he would use them and ruin the relationship. Though he was not a drug addict that I know of, in relation to other people, he behaved like one. He manipulated and used people to get what he needed and without regard for what it would do to them and his relationship. He seemed to have no empathy. He seemed to be addicted to using and hurting others. His behavior was sadistic. I believe he was a narcissist and a sociopath.

65. Until I was interviewed for this declaration, no one contacted me to ask about the Hoskinson case. Since then, I have done some research into the case. Based on what I know about it, and my experience with Todd's and Annette's behavior, I would not be at all surprised to find out they were involved in the crime.

66. If I had been asked to provide the information in this declaration at any time preceding this, I would have done so. If I had been asked to testify to the things I have stated in this declaration, I would have done so.

Initials

I have read the foregoing declaration consisting of 66 paragraphs. I declare under penalty of perjury under the laws of the State of Arizona and the United States of America that it is true and correct. Signed this ~~21st~~ 22 day of July, 2021, at Maricopa County, Arizona.

Julie Ann Lainhart

Initials

Exhibit 55

Declaration of Crystal Joy Blakely

I, Crystal Blakely, declare under penalty of perjury, the following to be true to the best of my information and belief:

1. I am the girlfriend of Joshua Slagle. Josh and I met in Montana about two years ago. I am trained as a nurse. We moved from Montana to Tucson in March 2020.

2. I met Josh's grandmother, Annette Fries, not long after we arrived in Tucson. I believe Annette has serious mental health problems. She is very self-centered and vindictive.

3. On one occasion after we moved to Tucson, I was present when Annette was speaking on the phone to her son, Todd Fries, who is serving a long prison sentence for terrorizing some former clients of his. I overheard the call because Annette was on speaker phone. Upon hearing that Josh had a new girlfriend, Todd immediately advised me to split up with Josh. Todd said I should get away from Josh and go back to Montana. Both Todd and Annette indicated that they did not believe Josh was worthy of me and that I would be wise to end the relationship. This incident helped me understand what destructive influences Todd and Annette have been in Josh's life. I thought it was shocking that they would say such things about their son and grandson.

4. When Josh and I came to Tucson from Montana, we stayed for a while at one of Annette's unoccupied properties that was listed for sale. However, we were not given access to the inside of the property. Annette only allowed us to essentially camp out on the patio. We were never given a key to the door or allowed inside. We had to shower on the patio. But at the same time, we were expected to water the flowers, pull weeds and maintain the exterior of the property. I thought this was selfish and paranoid behavior on Annette's part.

5. I believe Annette has a lot of money because she owns a lot of property in Tucson. I went to some of these properties to assist Annette when she had work to do on them. She offered to pay me but never did. I just let it go – I had just met her and was trying to be helpful to my boyfriend's grandmother.

6. Within the past year, I saw Annette lunge at Josh with scissors, then throw the scissors at him. She nearly fell over while doing so. She did this because Josh had the

CB

temerity to rummage about in an ice chest that belonged to Annette. This incident was very dramatic and she could have seriously hurt somebody or herself.

7. Annette never does anything for anybody but herself. Annette acts friendly and considerate – she has the Ten Commandments posted on the exterior of her vehicle – but it's all for show, a façade. I feel she is a very dark and disturbed person. You get a glimpse of her true nature, which is selfish and vindictive, when you look into her eyes. .

8. Once when I was helping her out, she drove onto private property and illegally dumped trash. She was urging me on, telling me to hurry up so we wouldn't get caught.

8. A woman named Mona Kong looks after Annette. I believe Kong lives in the Flowing Wells area. Once, when I was present, Mona showed up with her boyfriend. Annette responded to meeting the boyfriend by walking suggestively and inappropriately about in front of the man, who was so perplexed he asked Annette, "Who the fuck are you?"

I have read the foregoing declaration consisting of 2 pages and 8 paragraphs. I declare under penalty of perjury under the laws of the States of Arizona and the United States of America that it is true and correct. Signed this 26th day of January, 2022, at Pima County, Arizona.

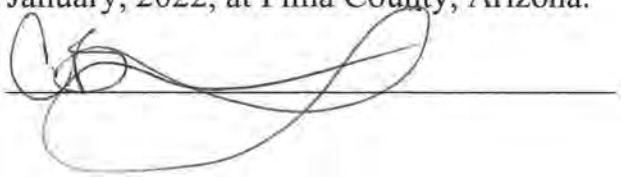

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Exhibit 56

DECLARATION OF NATASHA HERNANDEZ

I, Natasha Hernandez, declare under penalty of perjury, the following to be true to the best of my information and belief:

1. I am the ex-wife of Joshua Jay Slagle. We have been divorced since 2018.

2. I know Josh Slagle's grandmother, Annette Fries, and his father, Todd Fries.

3. In 2005 when I was a pupil at a beauty college near Wetmore and Oracle in Tucson, Annette Fries would come in to have her hair done. Josh Slagle and I were in a relationship at the time, but not yet married. I didn't know Annette well but knew she was Josh's grandmother, so I wanted to help her out. I did her hair two or three times.

4. One day after Annette had been in, a fellow student pulled me aside and said I shouldn't do Annette's hair. When I asked her why, she said Annette had molested her and a sibling when they were small children. If she told me what form this molestation took, I do not recall it. The student said Annette was "a horrible person. Don't you know who she is? Stay away from her!"

5. I do not recall name of the student who told me this. I do recall that she was white and seemed middle class. She wasn't among my circle of friends at

Initials NH

the school, and I don't think I ever spoke to her again about what she had told me, or anything else.

6. I went home and told Josh what my fellow student had told me. He said he wasn't surprised because he thought Annette was a weirdo.

7. I never told anyone other than Josh about the molestation allegation. I was embarrassed that somebody would say such a thing about my boyfriend's grandmother, so I kept it to myself.

8. I asked that Annette no longer be booked to have her hair done by me. I tried to avoid her in general.

9. I never spent much time around Todd or Annette Fries. My impression was that Annette, Todd, and Josh all hated one another.

10. Even before I was told of the molestation, neither Josh nor I trusted Annette around our children. We were especially on guard afterward. We did not want the children around Annette or Todd Fries at all.

11. Todd Fries was an extremely vulgar man. He would make unbelievable comments about me to Josh in my presence. He said I had "nice tits," and once told Josh, in front of me, and referring to me, "Imagine all the ways you could fuck that." I was appalled.

I have read the foregoing declaration consisting of three pages and 11 paragraphs. I declare under penalty of perjury under the laws of the State of Arizona and the

Initials NF

United States of America that it is true and correct. Signed this 21 day of April, 2022, at Pima County, Arizona.

Natasha Hernandez

Initials _____

Exhibit 57

DOMESTIC RELATIONS
Marriage Licenses

Kevin Cleary, 24, Tucson, and Elizabeth Quiroz, 21, Tucson.

James McDougall, 29, Bangor, Me., and Vicki Shultz, 26, Tucson.

Carl Krugh, 69, Tucson, and Effie Horne, 57, Tucson.

Steven Thornburg, 27, Tucson, and Janice Cooper, 27, Tucson.

John Gurbach, 28, Tucson, and Belinda Mossor, 20, Tucson.

George H. Garcia, 25, Tucson, and Janet Durnez, 23, Tucson.

Timothy J. Charles, 19, Tucson, and Kathleen Johnston, 21, Tucson.

Frederick Lauer, 30, St. Louis, and Juanita Rendon, 25, Laredo, Tex.

Juan Bejarano, 33, Tucson, and Amelia Zuniga, 43, Tucson.

John L. Lacey, 26, Ray, Ariz., and Karen Obert, 17, Tucson.

Raymond Kilburn III, 21, Tucson, and Ronnie Osterlund, 22, Denver, Colo.

Robert G. White, 51, Tucson, and Beverly Gobeille, 48, Tucson.

Anthony McNair, 18, Tucson, and Cheryl Liddeke, 17, Tucson.

Javier Velarde, 24, Tucson, and Josie Celaya, 22, Tucson.

Coriolan Balulescu, 23, Tucson, and Carol Dills, 23, Tucson.

William Hutcheson, 27, Tucson, and Josephine Chamberlain, 27, Tucson.

Thomas Schriner, 31, Tucson, and Karen Mygard, 24, Tucson.

Terrence Braun, 28, Tucson, and Maria Marquez, 28, Tucson.

Gerald DeYoung, 24, Tucson, and Kathy Moorman, 23, Tucson.

Russell Noster, 22, Tucson, and Karen Wardle, 16, Tucson.

Francis X. Fries, 37, Tucson, and Farida Burns, 33, Tucson.

William Spain Jr., 19, Tucson, and Barbara White, 18, Tucson.

Oscar Murrieta, 21, Tucson, and Rosa Garcia, 20, Tucson.

Alfred Cameron, 43, Tucson, and Jo Ann Roberts, 40, Tucson

Raymond Buckwalter, 36, Tucson, and Irene Roberts, 25, Tucson.

Edward Warringer, 25, Tucson, and Olga Burciaga, 24, Tucson.

Donald Casey, 21, Tucson, and Darlene Williams, 20, Tucson.

Exhibit 58

124. NARRATIVE

On 08-24-79, this officer was dispatched to DAVIS MONIHAN AIR FORCE BASE HOSPITAL EMERGENCY ROOM.

Upon my arrival I spoke with the reportee, MRS. FRIES, the mother of the victim, who stated that on 08-23-79, her son waa assaulted by her husband, MR. PRANCIS FRIES.

The son was at the DAVIS MONTHAN HOSPITAL for medical treatment. I spoke with the doctor who stated that he did have bruises and iotsrnal injuries caused from a beating. The doctor's name was DR. INGENICK.

The reportee did state to thia officer that an officer had been at her residence the night before. I spoke to SGT. MC NINLEY who responded to the scene on 08-23-79. He statsd that at the time they did not feel it wae necessary to make a report. The son was not compiaining of injuries.

The son stated to this officer that he was hit in the face, in the mouth, and in the neck. Ihe father then kicked him in the right side and twisted his arm. When asked for a reason why the father beat him, he etated that in the household, MR. FRIES' daughter who Is also 16, resldea. There aeems to be some problem with the son and the daughter (inaudible) they are continuously fighting. The father then threw the stepson out and stated he would kill him. At this time the stepson hid the gun to protect himself.

CHILD PROTECTIVE SERVICES was called and MISS RAMSEY responded to the scene. I spoke to MISS RAMSEY who stated that she would find soma other place for the son to stay.

There is no further information.

DEPUTY STOVER, Badge Ho. 540-SR 09-02-79 2150 Hours 09-05-79 #1557, m.e.

TIME DICTATED TIME TRANSCRIBED

CASE NUMBER	FUNCTION/CRIME		TYPE
908-25-5-~~136~~	(A.) OTHER ASSAULTS	08.01	(A.) SIMPLE
CONN. UP	(B.)		(B.)
	(C.)		(C.)

VICTIM'S LAST NAME	FIRST NAME	MIDDLE	6. RESIDENCE ADDRESS OF VICTIM	7. RESIDENCE PHONE
BURNS	TODD	RUSSELL	5722 N. TRISHA, TSN., AZ.	887-3999

8. SEX ORIGIN	9. AGE	10. DATE OCCURRED	11. TIME OCCURRED	12. DATE REPORTED	13. TIME REPORTED	14. HRS OF EMPLOY.	15. BUSINESS ADDRESS OF VICTIM - IF JUVENILE, SCHOOL HE ATTENDS	16. BUS. PHONE OF VICTIM
M/W	16	08 24 79	1400	08 25 79				

17. REPORTING OFFICER	18. BADGE NO.	19. FIELD SUPERVISOR	20. REVIEW-ED BY	21. LOCATION OF INCIDENT
STOVER	S40SR	239SR		5722 N. TRISHA, TSN., AZ. TBO,

22. REPORTED BY	23. ADDRESS OF PERSON REPORTING	24. PHONE	25. DATE & TIME BROADCAST
AHNETIE FRIES	5722 N. TRISHA, TSN., AZ.	887-3999	

26. METHOD OF OPERATION | 27. TYPE AND VALUE OF PROPERTY DAMAGED | 28. IDENTIFICATION NOTIFIED RESPONDED

QUAN.	29. DESCRIPTION OF PROPERTY, INCLUDE BRAND & MODEL	30. SERIAL NUMBER	MONEY	JEWELRY	GUNS	T.V. STEREO	AUTO	BICYCLE	MISC.	TOTAL
A.										
B.										
C.										
D.										
E.										

AK

VEHICLE INVOLVED	YEAR	MAKE	MODEL	STYLE	COLOR	LICENSE NUMBER	STATE, YEAR	VEHICLE IDENTIFICATION NUMBER
XX	65	CHEV	ELC		WHITE	RN 1012		

WANTED / SUSPECT / MISSING / RUNAWAY / WITNESS XX

42. NAME	43. RESIDENCE ADDRESS	NICKNAME OR ALIAS	ORIGIN	SEX	47. DATE OF BIRTH
TERRY KELLY					APPROX. 16

48. HEIGHT	49. WEIGHT	50. HAIR	EYES	COMPLEX.	53. BUILD	54. CLOTHING	55. IDENTIFYING MARKS OR TATTOOS
						PHONE NO. 297-0205	

WANTED / SUSPECT XX / MISSING / RUNAWAY / WITNESS

56. NAME	57. RESIDENCE ADDRESS	58. NICKNAME OR ALIAS	ORIGIN	60. SEX	61. DATE OF BIRTH
FRANCIS X. FRIES	5722 N. TRISHA, TSN., AZ.	FRANK	W	M	UNK.

62. HEIGHT	63. WEIGHT	64. HAIR	65. EYES	66. COMPLEX.	67. BUILD	68. CLOTHING	69. IDENTIFYING MARKS OR TATTOOS
5-9	150	BLK	GRN		SMALL		

WANTED / SUSPECT / MISSING / RUNAWAY / WITNESS

70. NAME	71. RESIDENCE ADDRESS	72. NICKNAME OR ALIAS	73. ORIGIN	74. SEX	75. DATE OF BIRTH

76. HEIGHT	77. WEIGHT	78. HAIR	79. EYES	80. COMPLEX.	81. BUILD	82. CLOTHING	83. IDENTIFYING MARKS OR TATTOOS

84. MISSING PERSONS OCCUPATION | 85. WHERE MISSING PERSON IS EMPLOYED OR SCHOOL HE ATTENDS | 86. PERSONAL HABITS (HEAVY DRINKER, GAMBLER, ETC)

87. PHYSICAL CONDITION | 88. MENTAL CONDITION | 89. POSSIBLE CAUSE OF ABSENCE | 90. PROBABLE DESTINATION | 91. DATE & TIME MISSING PERSON LAST SEEN

92. PERSON WHO LAST SAW MISSING PERSON | 93. SEX ORIGIN | 94. AGE | 95. ADDRESS | 96. RELATIONSHIP

97. NAME OF PERSON ARRESTED OR CITED	98. ADDRESS	99. SEX ORIGIN	100. AGE	101. CHARGE	102. BOOKING	103. BADGE NO.
A)						
B)						
C)						
D)						

JUVENILE | 104. ORIGINAL OFFENSE | 105. REASON FOR FOLLOW-UP APPREHENSION | 106. HRS/DAY DETAINED | 107. A-B-C | 108. NAME OF JUVENILE A.

109. NAME OF JUVENILE APPREHENDED | FIRST NAME | MIDDLE | 110. SEX ORIGIN | 111. DATE OF BIRTH | 112. RESIDENCE ADDRESS

113. SCHOOL ATTENDED | 114. GRADE | 115. APPREHENDED-LOCATION | 116. DATE | 117. TIME | 118. PARENT OR GUARDIAN

119. ADDRESS OF PARENT OR GUARDIAN | 120. RESIDENCE PHONE | 121. BUSINESS PHONE | 122. DATE & TIME PARENTS NOTIFIED | 123. DISPOSITION PHYSICAL PAPER PARENTAL

TIME DISPATCHED	TIME ARRIVED	TIME CLEARED
1241	1257	1350

INFORMATION SYSTEMS DIVISION

PCSD-115 4/74

PIMA COUNTY SHERIFF - OFFENSE REPORT

Exhibit 59

DECLARATION OF TAMMY WATSON

I declare under penalty of perjury of the laws of the State of Arizona and the United States the following to be true to the best of my information and belief:

1. I am 54 years old and reside in Tucson, Arizona.
2. In 1982, when I was 16 years old, I had a consensual sexual relationship with Todd Fries. I had met him at a friend's house. He was 19 years old at the time.
3. I became pregnant with Todd's child and gave birth to my son in September 1983. I had turned 17 by then.
4. After I became pregnant, I resided for a brief time – probably no more than two months – in a doublewide trailer on Shawnee Drive in Tucson where Todd lived with his mother, Annette.
5. Todd wanted me to get an abortion. He told me I couldn't have the baby and dragged me all over Tucson trying to find a place that would provide an abortion. At Planned Parenthood, Todd tried to insist to the staff that I would, indeed, get an abortion, even though I didn't want an abortion. The

TW

staff told Todd that the decision was mine, not his, and that he would have to leave, which he did.

6. In any case, because of my age, I needed the consent of my parents to get an abortion. My mother wouldn't agree to sign the papers, which was fine by me anyway.

7. Not long after this, I moved out of the Shawnee residence and in with my mother. Later, I got my own place.

8. I did my best to avoid having anything to do with Todd or Annette Fries again.

9. I left Todd's name off our son's birth certificate.

10. Todd did nothing to help me raise my son, provided no child support and never expressed any desire, or took any initiative, to have a relationship with his son or with me. I raised him on my own. Annette likewise took only a passing interest in her grandson.

11. In the 1990s, Todd was married to a woman named Julie. She learned that Todd had a son and reached out to my son. Julie included him in some of

their family activities. But Julie, who was a very sweet lady, was the only one interested in knowing my son, or helping him.

12. When my son was in teens, Todd put him on the side of the road with sign to panhandle for money. The sign said money was needed for an organ transplant for a family member. This infuriated me. Not only was this a lie, it was dangerous and demeaning for my son. But this was par for the course for Todd, who had no compunction about using others or swindling strangers.

13. Todd is intelligent but always believed he was better and more important than everybody else. He didn't care if he hurt or endangered others. He also thought he was God's gift to women.

14. Todd was dishonorably discharged from the military. His mother told me about it, but I don't know why he was kicked out.

15. Annette was a strange character, though I have few vivid memories of her. I remember she had me rake the carpet in her mobile home while I was pregnant, which I thought was ridiculous and selfish of her.

16. Todd was supposedly working as a freelance photographer at the time I lived with them. I recall he had a camera but know nothing more about that enterprise, or if he was successful.

17. Todd owned a sky-blue-colored car when I knew him. It was a small car, but I do not recall the make or model.

18. About 15 years ago, my daughter was with my son at the Foothills Mall in Tucson. They encountered Todd with a woman at the mall. Todd introduced the woman as his wife or fiance. I was told she was petite and had dark hair. I don't know her name or if they ever were married.

19. My son got into trouble for marijuana possession when he was a young man. I contacted Todd at that point to see if he would be of any help to his son. He wouldn't lift a finger and told me that jail was probably the best place for our son. My son did his time and has had no trouble since.

20. I know Todd is now in prison, and may end up spending the rest of his life in prison. This doesn't surprise me in the least.

21. Before Todd was sentenced to prison, Annette contacted me and asked if I would write a letter to the judge, vouching for Todd's character. I declined to write a letter and told Annette that jail was probably the best place for him.

22. I knew Todd had a power-washing business at the time he was arrested for terrorizing some of his former customers. It's my belief that he had a helicopter at one time. I believe he was a pilot. I saw a commercial for his business that featured him in the helicopter.

23. I have never known Todd to wear a beard, but my daughter tells me she encountered him once prior to his criminal case, and that Todd had a beard and moustache.

24. I was not aware that Annette was a player in the Vicki Lynn Hoskinson case. Nobody has ever contacted me in relation to that case. But I do recall seeing a composite or a woman – probably in the news – at the time of Vicki Lynn's disappearance. I didn't put it together at the time, but I vaguely

remember the composite now and I can certainly see why people thought it looked like Annette.

25. My son has had more contact than I have with Todd and Annette over the years. He tells me he thinks both of them are crazy. Based on my experience, I agree with him.

26. I have seen Annette outside the state motor vehicle office with a clipboard. I believe she was registering people to vote or collecting signatures for candidates or ballot initiatives. I think she might frequently do this kind of work.

27. She asked that I become her friend of Facebook, but I ignored her request. She has called and asked if I could help her find renters for one of her properties. I thought this was an odd and silly request, and I didn't help her.

28. I know Annette had a boyfriend. I don't know his name but I believed he died of cancer.

29. In the early 80s, after Todd and I had broken up, I was in a Kmart in Tucson. I was shocked to see Todd walk into the Kmart dressed in nothing

but sunglasses and a Speedo swimsuit. He was immediately kicked out of the store.

30. In my opinion, Todd is a jerk. I wish I could say something good about him, but I can't.

Signed this 16th day of December, 2021, at Pima County, Arizona.

Tammy Watson

Tammy Watson

Exhibit 60

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Location of Incident				District	Beat	Page
82-10-26-005	2100 W. RUTHRAUFF RD. TSN AZ				CAT	18	1 of 2
Connect-Up Report Number	Date Occurred / Time		Date Reported	Arrival Time	Clear Time		
	10-26-82	0645.	10-26-82	0830	0910		

Reporting Officer	Badge	Follow-Up Officer	Badge
S.J. VANKIRK	308-C		
Officer Name & I.D.	Agency	Officer Name & I.D.	Agency
Officer Name & I.D.	Agency	Officer Name & I.D.	Agency
I.D. Tech. Responding	Badge	I.O. Service Performed ☐ UNK ☐ Photos ☐ Fingerprints ☐ I.D. Advised ☐ Composite ☐ Other	

Additional Forms
- ☐ Accident Report
- ☐ Addendum
- ☐ Arrest Information
- ☐ Closure
- ☐ DWI Continuation
- ☐ D.D.S. Narrative
- ☐ Juvenile Complaint
- ☐ Juvenile Paper Refarral
- ☐ Narrative
- ☐ People Continuation
- ☐ Property Continuation
- ☐ Vehicle Continuation

Forward Copies of This Report to:

Attending Physician	Phone	Who Transported	Hoapital/Medical Facility

Person Code: V-Victim/W-Witness/D-Driver RP-Reporting Person/IL-Investigative Lead
Relationship Code: SP-Spouse/PA-Parent/GU-Guardian/CH-Child/OR-Other Relative/FR-Friend/BF-Boyfriend GF-Girlfriend/NE-Neighbor/EM-Employar or Employee/CW-Co-worker/STR-Stranger/UNK-Unknown

Code	No	NAME: Last/First/MI (Nickname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Sub No.
V	1	FRIES, ANN S.	7-26-40	42	W	F	SPZ	1

Home Address: Number/Street/Apt./City/State/Zip	Home Phone	Work Phone	Days/Hours
5722 N. TRICIA LN TSN AZ	293-4370	887-1754	N/A
Work/School: Name/Address	Injury		
N/A			

Code	No.	NAME: Last/First/MI (Nipkname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Sub No.

Home Address: Number/Street/Apt./City/State/Zip	Home Phone	Work Phone	Days/Hours
Work/School: Name/Address	Injury		

Premises ■ N/A
Residential
- ☐ Apartment
- ☐ Duplex
- ☐ Hotel/Motel
- ☐ Mobile Home/Camper
- ☐ Single Dntached/House
- ☐ Townhouse
- ☐ Other Residential

Non-Residential
- ☐ Convenience
- ☐ Drug/Medical
- ☐ Fast Food
- ☐ Financial
- ☐ Mfg/Construction
- ☐ Public Building
- ☐ Restaurant/Bar
- ☐ Service Station
- ☐ Other Structure

Non-Structure
- ☐ Fenced Yard
- ☐ Open Yard
- ☐ Park
- ☐ Vehicle
- ☐ Other

Structure
- ■ N/A
- ☐ Occupied
- ☐ Unoccupied
- ☐ Uninhabited
- ☐ Abandoned
- ☐ Other

Structure Entry Point
- ■ N/A
- ☐ Rear
- ☐ Front
- ☐ Side
- ☐ Roof
- ☐ Skylight
- ☐ Doggie Door
- ☐ Door
- ☐ Window
- ☐ Vent
- ☐ Wall
- ☐ Other

Means of Entry
- ■ N/A
- ☐ Cutting
- ☐ Prying
- ☐ Gripping
- ☐ Picking
- ☐ Phys. Force
- ☐ No Force
- ☐ Other

Instrument
- ■ N/A
- ☐ Key/Slip
- ☐ Prying Tool
- ☐ Channel Lock
- ☐ Hands/Feet
- ☐ Brick/Rock
- ☐ Bolt Cutter
- ☐ Unknown

Vands/Item Means
- ■ N/A
- ☐ Brick/Rock
- ☐ BBs
- ☐ Bullet
- ☐ Sharp Instrument
- ☐ Paint
- ☐ Other

Suspect's Actions
- ■ N/A
- ☐ Victim Beaten
- ☐ Victim Blindfolded
- ☐ Victim Gagged
- ☐ Victim Handcuffed
- ☐ Victim Tied (rope/etc.)
- ☐ Demanded Money
- ☐ Other
- ☐ Followed Victim
- ☐ Telephoned Victim
- ☐ Threatened to Kill
- ☐ Used Notes
- ☐ Took Money from Register
- ☐ Victim Told Not to Call Police
- ☐ Used Vulgarity/Profanity

Vehicle Entry Point
- ■ N/A
- ☐ Top
- ☐ Trunk
- ☐ Door
- ☐ Window
- ☐ No Forced Entry
- ☐ Other

Safe Info
- ■ N/A
- ☐ Attempt
- ☐ Not Locked
- ☐ Pried
- ☐ Explosives
- ☐ Taken Away
- ☐ Combination Known

Weapon Type
- ■ N/A
- ☐ Revolver
- ☐ Automatic
- ☐ Shotgun
- ☐ Rifle
- ☐ Sharp Instrument
- ☐ Club/Rock/etc.
- ☐ Hands/Fists/Feet
- ☐ Other
- ☐ Observed ☐ Implied

Firearm Descrip.
- ■ N/A
- ☐ Unknown
- ☐ Blue Steel
- ☐ Chrome/Nickel
- ☐ Short Barrel
- ☐ Long Barrel
- ☐ Double Barrel
- ☐ Single Barrel
- ☐ Bolt Action
- ☐ Pump
- ☐ Sawed-Off
- ☐ Other Callbar

Second Weapon Type
- ■ N/A
- ☐ Revolver
- ☐ Automatic
- ☐ Shotgun
- ☐ Rifle
- ☐ Sharp Instrument
- ☐ Club/Rock/etc.
- ☐ Hands/Fists/Feet
- ☐ Other
- ☐ Observed ☐ Implied

Drugs/Narcotics ■ N/A
- ☐ Opium/Cocaine
- ☐ Marijuana/Hashish
- ☐ Synthotic Narcotics
- ☐ Drugs
- ☐ Peyote
- ☐ Other

Summary of Property
Alt values in U.S. dollars
S—Stolen R—Recovered

Clearance Code: 51.03 LOST - PROPERTY.

Value of Damage, Total $

Currency	Jewelry/Precious Metals	Clothing/Furs	Locally Stolon Motor Vehicles
S $ 100.00	S $	S $	S $
R $ 100.00	R $	R $	R $
Offica Equipment	**TVs/Radios/Cameras/etc.**	**Firearms**	**Household Goods**
S $	S $	S $	S $
R $	R $	R $	R $
Consumable Goods	**Livestock**	**Miscellaneous**	**TOTAL**
S $	S $	S $	S $ 100.00
R $	R $	R $	R $ 100.00

Date Entry I.D. Date & Time

- ☐ Stolen Vehicle
- ☐ Missing Person
- ☐ Found Person
- ☐ Fugitive Arrest
- ☐ Recovered Vehicle
- ☐ Runaway Juvenile
- ☐ Returned Runaway
- ☐ Stored Vehicle

Reviewed by 575

P.C.S.D. 500A

INCIDENT REPORT — BASIC CASE

INFORMATION SYSTEMS DIVISION 1/82

08-FJA020342

PIMA COUNTY SHERIFF'S DEPARTMENT

Report Number	Subject Code: A—Arrestee/M—Missing Person / S—Suspect / D—Driver / F—Found / RJ—Runaway Juvenile	Relationship Code: SP—Spouse/PA—Parent/GU—Guardian/CH—Child OR—Other Relative / FR—Friend / NE—Neighbor / BF—Boyfriend / GF—Girlfriend / CW—Co-worker / STR—Stranger / UNK—Unknown	Page
821017 045			2 of 2

Code	No.	NAME: Last/First/MI (Nickname/AKA)	Birthdate	Age	Race	Sex	Relationship Code	Vic. No.
S	1	ADAMS LISA K.	12-27-57	30?	5	F	NE	1

Height	Weight	Hair Clr.	Hair Length	Hairstyle	Facial Hair	Eye Clr.	Glasses	Eye Defects	Complexion	Build	Social Security No.
5'5"	200	BRN.								HEAVY	

Jewelry	Gen. Appear.	Clothing (give Color/Type)	Driver's License No.	State
	SLOPPY			

Scars/Marks/Tattoos (give Location/Content/Description)	Amputations/Deformities/Injuries/Handicaps

Speech	Hand Used	Demeanor	Traits	Home Address: Number/Street/Apt./City/State/Zip
				5722 N. TRISHA LN. - SINGLE WIDE

Home Phone	Work Phone	Work/School: Name/Address	Days/Hours
293-4154			

Parents/Guardian's Name	Relationship	Juv. Disp.	Adult Booking No.	Charges: ARS/City Code No

Vehicle Code: V—Victim / A—Arrested / S—Suspect / ST—Stolen / AB—Abandoned / AC—Accident / REC—Recovered

Code	No.	License No.	State	VIN	V. Year	Make	Model	Style	Color Top	Color Bottom	Color Inside

Markings	Condition	Damage	Location of Vehicle

Owner	Address	Owner Notified	by
		☐ Yes ☐ No	

Code	No	License No.	State	VIN	V. Year	Make	Model	Style	Color Top	Color Bottom	Color Inside

Markings	Condition	Damage	Location of Vehicle

Owner	Address	Owner Notified	by
		☐ Yes ☐ No	

Critique of the Initial Investigation

1. Is a suspect named?	☒ Yes	☐ No	☐ UNK	7. Are there any uncontacted witnesses?	☒ Yes	☐ No	☐ UNK
2. Can the suspect be identified?	☒ Yes	☐ No	☐ UNK	8. Is the suspect vehicle license number known?	☐ Yes	☒ No	☐ UNK
3. Is the suspect's location known?	☒ Yes	☐ No	☐ UNK	9. Is there a suspect vehicle description?	☐ Yes	☒ No	☐ UNK
4. Is there a suspect description?	☒ Yes	☐ No	☐ UNK	10. Are there a limited number of possible suspects?	☒ Yes	☐ No	☐ UNK
5. Is there useful physical evidence?	☐ Yes	☒ No	☐ UNK	11. Are there related similar incidents?	☐ Yes	☐ No	☒ UNK
6. Is the stolen property traceable?	☐ Yes	☒ No	☐ UNK	12. Is there a significant MO?	☐ Yes	☐ No	☒ UNK

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. Property Disposition: (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty	Disp	Serial Number	Description of Property	Value

MS. FRIES SPOKE WITH THIS OFFICER VIA THE TELEPHONE. SHE ADVISES THAT HER NEIGHBOR, (LISA ADAMS S-1) KEEPS CALLING IN THE WEE HOURS OF THE MORNING AND BREATHES HARD IN TO THE MOUTH-PIECE. MS. FRIES HAS A WITNESS TO THE INCIDENTS, AND CAN IDENTIFY THE SUSPECTS.

N.F.I.

CONTACTED VIC. 10/19 @ 0830 - UNCERTAIN IF SUSPECT IS MAKING NOISES. SHE CALLED AT 2300 last wk.. TOLD HER NOT TO CALL AFTER 2200 + HUNG UP.. SHE Called RT. BACK + CALLED me AN IGNORANT BITCH.. SHE CALLED LAST WEEK + whispered "HEY BABY". VIC. has WIT. BUT Requests him To REMAIN ANONOMOUS. SUSP. is Busy Body + NOSEY. VIC. IS NOT CONCERNED W/ SUSPS. PERSONAL PROBLEMS + SUSP. MAD ABOUT THIS. VIC. IS LANDLADY OF SUSP.

ATT. CONT. SUSP. 10/19, 1111 / 1553 & 1554

INFORMATION SYSTEMS DIVISION

PIMA COUNTY SHERIFF'S DE RTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

Report Number 821017045	Incident Location 5722 N. TRISHA LN.	Orig. Clr. Code 26.02	Dist. C	Beat 18	Page 1 of 2
Connect-Up Report Number	Officer Closing M. Cusick	Badge 350	Date Closed 10-21-82	Closure Affects All Victims? ☒ Yes ☐ No	
Case Reviewed by a Deputy County Attorney? ☐ Yes ☑ No	Attorney Reviewing	Prosecutor's Actions ☐ Issued as Charged ☐ Reduced Charges/Issues ☐ Prosecution Denied		☐ Prosecution Summary Attch.	

PROPERTY

Summary of Property All values in U.S. dollars S—Stolen R—Recovered ☐	Property Value Given in Basic Case Unchanged ☐	Add Following Amounts to Property Values Given in Basic Case ☐	Supersede Property Values Given in Basic Case w/the Following Amounts ☐
Currency S $ R $	Jewelry/Precious Metals S $ R $	Clothing/Furs S $ R $	Locally Stolen Motor Vehicles S $ R $
Office Equipment S $ R $	TVs/Radios/Cameras/etc. S $ R $	Firearms S $ R $	Household Goods S $ R $
Consumable Goods S $ R $	Livestock S $ R $	Miscellaneous S $ R $	TOTAL S $ R $

Disposition of Property Held by PCSD ☐ Photo & Release to Owner or Destroy ☐ Release to Owner or Destroy; No Photo ☐ Hold for Court; CA Release Needed ☐ Other Hold/ Explain NONE	Property & Evidence Officer PROPERTY NOV 1 0 1982

Vehicle Disposition ☐ Stolen ☐ Recovered ☐ Evidence	License No.	Year	Make	Returned to Owner ☐ Yes ☐ No	Agency Recovering

VICTIM

NAME: Last/First/MI FRIES, ANN, F.			☑ Clearance Code Same as on Original Report	☐ Change Clearance Code to	
☐ Open—Investigation Continuing	☐ Closed—Unfounded	☐ Closed—Leads Exhausted	☒ Closed by Exception	☐ Closed by Arrest	☐ Other—Explain
NAME: Last/First/MI			☐ Clearance Code Same as on Original Report	☐ Change Clearance Code to	
☐ Open—Investigation Continuing	☐ Closed—Unfounded	☐ Closed—Leads Exhausted	☐ Closed by Exception	☐ Closed by Arrest	☐ Other—Explain
NAME: Last/First/MI			☐ Clearance Code Same as on Original Report	☐ Change Clearance Code to	
☐ Open—Investigation Continuing	☐ Closed—Unfounded	☐ Closed—Leads Exhausted	☐ Closed by Exception	☐ Closed by Arrest	☐ Other—Explain
NAME: Last/First/MI			☐ Clearance Code Same as on Original Report	☐ Change Clearance Code to	
☐ Open—Investigation Continuing	☐ Closed—Unfounded	☐ Closed—Leads Exhausted	☐ Closed by Exception	☐ Closed by Arrest	☐ Other—Explain

SUBJECT / ARRESTEE

NAME: Last/First/MI ADAMS, LISA, K. DOB: 12-27-57		☒ Not Arrested	☐ Arrested During Initial Investig.	☐ Arrested After Follow Up Investigation	☐ Arrested by by Other Jurisdiction	☐ This Arrest Clears Another Incident	☐ This Case Cleared by Arrest/other case
☐ Warrant Issued—Not Served	☐ Probable Cause Arrest	☐ Warrant Arrest	☐ Adult Field Released	☐ Adult Booked	☐ Juvenile Parental Referral	☐ Juvenile Paper Referral	☐ Juvenile Physical Referral
NAME: Last/First/MI		☐ Not Arrested	☐ Arrested During Initial Investig.	☐ Arrested After Follow Up Investigation	☐ Arrested by by Other Jurisdiction	☐ This Arrest Clears Another Incident	☐ This Case Cleared by Arrest/other case
☐ Warrant Issued—Not Served	☐ Probable Cause Arrest	☐ Warrant Arrest	☐ Adult Field Released	☐ Adult Booked	☐ Juvenile Parental Referral	☐ Juvenile Paper Referral	☐ Juvenile Physical Referral
NAME: Last/First/MI		☐ Not Arrested	☐ Arrested During Initial Investig.	☐ Arrested After Follow Up Investigation	☐ Arrested by by Other Jurisdiction	☐ This Arrest Clears Another Incident	☐ This Case Cleared by Arrest/other case
☐ Warrant Issued—Not Served	☐ Probable Cause Arrest	☐ Warrant Arrest	☐ Adult Field Released	☐ Adult Booked	☐ Juvenile Parental Referral	☐ Juvenile Paper Referral	☐ Juvenile Physical Referral
NAME: Last/First/MI		☐ Not Arrested	☐ Arrested During Initial Investig.	☐ Arrested After Follow Up Investigation	☐ Arrested by by Other Jurisdiction	☐ This Arrest Clears Another Incident	☐ This Case Cleared by Arrest/other case
☐ Warrant Issued—Not Served	☐ Probable Cause Arrest	☐ Warrant Arrest	☐ Adult Field Released	☐ Adult Booked	☐ Juvenile Parental Referral	☐ Juvenile Paper Referral	☐ Juvenile Physical Referral
NAME: Last/First/MI		☐ Not Arrested	☐ Arrested During Initial Investig.	☐ Arrested After Follow Up Investigation	☐ Arrested by by Other Jurisdiction	☐ This Arrest Clears Another Incident	☐ This Case Cleared by Arrest/other case
☐ Warrant Issued—Not Served	☐ Probable Cause Arrest	☐ Warrant Arrest	☐ Adult Field Released	☐ Adult Booked	☐ Juvenile Parental Referral	☐ Juvenile Paper Referral	☐ Juvenile Physical Referral

P.C.S.D. 504A INCIDENT REPORT — CLOSURE INFORMATION SYSTEMS DIVISION 5/1/82

PIMA COUNTY SHERIFF'S DEPARTMENT

R.O. BOX 910, TUCSON, ARIZONA 85702

Report Number	Incident Location	Class	Dist.	Beat	Page
5/821017045	5722 N. TRISHA LN.	26.02	C	18	1 of 1

Connect-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	M. Cusick	350	10-20-82	1600	

Narrative Instructions: The narrative portion of the incident report should include a property description of items stolen or destroyed with serial-numbered property listed first, followed by a chronological synopsis of what occurred.

Property Type: ST—Stolen / REC—Recovered / D—Damaged / L—Lost / F—Found. **Property Disposition:** (only in cases of found & recovered property) PH—Photographed & returned to owner / RTO—Returned to owner, no Photographs / PE—Placed in Property and Evidence

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

CONTACTED VICTIM ON 10/19/82 AT 0830 HRS.. VICTIM STATED SHE DOES NOT WISH TO PURSUE MATTER. VICTIM DID REQUEST I CONTACT SUSPECT AND ASK HER TO CEASE MAKING CALLS.

CONTACTED SUSPECT ON 10/20/82 AT 1500 HRS.. SUSPECT, LISA ADAMS, STATED THAT SHE HAS NOT BEEN CALLING THE VICTIM. LISA STATED THAT THE CALLER IS VICTIMS SON, TODD FRIES. LISA HAS ALLOWED TODD TO USE HER PHONE AND WITNESSED HIM CALL HIS MOTHER AND BREATH HEAVY INTO THE PHONE. LISA STATED TODD AND VICTIM BOTH IMPRESS HER AS BEING CRAZY. SHE FELT THEY WERE SIMPLY PLAYING GAMES, SO SHE DID NOT WORRY ABOUT THE SITUATION. LISA ALSO STATED THAT SHE TOLD THE VICTIM ABOUT TODD, APPROXIMATELY A WEEK AGO.

CASE WILL BE CLOSED.

N.F.I.

M Cusick

P.C.B.D. 502A

INCIDENT REPORT — NARRATIVE INFORMATION SYSTEMS DIVISION

5/1/82

Exhibit 61

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff,	No. CA 13-10116 9th Circuit
vs.	No. CR 11-01751 TUC-CKJ
TODD FRIES, Defendant.	Tucson, Arizona October 4, 2012

TRANSCRIPT OF CLOSING ARGUMENTS

JURY TRIAL DAY NINE

BEFORE THE HONORABLE CINDY K. JORGENSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: By: Beverly K. Anderson, and
David A. Pimsner
U.S. Attorney's Office
405 W. Congress St., Suite 4800
Tucson, AZ 85701

For the Defendant: By: Richard C. Bock
100 N. Stone Ave., Suite 801
Tucson, AZ 85701

Mary A. Riley, RMR, FCRR
United States Court Reporter
U.S. District Court
405 W. Congress St.
Tucson, AZ 85750

Proceedings produced by computer-aided transcription

he -- and he was shocked, can you believe it, he said. And then he called Mrs. Levine an F'ing Jew, and F'ing bitch. He was angry. He was seething. This became personal. This wasn't just about the money, $200 -- it was not about money. This was about revenge. He even told Mr. Trujillo, if you recall his testimony, that the defendant was going to target the Levine's driveway causing them to have to spend money to repair it.

So the -- so he -- what did he do? He began to direct his employees to collect disgusting waste he intended to use in his attack. He would collect waste items in the large buckets that you saw in photographs were commonly used as his business. You saw them at the scene of the crime. Those are buckets that are commonly used by the defendant. He started having the employees start collecting the oils from the -- the power wash machines. The oil that used to be recycled was being saved now. And why was it being saved? To be used against the Levines.

Now, you were -- you received into evidence a number of revenge books the defendant had at his home. And they're just excerpts from the revenge books, but if you look at those excerpts from each of those books, the defendant was following directions on how to commit revenge. Included in the Encyclopedia of Revenge, which was found on his nightstand in his bedroom, that one of the acts of revenge should be to pour old motor oil on driveways, or anywhere it will do damage.

He directed his employees to start saving their

leftover paints and the paint sludge from the power washing business. The sludge, the disgusting items.

He all -- you also heard he directed the employees to start saving feces. There was testimony that some animal feces was collected, but there was also testimony that the defendant asked his employees to defecate in buckets to be used in the attack.

He directed his employees to start saving road kill that they came across.

And you heard testimony from a number of witnesses that he started -- that he was shooting woodpeckers at his house. He would collect those woodpeckers. He would put them in the same buckets that were used for the attacks, and including in buckets that contained oil.

The -- you also heard testimony that the defendant shot the coyote in his front yard, and he sent his employee, Jordan, to go pick it up, and Jordan was bit because the coyote was not dead. You heard that Mr. Fries directed that that coyote be put in the neighbor's outdoor refrigerator. And Mr. Trujillo testified that in fact the defendant, Mr. Fries, took him over to the neighbor's house just to show him the dead coyote in the refrigerator.

Mr. Monteil testified that he saw the dead coyote, but it was shown to him in a bag after it had been removed from the refrigerator by Jordan. But the coyote was there. The coyote

was used in the first attack. And he told Mr. Trujillo that he was going to use the coyote in the attack.

You also heard testimony from both Mr. Trujillo and Mr. Monteil that the defendant tried to recruit them to assist in the August -- or excuse me, the October 31st, 2008 attack. You heard testimony that even prior to the attack that day, the defendant took Mr. Trujillo out to the area behind the -- the community that the Levines were living at on Dove Mountain, outside the community walls, and showed him where he was going to stage the buckets and the other disgusting items he was intending to use in the attack.

Mr. Trujillo would not go along with it. You heard his testimony. He had kids, didn't want to get involved in something like that. But you also heard from both Mr. Trujillo and Mr. Monteil that the plot was openly discussed by the defendant in front of all the employees in the shop at Burns Power Wash, and it was clear from the testimony that it's the defendant that was calling the shots. He's the boss. It's his business. His employees that -- Jordan and Getsch that you heard of, they were younger guys, early 20's. Not mid 40's, like the defendant.

In fact, you heard testimony that -- from Mr. Trujillo that the defendant actually named his revenge. The 2008 attack, he called it The Levine Project. The planning took months. He methodically collected disgusting waste after disgusting waste. And as the buckets piled up, even Mr. Monteil said even with the

sealed lids, it was starting to smell pretty bad in the shop. And all the while he was planning his revenge. And again, referring to the -- it's right out of the revenge books that he had, the advice to let time pass. There's no better insulation than time. The longer amount of time you let pass before you take your revenge, the more bewildered the target will be. He wasn't in a rush, because it wasn't about the money, it was about he thought he went above and beyond and he was disrespected. He had the last $200 payment stopped after he went out there numerous times, and after he agreed to accept postdated checks. So it became personal at that point.

Now, he tried to deceive the people involved, the law enforcement involved, and he tried to throw off any suspicion on himself. And how did he do that? He told Mr. Trujillo I called Mr. Levine, and I thanked him for the check. Thanked them for honoring the check, so he'll think the bank cashed it, so they -- and he told him why he did that, so they won't suspect me in this planned attack. This call was confirmed by Mr. Levine. He recalls getting a call after the check was stopped from the defendant, and the defendant thanked him for honoring it. And Mr. Levine says what are you talking about? You know, the check was canceled. How did the defendant react? He just hung up. Didn't respond.

And while he's -- he also, excuse me, told both Mr. Trujillo and Mr. Monteil leading up to the Halloween attack

Exhibit 62

3 /

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

FILED IN COURT
Dec 23 '86
JAMES N. CLERK
R Brown

THE STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	NO CR-18998 & CR-19646
	)	
vs.	)	
	)	PLEA AGREEMENT
TODD RUSSELL FRIES,	)	
	)	
Defendant.	)	
	)	

The State of Arizona and the Defendant hereby agree to the following disposition of this case:

Plea: The Defendant, TODD RUSSELL FRIES, agrees to plead guilty to the charge of: IN CR-18998, THEFT BY CONTROL, a non-dangerous, non-repetitive class six open-ended offense in that on or about the 20th day of May through the 28th day of July, 1986, TODD RUSSELL FRIES committed theft by knowingly controlling property as follows: a 1979 Ford Fairmont, two-door, dark green, Arizona license number AHP 087, which is a motor vehicle belonging to MARY FRANCES HUGHES, in violation of A.R.S. §§ 13-1802 (A) (1) and (C), 13-701, 13-702, 13-801, 13-803 and 13-808.

IN CR-19646, THEFT BY MISREPRESENTATION, a non-dangerous, non-repetitive class six open-ended offense in that on or about the 14th day of May, 1985 through the 21st day of October, 1985, TODD RUSSELL FRIES committed theft by knowingly obtaining property or services with a value of more than $100, but less than $250, as follows: money and merchandise belonging to MERA BANK, J.B.'S, VILLAGE INN, TEXACO, GILMOUR BICYCLE, K-MART, BENNIGANS, VINCENT'S COFFEE SHOP, CATALINA BICYCLE, FAST FOTO, HOLLYWOOD RECORDS, COLOSSAL CAVE, RUSSELL & SHEPARD, LOWN'S COSTUMES, GUGGY'S, JUNE'S HALL MARK and UNION OIL by means of a material misrepresentation with the intent to deprive, in violation of A.R.S. §§ 13-1802 (A) (3) and (C), 13-701, 13-702, 13-801, 13-803, and 13-808.

Terms: On the following understanding, terms and conditions:

(18)

1. The statutory range and special conditions regarding sentence, parole, and commutation imposed by statute are:

If treated as a felony, the crime carries a presumptive sentence of 1.5 years; a minimum of .75; and a maximum sentence of 1.875 years. If sentenced to prison, the Defendant must serve 1/2 of his sentence before he is eligible for parole or release on any other basis.

Whether or not probation is available is within the sole discretion of the sentencing judge. If granted probation, the Defendant may be incarcerated 12 months in the Pima County Jail as a condition of probation.

Restitution of economic loss to the Victim in the amount of $ 346.00 to Mary Hughes for storage charges incurred in CR-18998 and full restitution in CR-19646 will be required. The Victim('s/s') acceptance of restitution pursuant to court order in this case does not constitute a waiver of any civil claims the Victim(s) may have.

The maximum fine that can be imposed is $ 150,000.00.

If the offense occurred after August 7, 1985, the Defendant shall pay a fine of $100 to the Victim Compensation fund as required by A.R.S. §§ 13-808.

If treated as a misdemeanor, the Defendant may be incarcerated up to six months in the Pima County Jail and/or a fine up to $1,000.

2. That the following charges or allegations are dismissed, or if not yet filed, shall not be brought against the Defendant:

All other charges/allegations in this cause number and any other forgery charges of which the State is aware, provided the defendant makes restitution for the losses. The Probation Department shall determine the amount of restitution.

3. Other terms and conditions:

If the offense is not designated a felony at the time of sentencing, then it shall not be designated a misdemeanor until the successful completion of three years probation.

4. Forfeiture of certain weapons or explosives: As part of the plea agreement entered into this date, the Defendant agrees to the forfeiture of certain weapons, instruments or explosives in accordance with the provisions out-lined below:

YES_____ NO XXXX

If yes, item(s) to be forfeited: _____

_____

If yes, the forfeiture agreement shall be in accordance with the following provisions of subsection a or b below:

a. For purposes of A.R.S. 13-3105, the parties hereby stipulate that the offense(s) herein constitute(s) a felony(ies) which involved the use, display or unlawful possession of a deadly weapon, dangerous instrument or explosive and that the weapon(s), instruments(s) or explosive(s) specified above, shall be forfeited to the appropriate law enforcement agency, to be sold, destroyed or otherwise disposed of as forfeited property.

b. The parties hereby stipulate that the item(s) specified above shall be forfeited to the appropriate law enforcement agency for proper disposition, regardless of the nature of classification of the offense(s) herein.

Pursuant to the plea agreement entered into this date, and pursuant to the Defendant's agreement of forfeiture as previously indicated, the Defendant hereby waives any requirements of notice of hearing provided for in Arizona Revised Statutes, Title 13, Chapter 39, and stipulates that acceptance of the plea agreement by the Court shall constitute an automatic forfeiture of the weapon(s), instrument(s) or explosive(s) specified above. Forfeiture of the item(s) under the terms and conditions of this plea agreement shall constitute full authority on the part of the appropriate law enforcement agency to sell, destroy or otherwise dispose of the item(s) as may be authorized by law.

5. That this agreement, unless rejected or withdrawn, serves to amend the complaint, indictment, or information to charge the offense to which the Defendant pleads, without the filing of any additional pleading.

9

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: Philip Fahringer

CASE NO. CR-18998 CR-19646

Court Reporter: Van Honeman

DATE December 23, 1986

STATE OF ARIZONA,	( )	Hy David Rubenstein
vs	( )	
TODD RUSSELL FRIES,	( )	Lori Petersen
	( )	
	( )	

	EVENT SUMMARY				
	Type: SE 1/27/87 Div 8 9 AM	in	Result:	both cases	
	Date:	Time:	Length:	Div:	Req:
	Type:		Result:		
	Date:	Time:	Length:	Div:	Req:
	Type:		Result:		
	Date:	Time:	Length:	Div:	Req:
	Type:		Result:		
	Date:	Time:	Length:	Div:	Req:

M I N U T E E N T R Y

CHANGE OF PLEA:

Defendant present, not in custody.

FILED IN COURT: Plea Agreement

The Court questions the defendant concerning his understanding of the terms and conditions of the plea agreement, the constitutional rights he would waive by entering into said agreement, and the possible consequences thereof.

The defendant enters a plea of guilty in CR-18998 to the crime of Theft by Control, a nondangerous, nonrepetitive, Class 6 open-ended offense committed on or about May 20, 1986 through July 28, 1986.

The defendant further enters a plea of guilty in CR-19646 to the crime of Theft by Misrepresentation, a nondangerous, nonrepetitive,

18-206

Linda Brown
Deputy Clerk

17

MINUTE ENTRY

Page No. 2 Date December 23, 1986 Case No. CR-18998 CR-19646

Class 6 open-ended offense committed on or about May 14, 1985 through October 21, 1985.

The Court questions the defendant concerning a factual basis for the plea. Ms. Petersen and Mr. Rubenstein make statements to the Court concerning the factual basis for the plea.

THE COURT FINDS that the defendant's pleas are knowingly, intelligently, and voluntarily made and that there is a factual basis for them.

THE COURT ACCEPTS the defendant's plea of guilty in CR-18998 to the crime of Theft by Control, a nondangerous, nonrepetitive, Class 6 open-ended offense.

THE COURT ACCEPTS the defendant's plea in CR-19646 to the crime of Theft by Misrepresentation, a nondangerous, nonrepetitive, Class 6 open-ended offense.

IT IS ORDERED that a presentence investigation and report be prepared; and, Ms. Petersen having no objection,

IT IS ORDERED that sentencing is set for January 27, 1987 at 9:00 a.m.

cc: Court Administrator
Hon. Thomas Meehan
Hon. Philip Fahringer
County Attorney - Hy David Rubenstein
Public Defender - Lori Petersen
Pretrial Services
Adult Probation with copy of plea agreement

Linda Brown
Deputy Clerk

18-181

Exhibit 63

PRESENTENCE REPORT - PART ONE

INSTANT OFFENSE:

Summary: This summary will only contain a brief synopsis because the Court presided over the trial and heard the evidence.

On November 1, 2008 a large number of Marana Police Department (MPD) officers arrived at a residence located in the Heritage Highlands subdivision after witnesses discovered a large amount of damage to the gate and to property belonging to Myles and Karen Levine. Officers found the driveway had been covered with used oil and paint. Anti-Semitic graffiti, written in German, and Nazi symbols were located on the garage door. Several dead animal carcasses were found near the front door. Over $10,000 in damage was reported.

MPD officers also found an identification card belonging to Ms. Kaylin Hovey. Crime scene analysts obtained latent fingerprint evidence at the scene. In October 2009, an analysis revealed a latent print left at the scene matched defendant Todd Russell Fries.

On August 2, 2009 at 4:53 a.m., a large number of Pima County Sheriff's Department (PCSD) deputies working in the foothills area began receiving reports of a strong chemical smell coming from the area near Magee Road and Jensen Drive. Deputies Atwell and Baird responded to Mr. Levine's home after he reported a toxic chemical smell and mist emanating from a bucket in his back yard. He also said he was unable to open his front or garage door. An adhesive had been applied to those doors to seal them.

After putting on protective equipment, the two deputies evacuated Mr. and Mrs. Levine from the home. As the volume of mist increased, deputies evacuated a large number of residents and contacted the Hazardous Materials Response Team. Mr. Carly Riggs, a near neighbor, was overcome by the fumes and had to be hospitalized.

The deputies also discovered two devices that contained material used to produce the gas at the home. They also found graphic graffiti, some written in Spanish that had sexual and gang connotations. The dead bodies of several birds and a rabbit were found at the scene. MPD officers also found documents belonging to Ms. Michelle Fuentes and Joaquin Contreras Navarette. Property damages exceeded $10,000. The victims told the deputies they suspected Fries, but he denied any involvement.

On May 31, 2010 at 7:30 a.m., Ms. Marguerite Brown contacted the MPD to report a large amount of vandalism at her residence in Tucson. The deputies discovered two of her vehicles and her driveway had been damaged with glue and acid, causing over $2,000 in damage. Ms. Brown also suspected Fries because she had an argument with him about some poor work his company had performed for her. The investigation continued.

On April 28, 2011, MPD officers returned to the Brown home after she reported more damage at her residence. MPD officers discovered more oil in her driveway and block wall along with feces and a dead lizard that were left on the property. They also found an identification card belonging to Jina Parks.

The Federal Bureau of Investigation, the MPD, and the PCSD jointly investigated these crimes. They developed information that led them to believe Fries was responsible. They obtained a search warrant for his residence on May 13, 2011. They recovered evidence linking him to the damage and found identifications belonging to Ms. Linda Mott. Other evidence found led to his being charged in federal court. The officers also found the bodies of dead animals including woodpeckers that appeared to have been abused.

A Pima County Grand Jury indicted him on February 3, 2014 and issued a warrant for his arrest. The defendant had already been convicted of federal charges as a result of these crimes and was in federal custody. The warrant was served on April 3, 2014 and the defendant was transported to the Pima County Adult Detention Center. He is being held on $75,000 bond.

Defendant's Statement: On advice of counsel, the defendant declined to make a statement about the counts for which the jury convicted him. He acknowledged killing the woodpeckers and said the birds had been a constant nuisance at his home. When no other options worked, he became frustrated and anxious.

The defendant is currently serving a federal prison sentence. He has been participating in programming and is employed. He is involved in transition planning classes in prison. At the time of his arrest, the defendant owned a successful power washing company. After he completes his federal sentence, he will transition back into the community where he hopes to rebuild his life.

Victim's Statement: Mrs. Karen Levine plans to attend court and will make a statement. She said the defendant has made her life "hell." Mr. Myles Levine is also planning to attend the sentencing. He said the defendant's conduct "has placed my family through hell for the last eight years." He and his wife have suffered great stress and are currently receiving therapy. They are afraid to leave their home and fear retaliation. Mr. Levine wants the Court to sentence the defendant to a long term in prison and wants the sentences to be consecutive.

All attempts to contact Mr. Carly Riggs, Deputy Atwell and Deputy Baird have been unsuccessful.

Ms. Kaylin Hovey is not requesting restitution and made no sentencing recommendation. She will not be present at sentencing and does not want to invoke her victim's rights.

All attempts to contact Michelle Fuente, Joaquin Contreras Navarratte, Jina Parks and Linda Mott were unsuccessful. The Court has scheduled a restitution hearing on June 13, 2016 to determine restitution amounts.

Ms. Marguerite Brown will be sending a victim impact statement by electronic mail. She will not be present for sentencing, but does want to be advised of the disposition and of any subsequent hearings.

RISK/NEEDS ASSESSMENT:

Because the defendant is not immediately eligible for probation, the risk/needs assessment was not completed.

COLLATERAL INFORMATION / ADDITIONAL RELEVANT INFORMATION:

The defendant was born in Syracuse, New York. He moved to Arizona as a child and graduated from high school. He also attended community college. He joined the United States Marine Corp and served for four years. He returned to Tucson. He married in 1998 and has two adult children. He and his wife divorced in 1995. He is involved in another relationship. The defendant suffers from high blood pressure that is controlled by medications. He does not drink or use illegal drugs.

INFORMATION NOT FOR DISCLOSURE:

Additional identifying information and/or criminal history may be contained in PART TWO of this report and is for disclosure only to the Court, the prosecutor, the defense attorney, and other authorized criminal justice agencies.

SUMMARY: A review of this 53-year-old man's prior criminal background reveals four prior convictions for misdemeanor property crimes prior his arrest in May 2011. During the commission of these offenses, he endangered and terrorized the lives of the victims, law enforcement and the community by his possession and use of toxic materials. His actions caused a large amount of property damage. The defendant's conduct has caused the victims to suffer severe physical, emotional, and/or financial losses. He now stands before the Court to be sentenced to a mandatory prison term.

It appears the Court can reasonably expect the defendant to pay *ten percent* of his gross income toward assessments.

ASSESSMENTS

CR-20140556-001:

TIME PAYMENT A.R.S. 12-116	$20
PROBATION SURCHARGE A.R.S. 12-114.01	$20
SURCHARGE ASSESSMENT A.R.S. 12-116.04(A)	$13
INDIGENT ADMINISTRATION ASSESSMENT A.R.S. 11-588	$25
VICTIMS' RIGHTS ENFORCEMENT ASSESSMENT ARS 12-116.09	$2

* * * * *

RESTITUTION:

	LOSS CLAIMED
Karen Levine	$ TBD
Myles Levine	$ TBD
Carly Riggs	$ TBD
Dep Atwell	$ TBD
Dep Baird	$ TBD
Kaylon Hovey	$ TBD
Michelle Fuentes	$ TBD
Joaquin Contreras	$ TBD
Jina Parks	$ TBD
Margueritte Brown	$ TBD

Respectfully submitted,

Deborah A. Pela, Lead Probation Officer
Court Services Division

APPROVED BY:

Leslie Clarke, Unit Supervisor
Court Services Division

June 8, 2016

Sentencing Date: June 13, 2016

Exhibit 64

Woman, girl seen in store

Ex-Tucson Mall employee testifies

By GABRIELLE FIMBRES
Citizen Staff Writer

PHOENIX — A woman who led investigators to initially believe Vicki Lynne Hoskinson had been abducted by a woman told jurors yesterday she was "positive" she had seen a girl, who was identified as Vicki in a photograph, in Tucson Mall the night the girl disappeared.

Konnie Koger, a defense witness, was brought to tears several times as she testified in the trial of Frank Jarvis Atwood, who is accused of kidnapping and killing Vicki.

At the time of the disappearance, Koger was employed at Cartoon Junction in Tucson Mall.

She told Pima County sheriff's officers about seeing Vicki with a woman Sept. 17, 1984, after she heard about the child's disappearance on the news that night, she said.

Three mall employees have testified about seeing Vicki, or a girl who looked like Vicki, in the mall between 6 and 7 p.m. that day. Vicki, 8, disappeared from her Flowing Wells-area neighborhood at about 3:30 p.m. that day after her mother sent her to a nearby convenience store to mail a birthday card to her aunt. Vicki never was seen by her family again.

Defense lawyer Stanton Bloom showed Koger a picture of Vicki.

"Is that the picture of the little

Jury told woman had girl in store

Ex-mall employee cries on stand

Continued from 7A

girl you saw on Sept. 17, 1984, at the mall?" Bloom asked Koger.

"Yes," she replied.

"It's the truth, isn't it?" Bloom asked.

"Yes," she answered.

"Are you sure?" Bloom asked.

"I am," Koger replied.

"Are you positive?" he asked.

"I am," she responded.

She described the girl as between 8 and 10 years old and having wavy, short brown hair.

"She had blue eyes and she had little spaces between her teeth," a weeping Koger told the jury.

She described the dress she saw the girl wearing as "patriotic"-looking, with red, white and blue or similar colored stripes. Vicki was wearing a dress that could have been described that way.

Koger said the girl and a woman entered the business, which she said sold "fun items for children," between 6 and 7 p.m.

"As they entered the store, they went directly to the Cabbage Patch display," Koger told the jury. She said the child picked up a few of the Cabbage Patch figurines and looked at them. "The woman was taking her from one display to another, and they stopped at the Garfield display," Koger said.

"I noticed that the little girl was crying and obviously upset. She kept saying 'I want to go home, I want to go home,' over and over," Koger said.

The woman told the child they would go home and then told Koger she had visitation rights, Koger said.

The woman, whom Koger described as being about 35 and dirty, bought the child a Garfield Halloween stuffed animal with a $20 bill she took from a bank envelope, she said.

Each of the mall employees has described the woman in a similar manner.

The woman held onto the girl, either by the shoulder or the wrist, while the two were in the store, Koger said. "She (the girl) was crying," Koger said. "Her stomach was growling. I noticed that."

Koger said she watched the woman and child go down the elevator to the lower level of the mall. She said she saw them walk past the fountain and then walk up to a man who was sitting on a bench.

The woman had contact with the man, whom Koger described as being about 35, having brown hair, a beard and wearing jeans.

A composite picture of the woman was drawn according to Koger's description and was widely circulated. For days, law enforcement officials said they were looking for a woman in connection with the abduction. Atwood, a convicted child molester, was arrested in Kerrville, Texas, three days after the disappearance.

Atwood, 31, was charged with murder after the child's remains were found the following April in the desert near the foothills of the Tucson Mountains.

Sheriff's officials took Koger to see a woman they were investigating, but Koger said she could not positively identify the woman as the person she saw in the mall.

When cross-examined by Assistant Attorney General John E. Davis III, Koger said she could not say whether the girl she saw was Vicki.

"I never said to anybody, not even my husband, that I saw Vicki," Koger told the jury. "All I said was the girl I saw in the mall looked like Vicki."

Koger said she was hounded by newspaper reporters and people who came to her work place to see her. "It was awful," she said, when Bloom asked her if work became difficult.

She said people would come to the store so they could meet her and "say mean things."

"People would say, 'Why didn't you take the little girl by the hand,' " Koger said. "But how did I know?"

She said she wore someone else's name tag and eventually quit her job because of the attention.

In other testimony yesterday, seven witnesses said they saw dark-colored sports cars in different parts of the city the week Vicki disappeared, and several said they saw the car at the time Vicki allegedly was kidnapped.

Atwood, at the time of his arrest, owned a black Datsun 280Z.

On several occasions, however, Davis attempted to show that the cars probably were not Atwood's by their description or the description of the driver.

Defense witnesses were expected to continue testifying today.

Associated Press

Konnie Koger cries at the witness stand at Frank Atwood's trial.

Exhibit 65

Declaration of Stuart P. Keating

I, Stuart P. Keating, declare under penalty of perjury the following to be true to the best of my information and belief:

1. I am a resident of St. Louis, Missouri, and an attorney barred by the State of Missouri (Missouri Bar No. 64952).

2. On the afternoon of October 20, 2019, I participated in an interview of Konnie Delaney regarding her experience as a witness in the Arizona criminal case *State v. Frank Atwood*, Pima Cty. Nos. CR14065 & CR15397. At the time of Ms. Delaney's principal involvement with the Atwood case, her surname was Koger. The interview took place on the porch of Ms. Delaney's home near Dixon, Missouri, and lasted for approximately two hours.

3. The interview was particularly memorable because Ms. Delaney was visibly armed with a handgun, which she kept in her hand for the full duration of the interview. She repeatedly verbally referenced and otherwise drew attention to the fact that she was armed. Ms. Delaney spoke freely but expressed a general concern for her safety that was independent of the interview.

4. During the course of this interview, Ms. Delaney described her role in the Atwood case. This description included her recalling seeing the victim in the company of an unknown second person at the Tucson Mall, where Ms. Delaney was working as an employee at a toy store; providing a description of that second

SPK Initials

person to police, which was used to make a composite sketch of a suspect; and testifying at Mr. Atwood's trial regarding what she had seen at the mall. Her recollection was that the prosecutor at the trial did not like what she had to say in her testimony.

5. Ms. Delaney stated that she had a difficult time personally because of her involvement in the case. She recalled that after her name appeared in media reports as one of the last people to see the victim following the victim's disappearance, she began to receive a lot of attention from curious members of the community, including people coming to her place of work wanting to talk to her about what she had seen.

6. Ms. Delaney further stated that she received significant harassment related to her role in the Atwood case. She recalled that around the time she was involved in the case, she resided on a large property on the outskirts of Tucson, where she lived with her father. She stated that she received anonymous, threatening phone calls at home, accusing her of trying to help a child molester go free. She recalled that on several occasions horses her family kept on their property were found slashed by an unknown attacker. She also stated that on at least one occasion she found a dead animal carcass left on her car, which she felt was a threat. She stated that the harassment was so bad that it led her father to wait

SPK Initials

outside at night with his gun looking for intruders. The harassment caused her considerable distress and concern for her safety.

7. Ms. Delaney said that she never discovered who was harassing her, but that the harassment continued for years. She stated that it only ended when she and her husband moved away from Arizona in approximately 1991. She stated that the move from Arizona was motivated in part by a desire to get away from the harassment she was experiencing because of her role in the Atwood case.

8. During the course of the interview, Ms. Delaney expressed that while she generally does not support the death penalty, she would like to see Frank Atwood executed for her own peace of mind. She said she felt this way because she believed that whoever had previously harassed her would have no reason to resume that harassment after Mr. Atwood was executed.

I have read the foregoing declaration consisting of three (3) pages and eight (8) paragraphs. I declare under penalty of perjury under the laws of the States of Arizona and Missouri and the United States of America that it is true and correct. Signed this 25 day of April, 2022, at City of St. Louis, Missouri.

MO BAR 6495

Stuart P. Keating

SPK Initials

Exhibit 66

Declaration of Jeremy Voas

I, Jeremy Voas, declare under penalty of perjury, the following to be true to the best of my information and belief:

1. I am a private investigator employed by R3 Investigations in Tempe, Arizona (Arizona DPS License No. 1003003). R3 Investigations is currently under retainer to the Arizona Capital Representation Project in *State v. Atwood*, Pima Cty. Nos. CR14065 & CR15397.

2. On May 8, 2021, I was in St. James, Missouri with a colleague attempting to locate witnesses in the case, including Konnie Delaney, whose name was Konnie Koger around the time of Mr. Atwood's trial. We were unable to determine Delaney's whereabouts. We contacted Delaney's sister, Karen Salazar, on the afternoon of May 8 at her residence outside St. James. When we explained why we had contacted her, and asked how we might speak with Delaney, Salazar stated that she recalled Delaney's role as a witness in the 1987 trial of Frank Atwood and that she attended the trial the day her sister testified. Salazar further stated that she and Delaney lived on property owned by her father on Bopp Road west of Tucson, and that she recalled that Delaney had been subject to harassment after she had testified.

JV
Initials

3. While we spoke with Salazar, her son, Nicholas Musson, said he was speaking to Konnie Delaney on his phone, and he handed his phone to me. Delaney spoke with me and my colleague and we left the Salazar residence and called Delaney from our rental car. Delaney was on speakerphone during this conversation, which began at 2:14 p.m. CDT.

4. Delaney told us that the harassment she endured in the wake of her testimony took the form of a dead animal carcass or carcasses left on her vehicle while it was parked at her workplace. She said her work station was on the third floor of a building. She said she did not see who placed the carcass on her vehicle, nor did she know who had put it there.

5. Delaney further stated that a horse she owned was slashed, and she attributed this act to harassment directed at her due to her role in the trial. She stated she did not see who slashed the horse, nor did she know who had done so.

6. Delaney said the harassment she endured occurred right after the trial and years after the trial.

I have read the foregoing declaration consisting of 2 pages and 6 paragraphs. I declare under penalty of perjury under the laws of the State of Arizona and the United States of America that it is true and correct. Signed this 4th day of May, 2022, at Maricopa County, Arizona.

Jeremy Voas

Initials

Exhibit 67

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

TO : SAC, PHOENIX (7-1196) (P) **DATE:** 9/19/84

FROM : SA DAVID LINCOLN SMALL

SUBJECT: UNSUB;
VICKI LYNN HOSKINSON - VICTIM
KIDNAPING
OO: PX

At 10:27 a.m., 9/19/84, PXPD advised via their Chase Channel they had received an anonymous phone call from a female who stated that she saw captioned victim in a vehicle bearing Arizona license 3AM618.

Vehicle registration is set out on attached printout.

At 10:45 a.m., SA Michael C. Roof advised SRA Dick Rogers of these facts.

(2) - Phoenix

DLS:jlm
(2) jlm

Route to Rogers
ac 9/19/84

Bagley

7-1196-3
9
1984
Rogers

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

MVD.18-01 RR.FBIPX010.AZ0000000.TXT LIC/3AM618.

LIC:3AM618-73 TAB:107U43 EXPIRE: 02/85 CURRENT:031784 00
VIN:RN42080421 VYR:80 VMA:TOYOT VMO: VST:TK
NAM:RICHARD,L,RHOADS JR ADR:5742 N TRISHA LANE
CTY:TUCSON ST:AZ ZIP:85704 GVW:008000
TTL:F045696 ST:AZ DTE:060680
1ST LIEN:FIRST NAT'L BANK OF AZ AMT: 5641.56 DATE:030380
ADDR:555 N WILMOT CTY:TUCSON ST:AZ

10:27 AM

Sgt Dick Rogers advised
10:45 AM
9/19/84
NOK.

Exhibit 68

***** MEMO *****

TO: Stan Bloom

FROM: Dave Ewing

RE: ANN FRIES

Date: 7 April 1986

On 1 April 1986 I contacted a Mr. Richard Rhoads who lives next door to the Pries property on North Trisha Lane. He stated Ann Fries does not live on Trisha Lane but rents this trailer. She drives a brown Datsun station wagon and has for several years. He describes Ann as a "crazy" and would not be surprised if she was involved in this case. He states she brings some really strange looking men over to clean up her property. He is afraid to leave his home when these people are working next door.

Mr. Rhoads stated Ann got into trouble with the police in the past when she tried to burn down her trailer for the insurance. I did not pursue this, but he seemed to have more than just passing knowledge. He further stated Ann deals in real estate and is a nursing aid. He may know a great deal about Ann and her background. Mr. Rhoads owns and operates the Orca Corporation, selling coin operated copy machines. Local phone for him would be 888-4721.

I next epoke with the lady who rents Ann Fries trailer. She provided me with the following address for Ann: 3152 N. Shawnee Ave, Tucson 85705.

she also describes Ann as a crazy who attends Pima Community College and drives a brown Datsun station wagon. I did not press for any more from this woman as she was uncomfortable with my questions. She is very apphrehensive of Ann. I did not wish to exacerbate her fears.

I next drove by Ann Fries home at 3152 N. Shawnee. This is located on the southwest corner of Flowing Wells and Ft. Lowell. The home is a yellow trailer with brown trim on the south side of the street, mid block with a low chain link fence. The brown Datsun bearing Arizona license plate #VYF-536 was parked to the south of the trailer in the drive. The curtain were all drawn and the gate closed. Photos will be taken of the car and home this week. As it is, this is all I have to date.

Exhibit 69

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

CID

Report Number	Incident Location		Class	Dist.	Beat	Page
840917040	1920 West Hadley		26.04	C	20	1 of 6
Connect-Up Report Number	Reporting Officer	Badge	Date	Time		Reviewed By
/	Michael Barkman	175	092084			
Typed By	I.D.	Date Typed	Time	Storage Code		
Rodriguez, Adella	1503	9/20/84				

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

SYNOPSIS: This report deals with a series of structured interrogations conducted at the apartments located at 4213 North Romero on 17 September 1984.

DETAILS: On Monday, 17 September 1984, between 2000 hours and 2200 hours, I conducted, in the presence of Deputy Aubry, a series of structured interrogations of the residents of the apartment complex located at 4213 North Romero. As seen in Supplemental Reports, this apartment complex is located immediately south/southwest of the scene of the recovery of the bicycle of Vicki Hoskinson. Due to the nature and circumstances of the investigation as it then stood, it was decided that structured interrogations would be conducted of all residents, or in the alternative, all male residents of the apartment complex.

The following questions were asked during the structured interrogations:

1. After introducing myself verbally and by showing my credentials, I informed the individual being questioned "As you know we are investigating the kidnapping of an 8 year old girl named Vicki that occurred this afternoon. We would like your help. Do you know the little girl we are talking about?"

2. "Have you seen this little girl this afternoon"?, simultaneously handing the person being questioned a color photograph of Vicki Lynn Hoskinson.

3. "What kind of person do you think would kidnap and molest a little girl"?

4. "What do you think the punishment should be for a person who kidnaps and molests a little girl?"

5. "Do you think a person that would do that should be given a second chance"?

25 SEP 84 07:06 P.C.S.D.

The following individuals were questioned in the order as shown, the responses being as follows:

Apt. 101 SMITH, James; white male (family present).
(Apt, 101 is the apartment of Michael Barber, a subject of an accompanying report.)

1. Doesn't know girl.
2. Does not recognize photograph of the girl.
3. "An asshole",
4. "Life, I'd give it to him".
5. "No second chance".

JUL 5 1985

PIMA COUNTY SHERIFF'S DEPARTMENT

P.O. BOX 910, TUCSON, ARIZONA 85702

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840917040	1920 West Hadley	26.04	C	20	2 of 6

Contact-Up Report Number	Reporting Officer	Badge	Date	Time	Reviewed By
	W. J. Barkman	175	09/20/84		

Typed By	I.D.	Date Typed	Time	Storage Code
Rodriguez, Adella	1503	09/20/84		

Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Apt. 102 No response.

Apt. 103 **MEE**, William; white male; late thirties, early forties (female identified as girlfriend was present).

1. "No".
2. "No".
3. "A very sick person."
4. "Suppose capital punishment".
5. "No second chance, would like to be on the jury".

Apt. 104 Vacant.

Apt. 204 **BRUNER**, Jerry Duane; black male; early to mid-twenties. (An ice pick was noted on the floor of the apartment leaning on the couch, and there may have been two pills of unidentified origin laying in the carpeting.)

1. "Don't know her".
2. "Don't recognize her" (looked at the picture closely).
3. "I'd hate to say".
4. "Life sentence".
5. "No second chance".

Apt. 203 Vacant.

Apt. 202 No response.

Apt. 201 **BOWEN**, Fern L.; white female; 14 July 1930. Not questioned with structured paragraph.

Apt. 105 **MURRILLO**, Thomas (Wife, Mary, present).

1. "No sir".
2. "No sir" (Good look at picture and calls kids).
3. "A crazy person".
4. "Send him up for good".
5. "No".

Apt. 106 **MANAGER** (not questioned).

Apt. 107 **CYR**, Carol; white female; mid to late 30's; husband absent at time of interview. Identified as Armand Cyr.

1. "No, I don't know the girl".
2. "No, I don't recognize the girl" (shows daughter photograph).

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Typed By	I.D.	Date Typed	Time	Storage Code		
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Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Apt. 110 Vacant,

Apt. 109 RASMUSSEN, Paul; white male; late forties (wife, Kay, present). These individuals moved into the apartment complex "yesterday" 16 September 1984, and are to assume managerial duties.

1. "No, I don't know her".
2. "No, I haven't seen her".
3. "A sickee",
4. "Hang him up by his caboons" (a reference to the testicles).
5. "No way".

Apt. 210 KASTER, James Richards; white male; 23 September 1954.

1. Interrupts question, explains he has daughters in school.
2. "Is her hair still that short?"
3. "He must be pretty sick in the head".
4. "I'm pretty prejudiced, I got three of them in that room".

It should be noted that as Aubry and I approached Kaster's residence, we were able to see him on the couch, apparently watching t.v., in a prone position. After ringing the door bell several times, and knocking on the door loudly, we noted a woman identified as Debra Kaster (wife) to enter the room and come to the door. It was at that time that Kaster claimed to have been asleep on the couch. Kaster explained in non-specific terms how he had returned from work that afternoon from his place of employment at "Rusk Construction" or similar organization.

Apt. 109 DeROSSETT, David S. (wife, Debra, present).

1. "Don't know her".
2. "Haven't seen the girl".
3. "A sick person, I hope he burns in Hell".
4. "Should be sent away for ever unless he's mentally ill or something".
5. "We need to know more about the person".

Apt. 209 MAJALCA, Alex (apparently no relationship to our deputy). This individual was not home. This individual was known to Aubry who talked with the child that answered the door.

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Type	Item	Qty.	Disp.	Serial Number	Description of Property	Value

Apt. 208 **JOHNSON**, Arthur and wife, Beatrice Johnson, older, retired couple.

1. "No idea".
2. "No". (Looks at photograph with wife)
3. "A nut would do it".
4. "That would be hard to say".

Johnson and his wife have a discussion that children are usually molested by people they know, etc.

Apt. 207 **MOORE**, Gwene and **Harney**, Brenda L. (both females, late teens or early twenties, claimed no knowlege.) Both females deny any problems of phone calls, being watched, etc.

Apt. 205 **ARAYA**, Sergio (resides with girlfriend Connie Porter who was not present).

1. "No".
2. Does not know, but "I saw the picture before earlier tonight".
3. "A jerk".
4. "Death".
5. "There ain't no second chance after death".

It should be noted that I am familiar with this individual having known him for approximately for a year and a half.

Apt. 111 **DON**, Lois (husband Jeff is not present).

The woman denied any knowledge of the child, only giving background information as to the neighborhood.

Apt. 112 Vacant.

Apt. 113 **ARGENZIANO**, Debra Ann (white female; late twenties, early thirties); resides with daughters Wendy, 11, and JoAnn, 8. Not questioned. Claims a history of "hang up phone calls".

Apt. 114 **HARDY**, Wayne Sartian (white male; 4/27/57; wife, MaryAnn Louise Hardy, present).

1. "No".
2. "No, I don't know her at all". Repeats three times.

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Typed By	I.D.	Date Typed	Time	Storage Code
Rodriguez, Adella	1503	092084		

Type	Item	Qty	Disp	Serial Number	Description of Property	Value

3. "All sorts of people. A closed in type person, quiet type person".
4. "Rehabilitation if possible after at least ten years in prison unless the child is hurt, at which time he should be given twenty years."
5. "Depends on the person, maybe psychiatric help".

Hardi informed me that he rises early, and on several occasions has seen a "older man" walking in the alley behind the apartment complex "between 5:00 and 6:00 a.m.". Describing the man as "sort of a transient type". He suspects the man is frequenting the area collecting cans, etc.

Apt. 214 **REGHER**, Valerie (husband, Dennis Regher, not present at interview). Regher was not interrogated. Regher informing me both she and her husband work.

Apt. 213 **ROBERTS**, Peggy (white female; mid-30's). Her mother, Peggy Mayhard, was present and was questioned. Roberts and her mother both volunteered to have their apartment searched. It should be noted I've known Roberts for several years.

Apt. 212 Vacant.

Apt. 211 **NANEZ**, Samuel Louie (2 March 1959). Nanez, Scott Paul (2 April 1960). Samuel Nanez and his brother both claim no knowledge. Nanez described the previously mentioned child grabbing incident involving his neice, claiming he feels the person responsible should be hung or killed somehow.

Apt. 115 **ROBNETT**, Donald Stewart; (white male; 14 years; 14 May 1970; Flowing Wells Junior High School). Interviewed in presence of brother, Robnett, Gary Rowe; white male, 19, Gary Robnett is "deaf", and apparently does not speak.

1. Uh-uh (negative).
2. Uh-uh (negative).
3. "They most be mentally ill".
4. "The electric chair or life".
5. "I don't know."

Robnett seemed uncomfortable although the source of the threat was not identified.

Disclosures Made JUL 5 1985

Apt. 116 No response.

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Type	Item	Qty	Disp.	Serial Number	Description of Property	Value

Apt. 218 Vacant.

Apt. 217 No response.

Apt. 216 **ZIEGLER**, Sue Marie; white female. Not questioned at length, has two sons.

Apt. 215 **BONDI**, James Harvey; white male; 28 June 1959; (wife, **Bondi, Kathy Irene**, present).

1. Interrupts. Exploratory portion. Explains how he heard about the case on his way home from work on his car radio.
2. "Don't know her, don't know what she looks like, never seen her before, they said they had found her bike".
3. He and his wife talked. They have kids. It's possible the father took the little girl. He doesn't know, re-ask the question. "Don't know, maybe a maniac".
4. "Maybe a mental hospital". Again reiterating very specific responses to irrelevant issues when he arrived at home, about fifteen minutes ago.

It should be noted that the above responses are reconstructions of my recollection of the incident based on notes in which this report was constructed. At 2210 hours, after having informed Sheriff Dupnik of the facts and circumstances involving the structured interrogation, I was instructed to defer searching the "no response" apartments until "tomorrow". The "no response apartments" were those apartments that appeared to be or were purportedly occupied where we got no response. It should be further noted that Deputy Clark, in the company of his canine, searched the nine vacant apartments in the complex in the company of the manager's daughter.

Further, it should be noted that Sgt. Witte and I, earlier in the evening, had entered an apartment by use of a master key. The apartment was entered due to the facts and circumstances surrounding a purported "child grabbing" that occurred in the apartment complex. No evidence of the missing child was found in that apartment.

No further information at this time.

W. James Barkman, #175
Deputy Sheriff
Intelligence Unit

Exhibit 70

APP

FILED IN COURT
5-8 1987
JAMES N. CORBETT, Clerk
Deputy

STATE OF ARIZONA,
Plaintiff,
vs.
FRANK JARVIS ATWOOD,
Defendant.

CR-14065 and CR-15397
SPECIAL VERDICT
PURSUANT TO A.R.S.
13-703(D)

The Defendant, Frank Jarvis Atwood, was found guilty by a jury on March 26, 1987 of murdering Vicki Lynne Hoskinson in violation of A.R.S. §13-1105.

Subsequently the same jury found proven beyond a reasonable doubt that the Defendant, Frank Jaryis Atwood, had previously been convicted of two felonies: lewd or lascivious acts upon the body of a child under fourteen years of age in Superior Court, County of Los Angeles, California in case #A-071926 with judgment and sentence on November 29, 1978 and kidnapping in the Superior Court, County of Los Angeles, California in case #A-080644 on January 20, 1981.

The State properly gave notice to the defendant of its intention to seek the death penalty and to prove three of the enumerated aggravating circumstances listed in A.R.S. §13-703(F):

(1) The Defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

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(2) The Defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person.

and

(6) The Defendant committed the offense in an especially heinous, cruel or depraved manner.

The State further gave notice that it intended to prove number two above by the preliminary hearing transcript of Logan Mandel's testimony and to prove number six above by the testimony of Robert Hill.

As to number one above the State informed the Defendant of its intent to argue that the applicable Arizona statutes and State v. Tittle, 147 Ariz. 339, 710 P.2d 449 (1985) would make Defendant's prior conviction for lewd and lacivious conduct qualify under that section and arguably that the kidnapping conviction would also qualify.

The State's burden of proving the existence of any aggravating circumstance is beyond a reasonable doubt.

The Court has considered the memoranda of both counsel addressing these issues and pursuant to A.R.S. §13-703(B) has conducted a separate hearing to determine the existence or nonexistence of the aggravating circumstances noticed by the State and of any mitigating circumstances offered by the defense, for the purpose of determining the sentence to be imposed.

In determining whether to impose a sentence of death or life imprisonment, the court shall consider the proven aggravating and mitigating circumstances and, pursuant to A.R.S. §13-703(E):

> shall impose a sentence of death if the court finds one or more of the aggravating circumstances enumerated in subsection F of this section and that there are no mitigating circumstances sufficiently substantial to call for leniency.

Following the hearing for this purpose, this Court makes, pursuant to A.R.S. §13-703(D), the following findings:

1. The Court finds beyond a reasonable doubt that the aggravating circumstance of A.R.S. §13-703(F)(1) is proven by Defendant's conviction in 1978 of lewd and lascivious acts, an offense for which, pursuant to Arizona law applicable at that time, a sentence of imprisonment "for not less than five years nor more than life" was then imposable.

2. The Court finds that the aggravating circumstance of A.R.S. §13-703(F)(2) is not proven beyond a reasonable doubt since the Arizona Supreme Court has disapproved the consideration of testimony of a victim of a previous crime for the purpose of showing the underlying violence, State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983), and this Court, after review of the California statute concludes that the "use or threat of violence" is not a necessary element of the statute.

3. In regard to A.R.S. §13-703(F)(6), the aggravating circumstance of an offense committed in an "especially heinous, cruel or depraved manner," the State argues that the testimony heard by this Court during the trial is sufficient to prove this circumstance beyond a reasonable doubt. However, this Court has reviewed the relevant case law and has considered all of the testimony at trial in light of that, but concludes that mere speculation that the manner of the killing was "especially heinous, cruel or depraved" is not proof beyond a reasonable doubt.

4. The Court finds no other of the aggravating factors of A.R.S. §13-703(F) applicable here.

5. The Defendant, by memorandum filed April 30, 1987, has proffered eleven different circumstances for the Court to consider in mitigation. Only two of these arguably fit any of the specific mitigating circumstances of A.R.S. §13-703(G). One is the Defendant's age of 28 years. This Court finds that not a mitigating factor. Defendant contends that his drug usage so incapacitated him as to significantly impair his ability to appreciate the wrongfulness of his conduct on September 17, 1984. The Court finds that the Defendant has failed to prove that contention.

6. The Defendant is not limited by the factors specifically enumerated in A.R.S. §13-703(G) and has offered other matters in mitigation. While the giving of the felony murder instruction might under some circumstances be a mitigating factor, the Court finds it no mitigation here where the Defendant was the only participant in this offense.

7. No other of the suggested mitigating circumstances even warrant detailed discussion as those matters, even if true, do not even collectively support mitigation of the Defendant's actions.

8. The Court finds no mitigating circumstances which are sufficiently substantial to call for leniency.

The Court shall announce its special verdict in open court prior to sentencing.

John G. Hawkins
Superior Court Judge

May 8, 1987

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Exhibit 71

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

State of Arizona,
Plaintiff,
v.
Frank Jarvis Atwood,
Defendant.

No. CR 14065

Phoenix, Arizona
March 26, 1987

BEFORE: The Honorable John Hawkins, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VERDICT AND PRIORS HEARING

Prepared on Appeal
Original
Copy

Colleen M. Grunow
RPR, CSR

SUPERIOR COURT

APPEARANCES

For the Plaintiff:

John Davis, Assistant Attorney General

For the Defendant:

Stanton Bloom

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WITNESS:	EXAMINATION BY:	ON PAGE:
Robert Tavernaro	Mr. Davis	18

EXHIBITS:

NUMBER:	RECEIVED ON PAGE:
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105A	22
106	22

PROCEEDINGS

THE COURT: Thank you once again. For the record once more this is Pima County CR 14065, that is State versus Frank Jarvis Atwood. Both counsel and Mr. Atwood are present. Counsel, as you know the jury has indicated to Glenn that they have reached verdicts. So I need to have just a little discussion with you about what options they may be and what we need to do depending on what they are.

First of all, if, and I assure you I have no idea what the verdicts may be, but should they be not guilty, then of course the issue of allegations does not arise. Mr. Davis, should there be a guilty as to both charges, does the state then have any need or interest to proceed with the allegations?

MR. DAVIS: Your Honor, if there is guilty verdict as to both charges, I still would like to proceed in proving the priors, but I would proceed with what proof is available to me here in the state at the moment. And we have noticed the fingerprint expert to come down and, at that time I would move to admit -- let me get to the number for the record, 105 -- which is the letter of which only portions were admitted because the prior history was not relevant.

Our motion would be that it is not relevant and is more or less a confession to these priors, and I think that and fingerprint evidence would be sufficient to proceed. If there is a verdict in which there is only guilty on kidnapping, at that point if the court would give me a few moments to think about what I might want to do because we have other witnesses who are on notice to think if I think we need them.

THE COURT: Mr. Bloom, have you seen these additional exhibits that have been identified?

MR. BLOOM: Yes, I have, Judge. My objection would be of course to the certification and to the fact that I think there's some indication as a report that was attached along with it, one of the witnesses -- but basically to the certification to the authentication that they are not valid priors and we're not admitting to them for purposes of the documents themselves.

THE COURT: All right. I understand that and I'm assuming they are, Mr. Davis, certified exemplified copies?

MR. DAVIS: Yes, they are, Your Honor.

THE COURT: Counsel, I have had Irma prepare the three forms of verdict as to the allegations. I have looked them over, believe them to be correct, but please, if both of you would look them over, should we need

to use them I was not to know these are satisfactory. Mr. Davis, if you'll come take a look. I have the allegations here, if you want to make comparison with the allegations.

MR. DAVIS: Yes, please, Your Honor.

MR. BLOOM: The only thing I see here, Judge, on these that the allegation was alleged in CR 15397, of course the verdict form seems to be CR 14065.

THE COURT: That is because of the consolidation of them, Mr. Bloom. Once we consolidated, we ceased using both numbers.

MR. BLOOM: Okay. I realize that, I'm just saying the allegation was made, I think, to the -- I'm not sure which one is the later one now. Is the --

THE COURT: The kidnapping was the earlier.

MR. BLOOM: 140?

THE COURT: No, 140 I think is the original number adopted so they retained 140 CR but the allegations were with the original kidnapping charge.

MR. DAVIS: They were the same allegations.

MR. BLOOM: Yes, Judge, and all I'll saying is I thought they were alleged to kidnapping, even though they had been consolidated. So I would just make my objection to that effect for that purpose and I don't feel

it's applicable to this case.

THE COURT: All right.

MR. BLOOM: In general.

THE COURT: Thank you. Would you bring those back to me. What I will do is if there is a guilty verdict or if they are both guilty verdicts, I will advise the jury that we will have additional business for them, but that we will take just a few moments, send them back into the jury room. You'll have a chance then, Mr. Davis, to give some thought to how you wish to proceed at that point.

Let me ask of all of you in the audience, and it is obviously important at this point and undoubtedly emotional to all of you who have an interest and have been here for much or all of the trial and I realize that. But I have to ask of all of you that whatever the outcome, whatever the verdicts, that you not display any demonstrations or outburst or anything like that.

As you know, we will have other business that has to be conducted. I don't intend to compete with any of you to do that, so I suggest in advance that if you think there's going to be any sort of emotional outburst or if you think you need to let yourself go at that point, I suggest you excuse yourself from the courtroom and step out and do that if you feel you need to.

Counsel, are we otherwise -- one other thing,

Mr. Bloom, that we have not done and I have not forgotten it but simply thought you might do it just as well later and that is the record of the jury's request to go and visit Tucson and my decision to decline them that opportunity. I think you wanted to make some record that you voiced earlier and I'll let you do that later. All right? I guess we're ready.

(The following proceedings took place in open court.)

THE COURT: For the record now all jurors are present. Thank you very much. Please be seated. Mr. Bradshaw, we are advised by the bailiff that the jury has now been able to reach verdicts unanimously as to both charges, is that true?

JUROR BRADSHAW: Yes, we have.

THE COURT: And you have selected the appropriate verdicts and signed same, I assume?

JUROR BRADSHAW: Yes, I have.

THE COURT: Would you hand them all to the bailiff, please. What I will do is hand these to the clerk, she will read them aloud and record them. She will inquire of you, the jury, after that, "Are these your verdicts?" And you should answer aloud yes or no, please, if you would.

THE CLERK: May I omit the formal

caption?

THE COURT: Yes.

THE CLERK: "We, the jury, duly impaneled and sworn in the above entitled action, upon our oaths do find the defendant guilty of kidnapping, Andrew C. Bradshaw, Foreman." Is this your verdict so say you one and all?

Thank you. "We, the jury, duly impaneled and sworn in the above entitled action, upon our oaths do find the defendant guilty of murder, Andrew C. Bradshaw, Foreman." Is this your verdict so say you one and all? Thank you.

THE COURT: Mr. Bloom, do you wish to have the jury polled individually?

MR. BLOOM: Yes, Your Honor.

THE COURT: Jurors, further procedure at this point will be for the clerk to individually inquire of you, "Are these your verdicts?" And would you again please answer aloud yes or no.

THE CLERK: Juan G. Mejorado, is this your verdict?

JUROR MEJORADO: Yes.

THE CLERK: Rosetta M. Acker, is this your verdict?

JUROR ACKER: Yes.

THE CLERK: Frank C. Leyva, is this your

verdict?

JUROR LEYVA: Yes.

THE CLERK: Juvenal Lopez, is this your verdict?

JUROR LOPEZ: Yes.

THE CLERK: Barbara A. Fekete, is this your verdict?

JUROR FEKETE: Yes.

THE CLERK: David K. Smelser, is this your verdict?

JUROR SMELSER: Yes.

THE CLERK: Ruth Jones, is this your verdict?

JUROR JONES: Yes.

THE CLERK: Andrew C. Bradshaw, is this your verdict?

JUROR BRADSHAW: Yes.

THE CLERK: Frank J. Ondrey Jr., is this your verdict?

JUROR ONDREY: Yes.

THE CLERK: Carol Jones, is this your verdict?

JUROR JONES: Yes.

THE CLERK: Thank you. Stephen Garcia, is this your verdict?

JUROR GARCIA: Yes.

THE CLERK: Helen B. White, is this your verdict?

JUROR WHITE: Yes.

THE CLERK: Thank you.

THE COURT: Mr. Davis, in light of our discussion a few moments ago, was there anything further we need to proceed with before the jury?

MR. DAVIS: Yes, Your Honor. Should be just a few minutes, and I apologize to the jurors. Know this is a surprise to them, but there is that further matter we need to proceed this.

THE COURT: Thank you. I'll explain that to them. Jurors, there's just a little bit more business for you. We cannot tell you in advance that there is, but it's not long. There will be just a few minutes delay and then we'll get out of here and go right onto the business we have for you.

What I'll ask you, first of all, is that you step back into the jury room for just a few minutes. We will quickly get prepared to do this with you, and Glenn will bring you back very shortly and I suggest it won't be later than ten minutes from now and then that the additional business that we have for you will not take long, so you're still on schedule.

We won't have to worry about the hotel or anything else. If you will do that for me, please, step back in the jury room a few minutes and we'll have them back here shortly.

(Thereupon, the jury was excused.)

THE COURT: The jury has stepped back to the jury room, and counsel, I hope we can proceed within ten minutes to go ahead with the allegations of prior convictions.

MR. DAVIS: We have placed to call the D. P. S. fingerprint expert was on call. He has already taken and compared the fingerprints so it should only be the travel time from the D. P. S. building to here, and he was alerted that he might be needed. So hopefully that call went through.

I would like, while we're on the record, Your Honor, the exhibits marked 105 were inadvertently marked on a folder which was good except there is writing on that folder about certain other witnesses that would be available.

What I would ask is perhaps we let Irma remark these and withdraw this folder. And I will proceed with the fingerprint expert and I would at this time offer 60A and ask that the entirety of that letter be given to the jurors to reach their decision on the allegations of prior

conviction.

THE COURT: That being the letter to which reference is previously made?

MR. DAVIS: Yes. To which certain portions or edited and predacted upon motion by the defendant for the jury's decision.

THE COURT: Mr. Bloom, that would be over your objection obviously?

MR. BLOOM: Yes, Your Honor

THE COURT: I will admit exhibit 60A in full for purposes of this portion of the trial. It will be over defense objection that was more fully aired earlier. The certified documents, if I may see those also, those numbers are 60 A and 60B.

MR. DAVIS: No. The documents have been marked as one package as 105 on the folder. So what I'm giving the court now is what has previously been marked as 105 and you might want to mark them 105A, B, or C or whatever is most convenient for the clerk. Yes, I wanted to get all of those.

THE COURT: These will have new identification of what?

THE CLERK: 105A.

THE COURT: These are now the certified documents and I have confirmed that they are, will be

identified as Exhibit 105A. The court has confirmed that they are certified exemplified copies. They would be admissible, Mr. Bloom, over your objection I believe pursuant to Rule 803, Subsection 22, of prior convictions and if they are self authenticating pursuant to Rule 902 of the rules of evidence. So they will be marked and admitted as Exhibit 105A collectively <UFL>.

Mr. Davis, the only thing we need is D. P. S. officer to arrive?

MR. DAVIS: Yes. If I could be excused to step out, maybe I could come back while we're still on the record and tell the court what our expections are about him.

THE COURT: Let me just for a moment let me state exactly what our procedure will be and see if you care to make opening statement for example. My procedure would be to, when the jury returns, advise them that there are additional allegations that they must hear also and explain to them the same procedure follows. State will begin and defense will have an opportunity to proceed after that if they wish. And invite each of you, if you wish, to to make opening statement. Will you care to?

MR. DAVIS: Yes, I would, probably just to explain to them what they're to do. I'm not going to go into detail. But I think this is more puzzling than some of

the other things so you will explain to them what the allegation is, what they need to find and just tell them I will call two witnesses and introduce the letter to give them evidence to base a finding on.

THE COURT: I will simply advise them as to instructions and of course all of the previous instructions, especially if the burden is beyond a reasonable doubt for the state to prove, this is still applicable, and that they will then get the verdict forms. And I will read to them and be allowed to consider the evidence before them as to these allegations.

Anything else we need to do before we're actually ready to bring the jury out and do that?

MR. DAVIS: No, Your Honor. Just to check and make sure there's no snag and he's on the way.

THE COURT: I'll step off the bench and you advise me when he is here and available.

(A recess ensued.)

THE COURT: For the record, both counsel defendant and all jurors are present. Jurors, the additional business that is before you at this time, as I informed you, is something that we cannot advise you until such time as you have returned a guilty verdict should you do that. And these are allegations of prior felony convictions and an allegation of committing the offenses

that you have just heard and decided while being on probation, parole or any other release.

These are handled as the original charges were, that is I'm going to be reading the allegations to you. The state then has an opportunity to make a brief opening statement to you as to what it is they must do. The state proceeds with its evidence as before in the original case and then the same instructions, burden of proof and so on remain the same as to before. So you have there your note pads, and I will read to you now the allegations and then Mr. Davis may proceed thereafter.

The allegation is as follows: "The County Attorney of the County of Pima, Name of the State of Arizona by its authority and pursuant to A.R.S. alleges that the defendant Frank Jarvis Atwood has previously been convicted of the offenses, two of them, of lewd or lacivious acts upon the body of a child under 14, in the Superior Court, County of Los Angeles, California, and Judge C. Woodmuncy, A-071926. The defendant certified the Department of Mental Hygiene on February 3, 1975, Judgment and Sentence on November 29, 1978."

The second alleged prior conviction is that of kidnapping in the Superior Court, County of Los Angeles, California Judge L. J. Rittenband, case number A-080644 on January 20, 1981.

The next allegation is that of committing the felony while on probation, parole or other release. It reads as follows: "The County Attorney of County of Pima, name of the State of Arizona, by its authority, pursuant to A.R.S. alleges that the defendant Frank Jarvis Atwood committed the offense charged in the above numbered indictment," and that pertains to the kidnapping charge in this case, "while he was on probation, parole, work furlough or any other release in case number A-080644 kidnapping, County of Los Angeles, California, Judge L. J. Rittenband on January 20, 1981."

To these allegations the defendant has entered a denial and that brings us then to the time for Mr. Davis to make brief opening statement to you. Mr. Davis?

MR. DAVIS: Thank you. I'm sorry to give you this unpleasant surprise that you have more to do, and I apologize. There will only be one witness called to support the state's allegations. And that will be a fingerprint expert from the Department of Public Safety.

He will testify to you that he has taken the fingerprints of the defendant Frank Atwood and compared those fingerprints to documents which you will see. Those documents are the certified copies of the court documents showing the prior convictions of Frank Jarvis Atwood.

Some of those are attached to fingerprint cards

which the expert has then compared with the fingerprints of Frank Atwood as he sits here today to tell you that the Frank Atwood in those records is the same Frank Atwood who sits here today.

The other item which you will have to take back to the jury to prove these convictions is an item 60A, part of that item was admitted to you. Some of the words in the letter have already been given to you to help you reach your decision. Now, you may have all the letter.

In that letter you will see that Frank Atwood wrote rather detailed descriptions of these prior crimes and you can use that to consider and to prove the fact that this is the same Frank Atwood that was convicted.

For example, one of the allegations concerns a 14 year old girl, and you will see a discussion in this letter of that crime against that 14 year old girl and the admission of the defendant that he in fact committed that crime and was convicted of it. Also you will see a discussion of the next victim who was a seven year old boy who was kidnapped and defendant discusses that in the letter, too.

So you should read the letter and then compare it to the documents and consider the testimony of the fingerprint examiner, and from that evidence you will conclude beyond a reasonable doubt that in fact the

allegations are true, that Frank Atwood has been twice convicted of the crimes as alleged in the allegations.

THE COURT: Mr. Bloom, do you wish to make an opening?

MR. BLOOM: No, Your Honor.

THE COURT: Mr. Davis, you may proceed with your witness.

MR. DAVIS: I would like to call Mr. Tavernaro.

ROBERT TAVERNARO,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DAVIS:

Q. Tell the jurors your name and where you are employed, please?

A. My name is Robert Tavernaro. I am employed as a latent print examiner with the Arizona Department of Public Safety in the Phoenix laboratory.

Q. Would you briefly, briefly tell the jury your qualifications to perform that job for the Department of Public Safety?

A. I have attended numerous schools, including a class in the classification identification of fingerprints at Phoenix Police Department, have attended the FBI's basic latent print school, FBI's advanced print school. I have completed the FBI's latent print photography school at the FBI academy in Quantico, Virginia. I have attended and successfully completed numerous classes in police science at Phoenix College in this city and state.

I have taught in the science of fingerprints at Phoenix College, also Northland Pioneer College in the State of Arizona. I have, in addition, testified numerous times and been able to qualify as an expert witness on latent fingerprint identification.

I am currently member and president of the Arizona Identification Counsel and member and past chairman of the Arizona Regional Latent Print Certification Committee, which is affiliated with the International Association of Identification of which I am a certified latent print examiner.

Q. Mr. Tavernaro, pursuant to the state's request, did you come here this week and take the fingerprints of the defendant Frank Jarvis Atwood?

A. Yes, I did.

Q. And showing you what has been marked as 106, would you look at that, please, sir.

Q. You recognize that?

A. Yes, I do.

Q. Are those in fact the fingerprints which you personally took from Frank Jarvis Atwood here in this courtroom?

A. Yes, they are.

Q. Showing you now various documents which have been marked and admitted under the number 105A. Could you look at those and see if you recognize certain pages of those documents?

A. Yes, I do.

Q. And did you take the fingerprints which you took from Frank Jarvis Atwood and compare them to the fingerprints contained within those documents prior to coming to court here today?

A. Yes, I did.

Q. What was your conclusion based on that comparison?

A. Conclusion was that the prints that appear as copies within this document, three separate sets were made by the same person who I took these ink prints from, I believe it is on Wednesday of this week here.

Q. Okay. Just to be sure for the record that person is the defendant Frank Atwood?

A. That's correct. The gentleman in the dark suit

with the reddish tie.

THE COURT: He has identified the defendant.

MR. DAVIS: I have no further questions of the witness.

THE COURT: Mr. Bloom, any questions?

MR. BLOOM: No questions, Your Honor.

THE COURT: Thank you, Mr. Tavernaro. You may be excused, sir. Anything further, Mr. Davis?

MR. DAVIS: Yes, Your Honor. If I might, there was one thing I neglected to mention in my opening so I would mention that to the jury.

THE COURT: All right.

MR. DAVIS: What I forgot to mention to you is these documents also prove that the defendant Frank Atwood was on parole when he committed this offense. And you will see documents in here which showed that he was released in May of 1984 from the prison sentence on the kidnapping of the seven year old boy and placed on parole in California and that he was on parole in September of 1984 when he committed this offense.

That's the other allegation in part. The judge will give you two allegations similar to the forms of verdict that you found, and if you look at these documents, you're going to see photographs also of the defendant that

also convince you that the person who these documents talk about is in fact this defendant Frank Atwood. And you will see parole records in here that prove that he was released on parole from prison in California in May of 1984 and that that parole continued into September of 1984.

Your Honor, I would move, if I have not previously done so that 106 and 105A be admitted into evidence for purposes of this hearing and that also the jurors be allowed to consider the entire letter marked 60A previously identified by witnesses.

THE COURT: Mr. Bloom, I have recorded your earlier objections in addition.

MR. BLOOM: Fine, Your Honor.

THE COURT: Exhibit 60A, Exhibit 105A and Exhibit 106 will all be admitted over the objections. Mr. Bloom, do you wish to present anything at this time?

MR. BLOOM: No.

THE COURT: Mr. Davis, anything else?

MR. DAVIS: No, Your Honor.

THE COURT: Mr. Bloom, nothing else then?

MR. BLOOM: Nothing else, Your Honor.

THE COURT: Jurors, you have heard all that you're going to in the way then of evidence pertaining to these particular allegations.

I'm going to read to you again, as I did

before, the verdict forms that will be given to you very shortly. They pertain to each of these allegations.

The first one and again as before, each has the caption of the case up at the top, the CR and then the first one begins as follows: "It has been alleged that the defendant Frank Jarvis Atwood was convicted of the felony lewd lacivious acts in the Superior Court of Los Angeles County, California Case A-071926 on February 3, 1975."

In this case, the nature of the allegations requires that your decision be either that it is true beyond a reasonable doubt or that it is not true. And again the foreperson Mr. Bradshaw will sign at the very bottom.

The next reads: "It has been alleged the defendant Frank Jarvis Atwood at the time of committing this offense was on parole in case A-080644, kidnapping, Los Angeles County, California from judgment on January 20, 1981." Again your decision must be either true beyond a reasonable doubt or not true and again signature by the foreperson at the bottom.

I didn't read these in a particular order that you might consider them, but the other reads: "It has been alleged the defendant Frank Jarvis Atwood was convicted of a felony of kidnapping in the Superior Court of the Los Angeles County, California in case A-080644 January 20, 1981."

Again the decision either true beyond a reasonable dcubt or not true.

As I indicated to you before, the instructions previously given to you, a copy of which you have had and continue to have, apply to these allegations as they did to the original charges. So I need say nothing further to you. Just remind you that it is the burden upon the state to prove the allegations beyond a reasonable doubt.

Again we'll let you retire in the custody the the bailiff and wait to har something from you about your verdicts as to these allegations.

Record may reflect I am handing to Glenn also three forms of verdict that I read to you just now. Thank you. You may retire to begin deliberations.

(Thereupon, the jury was excused.)

THE COURT: For the record the jury has retired to consider these matters. Mr. Bloom, if you wish, this is a good opportunity for you to make any record you want as to the requested trip to Tucson by the jury that was denied by the court.

MR. BLOOM: Yes, judge. As Your Honor recalls in chambers --

THE COURT: You want to step to the podium so everyone can hear you, thank you?

MR. BLOOM: I'm sure they're most

interested to hear what I have to say, Judge.

I would simply say to the court that we have had conversation in chambers about the jury viewing in Tucson. I tried to recollect -- I thought at one time during the course of the trial that I had even suggested to Your Honor outside the presence of the jury that I wanted the jury to view the important areas that are involved in this case in Tucson.

The court wasn't sure if I had or not. I thought I had. I can't be sure about that, but the record will speak for itself. At least in chambers I did indicate to the court that while the court did send a message back to the jury, I did that as an alternative to my original suggestion, which was that they be allowed to view those areas requested by the jury in their note.

And I believe that Your Honor did make a ruling at that time. And rather than go through a formal proceeding on record here, we agreed that I could state this objection. Your Honor is giving me time to do so now, and we would send the alternative, if Your Honor was to overrule my objection, which I believe you did, and then send the note, which Your Honor also did.

So the only thing I would like to say is that I would like to -- in terms of not a jury view back to Tucson, but I would look to have my client dispatched to Tucson so

that I can be in communication with him prior to his sentencing time.

I would also ask that certain other property and other matters relating to the vehicle that are not subject of evidence in this case that were not used in any way as evidence in this case be released to my client's parents, since they would have no purpose in retaining that evidence or those items.

THE COURT: Mr. Davis, do you wish to add anything to the request for the trip to Tucson by the jury?

MR. DAVIS: No, Your Honor.

THE COURT: For the record that was the request from the jury dated 3/25/87 and time 3:52 p.m.. And without reading it in full, it was requested that they visit the area around Nora Wilson's and had mentioned several other areas of interest to them. And further said there are several jurors who feel they need to see this area fortify conclusions they have made from testimony and was signed by Mr. Bradshaw.

My response of course was -- and we did have discussion in chambers and it was not thought necessary by other counsel to at that time make the record. And Mr. Bloom, you had previously indicated that you would waive Mr. Atwood's presence for our discussions unless it came to something that we really wanted to make of record at that

time.

We did it also without Mr. Atwood at that time. I determined that it would not be of any assistance to the jury that if any anything it would be very confusing and difficult to try to duplicate for them. Obviously any of the testimony of routes or areas or locations that they had heard. Obviously we cannot go back to two and half years ago to try to do that.

So it was my decision that we would not do so, and then in the alternative I believe, Mr. Bloom, that you offered the first sentence of the response and that is "We are not in a position to transport you to Tucson period."

And I further supplied to them "Please consider all of the exhibits that are in evidence together with your collective recollection of the testimony that you have heard." And signed it and sent it back to them at 4:20 yesterday afternoon.

That is I believe the complete record as far as that is concerned. I don't, as I indicated to you at the time, Mr. Bloom, I don't remember you asked seriously or otherwise for us to actually transport the jury to Tucson for views earlier any time during the trial. Given my advancing age and senility, at times, though it's possible that I just didn't didn't remember it, but it certainly is not my recall that you did.

At any rate that takes care of that record and Irma has already marked that as part of the record as she has any other question and request that they have.

As far as Mr. Atwood's incarceration is concerned, since we are all from Tucson and counsel intend to return there as do I, I would suggest that we schedule any further hearings in regard to sentencing and/or allegations or mitigation there in Tucson and at a time yet to be determined, because I know both of you need a chance to think about what will be involved, what you wish to present, have the court consider, and how much time may be involved in that.

What I would suggest -- I'm assuming both of you will be returning to Tucson at least by Monday, Mr. Davis?

MR. DAVIS: That's correct, Your Honor.

THE COURT: Mr. Bloom also?

MR. BLOOM: Yes, Your Honor.

THE COURT: Let me suggest to you then that we meet on Tuesday, that will be the 31st of March, simply for the purpose of our determining how much time may be required and a date convenient to all of us to do that.

And I won't even set a time at this point since none of us know exactly what our calendars look like. I think I will start trial Tuesday morning, but I'm not

certain what. If you would let me have Vicki get in touch with you Tuesday morning, and we'll agree upon a time that day to meet for scheduling purposes.

Mr. Atwood should be transported back to Tucson as soon as possible after we complete these hearings on the allegations here along with any property that he has with him here and his property and then he will be housed in Pima County pending all other further hearings.

Mr. Davis, as far as other items, nonevidence that have been seized from him, I don't know, Mr. Bloom, exactly what those things might be. If the two of you would confer about what they are and whether they are where I need to order their release, for example, if they were identified here but never offered in evidence or something, if it's not part of the record we need to retain. And otherwise if you need further order from the court as to those items, I will make that for you.

For purposes of any appeals that may follow, I am going to arrange to have all of the exhibits in evidence and identified here in Maricopa County because the reporters are all from here. They will all be preparing transcripts here, and they will need access to those and reference to those and so it makes no sense for me to take those back to Pima County away from them.

That will be true also of all of the interviews

and documents and disclosure, so far as the court has had it, because I will leave those here for purposes of their reference, if it would assist them in preparing transcripts.

Otherwise I will come back to Tucson prepared to hear any other matters that we need to on the date we agree. Anything else we need to do right now?

MR. DAVIS: I don't believe so.

MR. BLOOM: No.

THE COURT: I would suggest we all just sort of stand by. I'll step off the bench, but I would assume that the jury will not be long in deliberating these matters so let's don't go far if we do. We'll be at recess until the jury indicates otherwise.

(A recess ensued.)

THE COURT: Thank you. Once again both counsel and defendant are present. All jurors also present. And Mr. Bradshaw, has the jury been able to agree unanimously as to all three of the allegations?

JUROR BRADSHAW: Yes, we have.

THE COURT: Hand those to the bailiff, please. As before, I will hand those to the clerk, ask that she read and record them. She will again inquire, "Are these your verdicts?" And answer aloud if you would.

THE CLERK: Want me to omit formal caption?

THE COURT: Yes.

THE CLERK: "It has been alleged that the defendant Frank Jarvis Atwood was convicted of the felony of kidnapping in the Superior Court of Los Angeles County, California, in case A-080644 on January 20, 1981. True beyond a reasonable doubt, Andrew C. Bradshaw, Foreman."

Is this your verdict, so say you one and all? Thank you.

"It has been alleged that the defendant Frank Jarvis Atwood was convicted of the felony of lewd or lacivious acts in the Superior Court of Los Angeles County, California in case A-071926 on February 3, 1975. True beyond a reasonable doubt, Andrew C. Bradshaw, Foreman."

Is this your verdict so say you one and all? "It has been alleged that the defendant Frank Jarvis Atwood at the time of committing this offense was on parole in case A-080644 kidnapping, Los Angeles County, California from a judgment on January 20, 1981, true beyond a reasonable doubt. Andrew C. Bradshaw, Foreman." Is this your verdict so say you one and all?

THE COURT: Mr. Bloom, do you wish to have the jury polled?

MR. BLOOM: No, Judge.

THE COURT: Thank you. Jurors, it's come to an end. You have invested an awful lot of time and

effort and emotion with us. Thank you isn't enough. I said thank you to all of you and to the four who were chosen to be excused at that time because I wanted you to realize that it had no bearing what result you might ultimately render if you were able to.

And so I said thank you to all of you then and I say to all of you who have remained and deliberated and reached the verdicts again. Thank you sincerely for all of us the entire system, all the court personnel, myself, the attorneys, everyone because we cannot do what we do, we cannot have our system of justice without you.

We cannot do it without people willing to make sacrifices, willing to be inconvenienced, willing to give of themselves emotionally and otherwise and you all have. And so with the sincerest appreciation and thanks from all of us, I'm about to say goodbye and thank you all very much.

I have certainly enjoyed being here. And this jury, as I mentioned before, has been good jury as I have ever seen, as attentive as ever as long trial as it was and as many delays. That were totally unexpected to you. I'm sure we knew there would be some, but less expected to you than to us. And throughout you were understanding and patient and never once voiced a complant and were as attentive, as far as I can tell, at the very end as you were at the very beginning.

So for all of us I thank you so much and I appreciate it. You are now excused from your further service until they contact you again if they need you to serve further. I can't imagine they would ask any of you to serve further after this period of time. Glenn is going to take you out and you have some options either one to leave immediately or perhaps a couple of you wanted to talk to me for a moment.

If so I will be here very shortly and available to you if you want to do that. But otherwise he will assist you in leaving as quickly as you would like. Thank you all again. Mr. Bradshaw, thank you for being foreman.

(Thereupon, the jury was excused.)

THE COURT: With the jury excused but counsel remaining, there's one further allegation and it was one that the jury did not need to consider because it is an allegation that the two prior convictions were serious offenses not committed on the same occasion and pursuant to Title 13, Section 604, Subsection N as in November.

The court finds that Mr. Atwood is in fact person at least 18 years of age as required; that he has, as found by the jury, just now been convicted of two prior serious offenses and they are of record already; that they were not committed on the same occasion and therefore the Title 13, Section 604 N does come into play for the purposes

of sentencing.

Counsel, I don't believe there's any further record to be made at this time. I will be happy to contact you about our meeting together on Tuesday of this coming week to determine a date for hearing and sentencing. And unless there's anything else that you think of, Mr. Davis?

MR. DAVIS: No, Your Honor.

THE COURT: Mr. Bloom?

MR. BLOOM: No, Your Honor.

THE COURT: We will adjourn until I talk with you on Tuesday. Thank you both very much. Let me add one thing for the record, I have said this to both counsel, both before we ever started this trial months ago and have said this to them off the record since and I will again now on the record because I think it's important. This is a long difficult road for counsel, whomever they are. It is sometimes emotional. It is sometimes that we appear to be unhappy with each other, and I'm saying counsel with each other, counsel with the court and perhaps the court with counsel at times.

But again it is all part of the system. They are advocates. I have said previously on the record they are both professionals. I have high regard and respect for both of them as counsel and for the job they have done. And I think in light of the length of time, the amount of time

we have all spent together, the emotional aspect of this trial and difficulties of putting it altogether over this long period of time, I simply want to compliment them both and tell them I do appreciate them and tell them on the record that I do, and that as far as I am concerned, if I had choices of two counsel that I know any where with whom to have to spend two months in this kind of difficult emotional case, they would have, previous to starting, this been among my first choices and they would still be among my first choices.

So I add that just as a final concluding remark then. Thank you all very much.

Exhibit 72

FILED
APR 21 PM 3:46
JAMES R. CORBETT
CLERK SUPERIOR COURT
BY
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,)
Plaintiff,)
vs.)
FRANK JARVIS ATWOOD,)
Defendant(s).)

NO. CR-14065, CR-15397

STATE'S SENTENCING MEMORANDUM

COMES NOW the State of Arizona, by and through the Attorney General, ROBERT K. CORBIN, and his Assistant Attorney General, John Davis, and hereby respectfully submits the following Memorandum of Points and Authorities in support of the State's position that the Defendant should receive the maximum penalty provided by law: death.

Respectfully submitted this 21 day of April, 1987.

ROBERT K. CORBIN
THE ATTORNEY GENERAL

John Davis
Assistant Attorney General

Copy ~~mailed~~/delivered this
21 day of April, 1987, to:

Stanton Bloom

PIMA COUNTY ATTORNEY
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CA-69

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INTRODUCTION

The State has provided notice to the defendant that it will seek to prove aggravating circumstances under three of the seven statutory provisions:

> 1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

Ariz. Rev. Stat. Ann. 13-703(F)1.

> 2. The defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person.

Ariz. Rev. Stat. Ann. 13-793(F)2.

> 3. The defendant committed the offense in an especially cruel, heinous or depraved manner.

Ariz. Rev. Stat. Ann. 13-703(F)6.

Each will be discussed in turn.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER OFFENSE IN THE UNITED STATES FOR WHICH UNDER ARIZONA LAW A SENTENCE OF LIFE IMPRISONMENT OR DEATH WAS IMPOSABLE

In State v. Tittle, 147 Ariz. 339, 710 P.2d 449 (1985) the Arizona Supreme Court was faced with the Defendant's 1965 prior California robbery conviction and interpreted the provisions of A.R.S. §13-703(F)1 as follows:

> [4] Our interpretation of A.R.S. §

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> 13-703(F)(1) compels us to agree with the trial court which determined that defendant's 1965 robbery conviction could be considered an aggravating circumstance. The statute does not read that the offense must be punishable by life imprisonment or death under current Arizona law. The words "was imposable" clearly require the sentencing court to look at the potential penalty imposable at the time a defendant was sentenced for the original conviction and not at the time of sentencing for the subsequent murder.

Id. 147 Ariz. at 343, 710 P.2d at 453.

The State has proven beyond a reasonable doubt that the Defendant has been convicted of a violation of California Penal Code, Section 288; Lewd and Lascivious Acts, committed on or about the 18th day of June, 1974, upon a child under the age of fourteen years. The California Penal Code, Section 288, reads:

> 288. Lewd or lascivious acts upon the body of a child under 14; intent; punishment.
>
> Any person who shall wilfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in part one of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the State prison for a term of from

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one year to life.

(Added by Stats. 1901, c. 204, p. 630, § 1. Amended by Stats. 1933, c. 405, p. 1028, § 1; Stats. 1937, c.545, p. 1562, §1.)

The counterpart in the Criminal Code of Arizona in effect at the time was A.R.S. § 13-652. Lewd and lascivious acts. The Arizona Statute provided:

§ 13-652. Lewd and lascivious acts; definition; punishment.

A person who wilfully commits, in any unnatural manner, any lewd or lascivious act upon or with the body or any part or member thereof of a male or female person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of either of such persons, is guilty of a felony punishable by imprisonment for not less than one nor more than five years. If such person commits the act as described in this section upon or with a child under the age of fifteen years, such person shall be punished by imprisonment in the state prison for not less than five years nor more than life without the possibility of parole until the minimum sentence has been served. As amended Laws 1965, Ch.20, §2, eff. March 25, 1965.

Transferred, Renumbered and Amended

[This section is transferred for placement in new Title 13, Chapter 14 (see revised Criminal Code, 1978 Special Pamphelt), renumbered as § 13-1412, and amended by Laws 1977, Ch. 142, §68, effective October 1, 1978.] [Emphasis added.]

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The potential sentence for commission of this crime in Arizona on June 18, 1974 was a range of five years to life in prison. Tittle is controlling, and the aggravating circumstance of A.R.S. § 13-703(F)1 is clearly present.

II.

THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY IN THE UNITED STATES INVOLVING THE USE OR THREAT OF VIOLENCE ON ANOTHER PERSON

The State has also proved beyond a reasonable doubt that the Defendant has been convicted of a violation of California Penal Code, Chapter 3, Section 207, Kidnapping: Committed on or about the 29 day of May, 1980. The victim's testimony about the 1980 crime has been introduced into evidence and the certified copy is part of the permanent record in this case. The victim testified to the death threats uttered by the Defendant during the kidnapping and ensuing molestation. The forcible abduction and threats of death certainly fulfill the requirements of A.R.S. § 13-703(F)2. In addition, the California Supreme Court has had occasion to analyze the elements of kidnapping under Section 207. Section 207 provides:

§ 207. Definition

Every person who forcibly steals, takes, or arrests any person in this state, and carries him into another country, state, or county or into another part of the same county, or who forcibly takes or arrests any

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> person, with a design to take him out of this state, without having established a claim, according to the laws of the United States, or of this state, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person; and every person who, being out of this state, abducts or takes by force or fraud any person contrary to the law of the place where such act is committed, and brings, sends, or conveys such person within the limits of this state, and is afterwards found within the limits thereof, is guilty of kidnaping.
>
> (Enacted 1872. Amended by Stats. 1905, c.493, p. 653, §1.)

The California Supreme court commented:

> In regard to a "general act of kidnaping," section 207 encompasses any movement of a victim which is substantial in character (People v. Stanworth (1974) 11 Cal.3d 588, 601, 114 Cal.Rptr. 250, 522 P.2d 1058), and accomplished by means of force or threat of force (People v. Rhoden, supra, 6 Cal.3d 519, at p. 527, 99 Cal.Rptr. 751, 492 P.2d 1143).

People v. Camden, 16 Cal. 3d 808, 129 Cal.Rptr. 438, 548 P.2d 1110, 1113 (1976). Accord, People v. Alcala, 36 Cal.3d 604, 205 Cal.Rptr. 775, 685 P.2d 1126 (1984). The court in Camden also

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stated that asportation by use of threat or force is the essential element of a general act of kidnapping. Camden, supra, citing Rhoden, supra.

Nonetheless, the exact standard for determining whether a felony involved the use or threat of violence is somewhat unclear. In State v. Arnett, 119 Ariz. 38, 579 P.2d 542 (1978) the Arizona Supreme Court resorted to a dictionary definition and defined violence as being the "exertion of any physical force to injure or abuse", quoting Webster's Third New World Dictionary (1976). Thus the defendant's prior conviction for "lewd and lascivious acts upon a child under the age of fourteen years" wherein the defendant had ruptured the hymen of a five-year-old with his finger and thereby caused bleeding, was a prior crime of violence under 13-703(F)2. In later cases, the court has laid down stricter guidelines for proof of the violent nature of the prior crime without indicating whether the definition of violence remains the same. In State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 [Gillies I] (1983). The Arizona Supreme Court specifically disapproved the admission of testimony from the victims of previous crimes at the aggravation hearing for the purpose of showing the violence underlying the previous statutory violation. Instead, the court held that the determination of violence must be by reference to the statutory definition of the crime which must include elements of violence or the threat of violence. Id. at 511, 662 P.2d at 1018. In

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State v. Poland, 144 Ariz. 388, 698 P.2d 183, affirmed on other grounds, 54 U.S. L.W. 4445, 196 S.Ct. 1749, 90 L.Ed.2d 123 (1985) [Poland II] the court further provided that the trial court can take judicial notice of the nature of the prior felony. No Arizona court has analyzed the California Kidnapping Statute for purposes of A.R.S. § 13-703(F)2. Regardless of the standard applied, the prior California kidnapping conviction fulfills the requirements of A.R.S. § 13-703(F)2.

III.

THE DEFENDANT COMMITTED THE OFFENSE IN AN ESPECIALLY CRUEL, HEINOUS OR DEPRAVED MANNER

The last aggravating circumstance to be proved by the State has been the subject of much litigation; proof that the crime was committed in an especially heinous, cruel or depraved manner. The court has made efforts to note that while all murders are in some sense cruel, heinous and depraved, this provision is to be used only when the murder is especially so. In other words, it must be distinguishable from ordinary, run-of-the-mill murders. State v. Gretzler, 135 Ariz. 42, 659 P.2d 1 (1983), cert. denied, 461 U.S. 971 (1983): State v. Zaragoza, 135 Ariz. 63, 659 P.2d 22 (1983). The sentence has been held to be written in the disjunctive, thus, the State may establish aggravation by proving only one of the three factors of 13-703(F)6. State v. Clark, 126 Ariz. 428, 616 P.2d 888 449 U.S. 1067, 101 S.Ct. 796, 66 L.Ed.2d 612 (1980) citing State v.

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Ceja, 126 Ariz. 35, 612 P.2d 491 (1980) [Ceja II]. State v. Castenada, 150 Ariz. 382, 724 P.2d 1 (1986), State v. Carriger, 143 Ariz. 142, 692 P.2d 991 471 U.S. 1111, 105 S.Ct. 2347, 85 L.Ed.2d 864 (1984). State v. Correll, 148 Ariz. 468, 715 P.2d 721 (1986). The terms cruel, heinous and depraved have been defined in State v. Gretzler, 135 Ariz. 42, 659 P.2d 1 (1983), cert. denied, 461 U.S. 971 (1983):

> [The Arizona Supreme Court has] set forth the following definitions of the words heinous, cruel, and depraved:
>
> "heinous: hatefully or shockingly evil; grossly bad.
>
> cruel: disposed to inflict pain esp. in a wanton, insensate or vindictive manner: sadistic.
>
> depraved: marked by debasement, corruption, perversion or deterioration."

Id. at 51, 659 P.2d at 10, citing State v. Knapp, 114 Ariz. 531 at 543, 562 P.2d 704 at 716 435 U.S. 908, 98 S.Ct. 1458, 55 L.Ed.2d 500 (1977). Basically, cruelty involves the pain and distress visited upon the victim while heinous and depraved go to the mental state and attitude of the perpetrator as reflected in his words and actions. Correll, 148 Ariz. at 479, 480.

Unfortunately, the State has been deprived of much of the evidence concerning the final moments of Vicki Lynn Hoskinson by the suppression of the Defendant's confessions to Jonas Bowen and by Robert Hill's refusal to testify. But the

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jury has spoken and the following facts must be accepted as having been proven beyond a reasonable doubt.

1. The Defendant abducted Vicki Lynn Hoskinson from her neighborhood.

2. The Defendant restrained Vicki Lynn Hoskinson and transported her to the northwest side of Tucson.

3. The Defendant intended to inflict a sexual offense, physical injury or death upon Vicki Lynn Hoskinson.

4. The Defendant murdered Vicki Lynn Hoskinson.

5. The murder was committed by stabbing with a knife.

6. The murder was committed to prevent the victim from testifying against the Defendant.

7. The little eight-year-old victim was carefully concealed and left in the desert.

Even without resorting to analysis, these facts allow no reasonable doubt as to the especially cruel nature of Vicki's death and the heinous and depraved state of the Defendant's mind. Although the State is unable to prove beyond a reasonable doubt exactly how Vicki Lynn Hoskinson suffered physical pain while in the hands of Frank Jarvis Atwood, the Arizona Supreme Court has specifically included mental suffering in defining cruelty. The court has indicated that "A victim's uncertainty as to the

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ultimate fate can be significant in indicating mental suffering." Correll 148 Ariz. at 480, 715 P.2d at 733. Accord, State v. Gillies, 142 Ariz. 564, 691 P.2d 655 (1984) [Gillies II], cert. denied., ____ U.S. ____, 105 S.Ct. 1775, 84 L.Ed.2d 834 (1985); State v. Gretzler, supra; State v. (Ricky Wayne) Tison, 129 Ariz. 526, 633 P.2d 335 (1981) cert. denied, 459 U.S. 882 (1982). The length of time between her abduction and murder was more than sufficient for Vicki Lynn Hoskinson, an eight-year-old girl, to experience unimaginable terror.

At least one commentator has argued that State v. Adamson, 136 Ariz. 250, 665 P.2d 972 464 U.S. 865, 194 S.Ct. 204, 78 L.Ed.2d 178 (1983) has added a second prong to the cruelty determination: that the Defendant intended or could reasonably foresee a substantial likelihood that the victim would suffer. (Note: "The Aggravating Circumstances of Arizona's Death Penalty Statute: A Review," 26 Ariz. L. Rev. 3, 661 at 675 (1984). Not all subsequent cases have made mention of this decision in assessing cruelty.) But see, State v. McCall, 139 Ariz. 147, 677 P.2d 920 467 U.S. 1220, 104 S.Ct. 2670, ___ L.Ed.2d ___ (1983); State v. McDaniel, 136 Ariz. 188, 665 P.2d 70 (1983).

The other two factors, "heinous" and "depraved", are usually analyzed together because they both focus on the Defendant's state of mind as evidence by words and actions at or near the time of the murder. Gretzler provides a list of five

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factors to be used in assessing heinousness and depravity:

> 1. the apparent relishing of the murder by the killer;
>
> 2. the infliction of gratuitous violence on the victim beyond the murderous act itself;
>
> 3. mutilation of the victim's body;
>
> 4. the senselessness of the crime; and
>
> 5. the helplessness of the victim.

Id. 135 Ariz. at 52, 659 P.2d at 11. [Citations ommitted].

The first, second, and third factors are shown by the uncontroverted testimony of Thomas "Mad Dog" Parisien. The Defendant related the details of a stabbing, allegedly involving a drug dealer to Mr. Parisien. In fact, the Defendant was talking of the death of the 8 year old victim Vicki Lynn Hoskinson. The Defendant bragged about the stabbing and demonstrated what Parisien described as a "Zorro number" on the victim. The Defendant also boasted about blood spurting from the wounds he had inflicted upon the victim. These admissions by the Defendant establish the first three factors.

Without additional factors, the last two considerations alone will not ordinarily sustain a finding of heinousness or depravity, Correll, 148 Ariz. at 481, 715 P.2d at 734; State v. (Bernard) Smith, 146 Ariz. 491, 707 P.2d 289 (1985), but either or both of the factors considered together with other circumstances may lead to such a conclusion.

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Gretzler, 135 Ariz. at 52, 659 P.2d at 11.

In addition to these five factors, depravity is also found when the Defendant has indicated that the murder was committed to prevent the victim from testifying against him concerning a felony that occurred contemporaneously with the murder. Correll, 148 Ariz. 481, 715 P.2d at 734, citing State v. (Roger Lynn) Smith, 141 Ariz. 510, 687 P.2d 1265 (1984) and State v. Hensely, 142 Ariz. 598, 691 P.2d 689 (1984). Depravity is also indicated by a total disregard for human life, State v. Clark, supra. Killing in order to silence a potential witness shows "a complete lack of understanding of the value of human life." (Roger Lynn) Smith, 141 Ariz. at 512, 687 P.2d at 1267, cited in Correll, 148 Ariz. at 481, 715 P.2d 734. The senselessness of the murder, the helplessness of an eight-year-old child, the Defendant's avowed purpose of silencing the "next kid" and the unrefuted motivation for the attack combine show beyond a reasonable doubt a heinous and depraved mind which is utterly repugnant to civilized society.

CONCLUSION

Pursuant to the above points and authorities, the State respectfully requests this Honorable Court to deliver a sentence of death in the matter of the State of Arizona v. Frank Jarvis Atwood.

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CR-14065

Respectfully submitted this 21 day of April, 1987.

ROBERT K. CORBIN
THE ATTORNEY GENERAL

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Exhibit 73

THE SENTENCING

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

vs.

FRANK JARVIS ATWOOD,

Defendant.

Case Nos. CR-14065
CR-15397

May 8, 1987
Tucson, Arizona

SENTENCING PROCEEDINGS

BEFORE: THE HONORABLE JOHN G. HAWKINS, JUDGE

APPEARANCES:

For the Plaintiff:

JOHN E. DAVIS, III, ESQUIRE
Assistant Attorney General

For the Defendant:

STANTON BLOOM, ESQUIRE
Attorney at Law

Catherine V. Hintzen, RPR
Official Court Reporter
Division XVII

P R O C E E D I N G S

(9:53 a.m.)

THE COURT: For the record, once again this is State versus Frank Jarvis Atwood. There are two CR-numbers, 14065 and 15397. Counsel, if you will announce your appearances, please, for me once more.

MR. DAVIS: John Davis, Assistant Attorney General, for the State, Your Honor.

THE COURT: Thank you.

MR. BLOOM: Stanton Bloom on behalf of Frank Atwood, present in court.

THE COURT: I'm sorry about all the obstacles to counsel getting here. In addition to what we expected, there are other things that created problems this morning.

This is the time for sentencing and I need to put on the record fully exactly what has brought us here before I hear from counsel and Mr. Atwood additionally, if he wishes to.

For the record, then, on March 26th 1987, a jury found Mr. Atwood guilty first in count one of kidnapping, a class-two felony. It is non-dangerous but repetitive, in violation of Title 13, Section 1304(A)(3)(B) and 604(N) and 604.01.

They found also that he had been convicted of two prior felony convictions, and they are one conviction of lewd or lascivious conduct in Los Angeles County in A-number 071926, occurring February 3rd 1975, and a second one of kidnapping in Los Angeles County also, January 20th 1981, and that in A-number 080644.

It was found also that he was on parole in A-number 080644. And this then is in violation of Title 13, Section 604.01. These are two felonies committed on separate occasions.

The jury found also that Mr. Atwood was guilty in count two of felony murder. That is a class-one felony, again non-dangerous but repetitive, the same prior felonies applying, this in violation of Title 13, Section 1101 and 1105. These events occurred on 9-17-84.

Counsel, you have an opportunity now to address the Court any further if you wish. And I have read, by the way, Mr. Atwood's letter that he wrote to me. I had not seen it before it was marked as an exhibit on Wednesday but I have since read it.

And Mr. Bloom, if you would like to add anything at this time, you're welcome to.

MR. BLOOM: I've had a chance to just recently, just within a matter of a couple minutes, read

Your Honor's special verdict form, so I will not address my comments to some of the other matters that were taken before the Court where Your Honor has ruled favorably to the defendant.

I will talk a little bit about the one aggravating circumstance and why I think -- I'm not here to argue that that is not an aggravating circumstance because Your Honor has already ruled on that question. But I would ask the Court to consider the weight that should be given to that particular aggravating circumstance.

We have the statute, I've argued the question about the constitutionality of this statute. But at least from my reading of the cases it doesn't appear that this is a recipe or a formula that the Court considers and then says, "Well, there are so many aggravating circumstances and there are so many mitigating circumstances but if the aggravating outweigh the mitigating then the matter is concluded."

I think it is totally discretionary based on the facts of the case. Your Honor has found one -- at least at this point, from what I'm able to glean in my cursory examination of your special verdict -- one aggravating circumstance, which appears to be the lewd and lascivious charge that Mr. Atwood was convicted of

in 1974. Mr. Atwood has testified that that charge, at least when he pled, as it appears, it was a sentence that could be a -- excuse me, a life sentence could be imposable at that time in California and particularly in Arizona.

It seems to me, and I'd argue to Your Honor, that that particular statute has been changed. It was changed in California for a definitive sentence, which he was sentenced to for five years. And it was changed in Arizona to a much lesser charge, which is a class-three felony, with a maximum of ten years, which would have been at the time that Mr. Atwood would have been convicted.

It seems to me that to use that as an aggravating circumstance, to revert back to the 1974 charge when the law was different than it is now, is to set back the clock considerably in terms of due process of law. I've argued that. But more importantly, Your Honor, I think what it says is that that particular charge at that time I do not feel warrants -- because that's what it would come down to -- warrants the imposition of the death penalty.

And I'm not here to argue the legitimacy of the death penalty. I am sure Your Honor has heard all sorts of arguments during your legal career about

whether capital punishment should be imposed or not imposed. The Arizona legislature has decided that that is a proper sentence in certain types of cases and has given the Court a guidance with the aggravating and mitigating circumstances.

It is clear that the mitigation portion of it, which Your Honor has found nothing to mitigate the case, certainly is open, as I indicated, to the wide discretion of the Court on those matters that can be placed before the Court even though it's not in the so-called shopping list of the statute.

I cannot stand up here in my own good conscience after representing Mr. Atwood for some twenty months and not feel a certain wave of feeling and emotion. And I guess it is fitting what happened here this morning as I walked over to the courtroom and was on the street and many people said, "Don't bother going over there because you can't get into the building."

And I guess my thoughts ran to when I first took this case. And a lot of people said to me, "Mr. Bloom, Stan, why would you take a case like this?" Certainly, as Your Honor well knows, it turned out it wasn't for the money. And it certainly wasn't for any glorification for me with the newspapers or the T.V. because I've always tried to keep them out of the case

and not to televise it; I'm not looking for that. But what was it?

And I realized it really clearly when I saw what happened this morning. Because I guess many people said that to me that knew me had said, "Well, gee, you know, you're a nice fellow but, boy, how could you represent Mr. Atwood? How could you associate yourself with that person?"

And I suppose that when I was first sworn in as a lawyer, and I was originally sworn in at 24 years old when I was in the State of Illinois before I came to Arizona many years ago, but I remember distinctly swearing when I was sworn in by the Illinois Supreme Court, the Chief Justice swore us in, and he told us about what it is to be an attorney and the oath you take to represent somebody whether it's a popular cause or it's not a popular cause. And this certainly is not a popular cause for the defendant.

Mr. Atwood was entitled to every bit of the due process of law that he can get in the courtroom. And that's been my feeling. But I don't think that's what's happened to this community. This community has -- and I wasn't going to -- I was going to end up with this but it is just something that's always been omnipresent in this case from the beginning.

Your Honor has to feel it. Mr. Davis has to feel it. We've both have felt it together. I feel it. And everyone concerned in this case who really deals with it on a daily basis has to feel it. And you know what I'm talking about because Your Honor gets all kinds of phone calls and little messages that come through the mail.

I've gotten all kinds of calls in the last couple of weeks of people who have called me up and said, "Gee, you know, I don't think your client was proven guilty beyond a reasonable doubt. I don't think he ought to get the death penalty." I said, "Well, who am I speaking to?" "Well, I don't want to tell you who I am, I don't want to give you my name. But I just want you to know how I feel." "Well, why don't you want to give me your name?" "Well, I don't want to get involved in this case, I don't want to get threats. I don't want to have problems."

But you know, it seems like the people that are out in the audience -- and I would venture to say at least 99 percent of these people are here for one reason and one reason only. I found out that the good, honest, decent people in this community who are fair-minded, they don't want to talk about the case, they don't want to write letters to Your Honor, they don't want to come

down to the courthouse, they're not interested in doing that. It's a different kind of a person that wants to come down here. And I don't care, I have taken their glares and their stares and their hateful looks to me all during this case. And if I wasn't man enough to take it then I shouldn't be standing up here now.

But it's what it means. It means that this community wants Your Honor to sweep away any kind of law and they want you to exact retribution no matter at what cost, regardless of what the facts are in the case, what the statute says, it doesn't make any difference. And it's fitting that there should be a bomb threat here this morning. It's very fitting because that's how this case began for Mr. Atwood.

This community marched on the mall 3,000 strong and they went over and they wanted and did in fact in vigilantism burn a trailer that Mr. Atwood spent an evening, one night at, just because his presence was there, they burned that trailer down. And they have been doing that kind of behavior all the way through this trial.

I've gotten all kinds of comments and letters and phone calls. And it just has continued. And it's that type of mentality that sweeps this community and sweeps into this courtroom and then

presents itself to Your Honor. And then I am supposed to stand up here and say to Judge Hawkins, "Please, Judge," which is my duty to say to you, "don't, don't impose the death penalty on my client. Don't be caught up with this community."

A judge, a human being, who lives in this community just like the rest of us, you've got to live here too, Judge. You've got to be elected. I'm not saying that's the reason you may impose the death penalty. But there these people sit and there this community says, "Give the death penalty."

And then the newspapers and the press and the feelings that were all through this case about how Mr. Atwood is guilty and why give him a trial in the first place, I remember looking at T.V. tapes of Mrs. Carlson very early in the beginning of this case, even before Mr. Atwood -- just about the time he got a preliminary hearing, was ready to have him hung up at that point without even hearing any evidence; it didn't make any difference. This case was over from the day it started. And I knew it and it was a tough case to take in with that kind of a posture from the beginning.

But that's a lawyer's job. And I don't shirk from it for a second, just as I don't shirk from coming up to here talking to Your Honor about what I

think has happened in this community, the pressure that's being put on you to impose this penalty.

And sure, I can say: Well, Your Honor, the death penalty, it's not an appropriate sentence in this case, it's not an appropriate sentence. Civilized countries all over this world have said every year, "Don't, we are not going to give the death penalty, it's not a civilized penalty," Australia, New Zealand, every country in Western Europe except the Soviet Union, Iran and South Africa. That's who we've aligned ourselves with on the question of the death penalty.

And on the question of deterrent, I went to a seminar just this week with somebody in Mr. Davis' office talking about the deterrent aspect. And they said, "Well, it's proven that it really isn't a deterrent." And the prosecutor said, "Well, I'm not going to really dispute that." The deterrent really is that Mr. Atwood or someone like him, that's the argument, won't be able to get back on the streets. And that's the only deterrent that it is.

Well, the sentence that Your Honor can impose in this case, the two potential sentences that Your Honor can impose, one is certainly 25 years without the possibility of parole and the other, as Your Honor has just read, is a life sentence without the

possibility of parole at all. I would take that to mean that Mr. Atwood would spend the rest of his life in jail.

I personally don't really know what the choice is. I really don't know if that's a better choice to spend the rest of your life in a penal institution where you can't -- you are just in some cell half the size of this jury, where you can't do anything, you don't get outside, you don't do anything in your life that you could do just about that we take for granted. I don't know if that's a death in and of itself.

But I just know in the law that the death penalty just seems to be a higher penalty and so as an attorney I advocate a lesser penalty, although I have some real reservations about it being a lesser penalty.

I also consider not only -- I watched this case and I saw the newspapers and the press and the T.V., and by the time the case started to wind down in the last couple of weeks, as much as they hated to admit it, they were truly concerned that maybe, just maybe, Mr. Atwood might be acquitted.

And what a terrible thing, what an inglorious taint to the City of Tucson and Pima County if Mr. Atwood should be acquitted, rather than saying

that it would be something to be proud of because that's what the law provides, a fair trial regardless of the verdict. That's not the tenor and feeling of this community.

That would have been an awful, terrible experience. I personally don't think I could have walked the streets of this town. And I don't know what would have happened to Your Honor, either, because somehow they might have held you responsible because maybe you suppressed one piece of evidence that might have made the difference.

Now Your Honor stands in a different situation. Your Honor now is going to make a determination between life and death, probably the most difficult decision Your Honor will have to make in your legal career and as a judge.

And I listened to the news media, how they shape it, how they tell it. It's just recently with Gary Hart, how they tell the story. It's not the facts, it's how the press and the media manipulate it. And as I am wont to listen to the radio and the T.V. -- and I really don't want to, and I don't subscribe to the newspaper anymore because I have just tired of the way they distort the facts.

But as I listened to the radio on the way

down, and I saw it on television, the headline is -- and Your Honor knows it full well -- "Judge Hawkins has never imposed the death penalty." The goading, like, "Judge, you've never given it; when are you going to give it?" And the State's argument: "If you don't give it in this case, when would you ever give it?"

And do you want to go on record, Judge Hawkins, as not giving the death penalty when a community outrage is saying, "My God, how can you not give it? What kind of a judge are you if you can't give it in this case?" Not because of the facts; if they looked at the facts and they heard the evidence in the case, they'd say, "Well, gee, I can understand that the State hasn't really shown things like cause of death, eye witnesses, what happened to Vicki Lynn Hoskinson, things that would merit giving of the death penalty." They're not concerned about that.

And I have even heard on the way over here now walking to the courthouse a lawyer approached me and said he's heard other judges comment about what Judge Hawkins should do in this case and if he doesn't do it they've made like -- I guess we're not in the Soviet Union so you can't go to Siberia, Judge, but they have other places that they would like to put you. Maybe they will send you out to Juvenile. And I mean no

disrespect for Judge Carruth. But maybe they will send you out there. You might even end up going to Ajo.

And I know I'm adding a little levity to it but in a very serious matter. But I really feel, I feel the pressure that's being put on you. And I guess, you know, there is a very favorable passage -- I am not going to make a lot of quotes -- and I brought it here. It is a favorite passage of mine. And I would like to read it to you. It's from the works of Henry David Thoreau on page 424 of his book. It says, "Oh, for a man who is a man and, as my neighbor says, has a bone in his back which you cannot pass your hand through."

And I guess, Your Honor, that's what I'm talking about, because that's what's it's going to take for this Court not to impose the death penalty on my client. Someone's going to have to try to pass their hand through your back and it's not going to go because there is a spine there that is going to prevent that from happening.

And I know it isn't easy, because for you to say to this community, "No, I don't think it's warranted in this case," and the public pressure that's going to be put on you for making that comment, I don't know, Judge, I don't know what I would do. I feel I could do it but you're sitting up there and I don't know

what it takes, the strength to be able to say that to this community when it's not warranted.

You've mentioned what you feel about the mitigating factors in this case in your minute entry, you've listed them. I think they're important and there are a lot of them, but I'm not going to go over them since Your Honor has already indicated your feelings about them.

I do feel when you ultimately impose the punishment that it is important to hear some of these things that are really important about the case and about Mr. Atwood. And I guess the final thrust that Your Honor has to overcome is whether or not there is something redeeming about Mr. Atwood that should allow him to live.

I think there is. I've spent twenty months with Mr. Atwood. I've heard all the things about him. I've heard all the prejudice. I don't hear anything good about him, all I hear is there's just no mitigation, there is nothing good to be said about him.

Well, I think the man has -- and I don't say intelligence is something that is to be rewarded in terms of saving his life. But he has the wherewithal and I think the capacity to do something with his life.

I still feel -- he's 31 now and he was 28

then. But he was immature and still is and still growing, like many people. But when you listen to his life, and Your Honor heard it here, and I don't know if the full impact is brought out when his father gets up here and talks about it.

But when you live with it and you live with his parents and you've seen what they have endured during this whole trial and during the whole portion of the case and hatred of this foreign community on them as they came into this community, I look at Mr. Atwood's life and I really see, I see this young man living the life that we all led, maybe even a little bit better.

And he did all the things we all did. He played football, baseball, went to school, had friends, lived a very normal life, much like many of the children of the people that are sitting in this audience, their own children.

And then something happened to him at 13, a real good lesson of what puts Mr. Atwood right here in this courtroom today. And they all say, "Well, that couldn't happen to my son or that couldn't happen to my child." But it's a real good lesson to be learned because that is why Mr. Atwood is here.

Mr. Atwood told. He told what happened to this child. He told what happened, to see that this

child was loving and he loved and how the steps occurred and how it just wasn't there anymore and what happened to Mr. Atwood. It happens to a lot of young people in this country and it's happened to him. And he's telling about it, and he's told people over there.

I know firsthand that he's told people over in that jail, and he put it in his letter to you, and he's told you that he's told these people, "Don't take the life path that I took." He's got something to say. And I think it's important, if nothing else, that he could continue to say that to people who hear it.

I don't know what's to be gained by snuffing out his life. I guess the only thing that's left and that's squeezed out into this courtroom is the word retribution, because that's what these people want and that's what, if Your Honor imposes the death penalty, that's what it's going to be given for. Because I know in my heart it won't be given for the facts of this case. They have no evidence to say that it was done in a heinous way. Your Honor has already ruled that way. They don't have that. They have this aggravating lewd and lascivious charge back in 1974. And for that and that only the State's asking for you to impose the death penalty.

I guess it's -- I guess I am caught up by

the emotions myself about the primitiveness of the community that I live in who is going to regale in this Court imposing the death penalty, cheering about it, applauding it. I don't think thinking people applaud the death penalty. If they think it's properly to be imposed, it's a solemn occasion, it's not something to applaud, it's something that has become part of our life. But it's not something to regale in and feel good about.

Many of these people claim to be good Christians. And I don't know if they can even see the hypocrisy of the imposition of the death penalty, particularly in a case like this, with their own feelings of religiousness, the inconsistency of it all.

I suppose, Judge, in conclusion, it's the easy way out, it's the popular thing to do to impose the death penalty. It's something that everybody expects you to do, and I suppose myself included. I don't feel it's warranted but I have been in this courtroom long enough to know, to read a minute entry and to know something about to anticipate how this Court feels. I don't intend to be or claim to be clairvoyant, but when you spend a lot of time in one courtroom with one judge you learn about the man, too.

And I'm hoping as I stand here, I really

feel that I am standing at a bridge of an ocean and, as I have for twenty months, trying to sweep back the oncoming tide that now has become a groundswell that has taken over this community and all ration and reason has been squeezed out, and saying to Your Honor in this case the death penalty is not warranted and importune this Court not to impose the death penalty on Frank Atwood.

Thank you.

THE COURT: Thank you, Mr. Bloom.

Mr. Atwood, you have a chance also to address the Court further if you wish to.

MR. ATWOOD: I have a couple things I'd like to say, Your Honor.

THE COURT: All right. Do you want to step right up here.

MR. ATWOOD: Sitting here listening to Mr. Bloom talk I just came up with a couple of things I'd like to mention to you. You sat through a very long trial. There has to be some doubt in your mind as to my guilt, there just has to be. And I'm telling you from my heart I'm innocent of this crime.

I haven't always been innocent. There's been some terrible crimes that I've done in the past and I feel a lot of remorse for those. But this is not a crime that I have committed. It's not in my heart to

kill or to cause violence to somebody.

I can do some good for myself and hopefully for society, as Mr. Bloom mentioned. I wanted to take some journalism classes and maybe write, write -- maybe I can get newspapers to publish some things about the path that I took, about how it can happen to good kids, kids from good families.

I don't know what else to tell you. I wrote it in my letter. I just ask you not to impose the death penalty.

Thank you.

THE COURT: Thank you, Mr. Atwood.

Mr. Davis.

MR. DAVIS: Your Honor, before I begin my remarks on this proceeding I have an item that I placed on the clerk's desk that I would like to have marked as an offer of proof for appellate purposes. I don't think it serves any purpose in this hearing. But I think it may have appellate purpose. What it is is a transcript of a deposition of Jonas Bowen.

And the argument my colleagues on appeal plan to make would be that under Harris versus New York and Rule 801 that Mr. Atwood's denying of guilt on the stand the other day, that I should have been allowed to impeach him, that that would be substantive evidence and

it would have supported the fact of especially cruel, heinous and depraved. I just say that I'd like it marked, I'd like it part of the record for appellate purposes. I don't think it serves any purpose here today.

THE COURT: It may be so marked.

MR. BLOOM: Please show my objection, Your Honor.

THE COURT: Over objection of the defense.

MR. DAVIS: Your Honor, as to today's proceedings, I have also read the special verdict that the Court has rendered. I don't think that the Court needs nor wishes a passionate oratory today. I don't begrudge the defendant and his attorney the opportunity to deliver that. But I don't feel that the Court needs that.

The Court has consistently rejected sympathy and passion in all the rulings that it has made in this case. And if I could refer to that confession, there was no complaint by the defense at that time when the confession was suppressed or when other things were suppressed. The Court called it like it saw it. And it did not bend to sympathy or pressure or passion.

And I reject and I'm offended by the exaggeration of what has been brought to bear on this

Court, and I totally reject the notion that it has influenced what the Court has done.

The Court suppressed evidence very probative of guilt. It did that because that's the way you saw your duty to do. What the Court is here to do today is to consider specific statutory considerations. And those considerations are constructed to preclude the passion and sympathies of the community, and that is no matter how warranted or sincere those passions and sympathies are.

I reject Mr. Bloom's labeling of the people that are here in these proceedings as a public hanging and I reject his criticism of their interest in this case. I vehemently reject Mr. Bloom's call for apathy in the face of a horrible crime such as this. These people have a right to be here. They have a right to show their interest and they have no need to be ashamed of it.

Your Honor, the Court's special verdict pursuant to the statute for factors that it must find has stated that it has found an aggravating circumstance proved beyond a reasonable doubt. And the Court has very correctly found that there are no mitigating circumstances for Mr. Atwood.

And I might say that I don't begrudge

Mr. Atwood his pleading with this Court for his life. Any human being in his position would do that. I do find it particularly disgusting that his plea for his life is based on an attack on the verdict and the system which found him guilty. He had every measure of due process in this case. He made no complaint when his confession and other incriminating evidence was excluded under our rules, but he continues to deny his guilt.

As the Court has properly said, that is not a mitigating circumstance. And, as the Court has properly found, there are no mitigating circumstances. The statute is clear and I think the Court's duty is clear. And I know that the Court renders that verdict pursuant to the statute, that it rejects all passion and sympathy when it does so and it upholds its duty when it gives Mr. Atwood the death penalty.

There are aggravating circumstances, there is no mitigation. The statute is clear. Justice is served by the Court's sentence today.

THE COURT: Thank you, Mr. Davis.

Mr. Bloom, if you and Mr. Atwood will step back up to the podium.

Mr. Atwood, you are to step up here also.

Counsel, is there any legal reason why I should not now proceed with sentencing?

MR. BLOOM: No, Your Honor.

THE COURT: Mr. Atwood, based upon the jury's verdict as to the charge of kidnapping, it is ordered that you be imprisoned by and committed to the custody of the Arizona Department of Corrections for a period of life imprisonment without possibility of parole until you have served not less than 25 years, to date from this date with credit for 960 days in custody up to now. That is a mandatory period of imprisonment.

As to the count two conviction of felony murder, counsel have made some reference to the Court's special verdict that is required. I have done that in writing in a minute entry that is filed this morning.

I am sorry counsel didn't get it sooner, but you have had a chance to see probably all that you need to of it or to review it at least. I will briefly state what you've referred to.

The Court in the special verdict has set out all of the premises that led to the hearing required to determine what, if any, aggravating circumstances or mitigating circumstances existed. The Court has completed that and made certain findings, and I will only briefly summarize those. They are more fully detailed in the special verdict itself.

As both counsel have recognized, the Court

has found beyond a reasonable doubt that the first aggravating factor of 13-703(F)(1) is proven and that it is proven by Mr. Atwood's 1978 conviction of lewd or lascivious acts. That was an offense which at the time in Arizona was punishable by a life imprisonment.

The Court found as to aggravating circumstance Number 2 of Subsection F of that statute that it was not proven beyond a reasonable doubt.

That is the factor that would pertain to offense that involved the use or threat of violence. And the Court is unable to go behind the actual conviction of kidnapping. State versus Gillies, the Arizona Supreme Court has determined that consideration of Logan Mandel's testimony is not appropriate, so the Court cannot consider that. The Court's conclusion then must come strictly from the statute itself and the elements within it.

Therefore, the Court has found that the use or threat of violence in that kidnapping statute is not a necessary element of the offense, though it may sometimes be present. That is why the Court found that not to be proven beyond a reasonable doubt.

The third allegation that the State had contended was proven beyond a reasonable doubt was Subsection 6 of 703(F) pertaining to this offense that

was alleged to be especially heinous, cruel or depraved in its manner.

The Court has considered all of the testimony that was admitted at trial and has read numerous, numerous cases that have given us some direction and guidance and information about how one determines just what is especially heinous or especially cruel or depraved.

And the Court has concluded that from all of that there may be considerable speculation that it might have been that but that that is not sufficient, that is not proof beyond a reasonable doubt. So the Court has rejected that one also as not proven beyond a reasonable doubt.

No one contended that any other of the aggravating factors were applicable here and the Court finds no other applicable.

As far as the defendant's contention of, I believe, eleven different circumstances that were suggested to be mitigating, the Court considered those and has discussed some in detail and others simply collectively, suggested that the Court does not find them to warrant mitigation even if they are true.

And as a result the Court has concluded with again the statutory language that the Court finds

no mitigating circumstances which are sufficiently substantial to call for leniency.

As a result of that, Mr. Atwood, as to the charge of murder it is ordered that you be put to death by lethal gas.

This judgment shall be the authority of Arizona Department of Corrections to carry out the sentence of life imprisonment and to carry out your execution.

It is also the authority for the Sheriff of Pima County to transport you to the Department of Corrections for purposes of carrying out these sentences.

Mr. Atwood, you have, of course, the right to a mandatory appeal to the Arizona Supreme Court from this judgment and sentence and all matters leading up to it and all rulings previously made.

I presume that Mr. Bloom will be filing the notice of appeal for you, but I know that he has been retained only for purposes of the trial and retained by your parents.

So Mr. Bloom, unless new arrangements have been made for your handling the appeal, I am assuming that you are not. Is that correct?

MR. BLOOM: I'm not going to handle the

appeal, Your Honor. I do have the notice of appeal prepared. And I just need to fill in the date. And without being presumptuous, I did have in there that the defendant had been sentenced to death.

So with that, if I can approach the Court.

THE COURT: Yes, if you give that to the clerk, it will be shown filed this morning.

Mr. Atwood, I don't need to finish part of this then. The part of the notice is that you have to do that within twenty days; it's been done this morning, so the notice of appeal is filed this morning and that appeal will commence.

Unless your parents have made any other arrangements for retaining counsel for the appeal, then the Court finds that you are still indigent, as you have been throughout, and an attorney will be appointed to represent you for purposes of the appeal.

You understand that you have these rights already, and that notice of appeal indicates that. And as a result I don't need to have you sign the notice of your rights to appeal, that's obviously understood by you already.

With that completed then, counsel, the special verdict being filed with the clerk -- and I have already given her the original this morning, you each

have copies. My secretary will have some additional copies for the media and the press if they are interested.

Gentlemen, thank you very much.

(Recess, 10:35 a.m.)

C E R T I F I C A T E

I do hereby certify that, as Official Court Reporter in the Superior Court of Pima County, Arizona, I was present at the trial/hearing of the foregoing entitled case; that while there I took down in stenotypy all the oral testimony adduced and/or proceedings had; that I have transcribed such stenotypy into typewriting; and that the foregoing typewritten matter contains a full, true and correct transcription of my stenotype notes so taken by me as aforesaid.

Date: July 8, 1987

Catherine V. Hintzen, RPR
Official Court Reporter

Exhibit 74

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ATTORNEYS FOR PLAINTIFF

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

STATE OF ARIZONA, Plaintiff, -vs- FRANK JARVIS ATWOOD, Defendant.	Nos. CR–14065 & CR–15397 **RESPONSE TO ATWOOD'S THIRD PETITION FOR POST-CONVICTION RELIEF.** Hon. Catherine Woods Presiding [Capital Case]

Defendant Frank Jarvis Atwood sits on death row for the 1984 abduction and murder of 8-year-old V.L.H. He has exhausted all of-right appeals and the State and federal courts have consistently denied relief. Atwood has now filed a *third* petition for post-conviction relief in this Court, in which he challenges his death sentence on three grounds:

1) the sentencing judge's finding of the A.R.S. § 13–703(F)(1) (1984) aggravating factor was legally erroneous (Claim 1);

2) the prior conviction underlying the (F)(1) was itself constitutionally infirm (Claim 2);

3) mitigating evidence he has developed in the nearly 33 years since sentencing is sufficiently substantial to warrant leniency (Claim 3); and

4) the "extreme duration" of his incarceration on death row (attributable primarily to his relentless pursuit of appellate remedies) renders his death sentence unconstitutional (Claim 4).[1]

For the reasons discussed in the following memorandum of points and authorities, this Court should summarily deny Atwood's claims, without an evidentiary hearing.

RESPECTFULLY SUBMITTED this 5th day of March 2020.

Mark Brnovich
Attorney General

Lacey Stover Gard
Chief Counsel

Attorneys for Plaintiff

[1] Atwood also reserves the "right" to amend his post-conviction petition to raise conviction-related claims. Amended Petition ("Am. Pet.") 2 n.2. The State similarly reserves the right to argue that Atwood has failed to establish good cause for any proposed amendment. *See* Ariz. R. Crim. P. 32.9(d).

MEMORANDUM OF POINTS AND AUTHORITIES

"In all cases, civil or criminal, there must be an end to litigation." *State v. Carriger*, 143 Ariz. 142, 145 (1984). "By requiring that all post-conviction claims be raised promptly, Rule 32.2(a) not only serves important principles of finality, but also allows any relief to be issued at a time when the interests of justice, from the perspectives of the defendant, the State, and the victim, can be best served." *State v. Shrum*, 220 Ariz. 115, 118, ¶ 12 (2009). Rule 32—especially a successive proceeding like this one—is intended to apply to "the unusual situation where justice ran its course and yet went awry." *Carriger*, 143 Ariz. at 146 (quoting *State v. McFord*, 132 Ariz. 132, 133 (App. 1982)).

There is nothing unusual about Atwood's case. Each of the claims he presents in this *third* post-conviction proceeding have been available to him for decades. Claims 1 and 2 challenge the A.R.S. § 13–703(F)(1)[2] aggravating factor on legal grounds that have been available to Atwood since sentencing. They are precluded and meritless. Claim 3 rests on the inevitable occurrence that Atwood has developed new mitigating evidence since sentencing, which evidence he believes warrants a life sentence. That claim is not cognizable under the newly revised rules. *See* Ariz. R. Crim. P. 32.1(h) (2020). Moreover, the evidence Atwood proffers has already been deemed insufficient to carry his reasonable-probability burden under *Strickland v. Washington*, 466 U.S. 668 (1984), and does not come close to satisfying the much higher clear-and-convincing evidence standard Rule 32.1(h) requires. Finally, Claim 4 is based on the perplexing theory that Atwood has delayed his death sentence so long that carrying it out now would be cruel and unusual. That claim, too, is precluded and meritless. This Court

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[2] Unless otherwise noted, all citations to the sentencing statutes refer to the versions in effect in 1984, when Atwood killed V.L.H. For this Court's convenience, the State has attached a copy of those statutes hereto at Exhibit C.

should swiftly deny and dismiss Atwood's most recent post-conviction petition, without an evidentiary hearing.

I. FACTUAL AND PROCEDURAL HISTORY.

There can be no serious argument that Atwood does not rank among the worst of the worst offenders for whom the death penalty is reserved. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 568 (2005) ("Capital punishment must be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.") (quotations omitted). Beginning in the mid-1970s, mental-health professionals identified Atwood as posing a future danger to children. Atwood proved these predictions true by engaging in an escalating pattern of sexual violence against children, culminating with V.L.H.'s 1984 murder.

A. Atwood's history of predatory offenses.

Atwood's history of sexual attraction to and offenses against children is well documented. *Atwood v. Ryan (Atwood III)*, 870 F.3d 1033, 1039–40 (9th Cir. 2017); *State v. Atwood (Atwood I)*, 171 Ariz. 576, 593 (1992). In 1975, Atwood was convicted of engaging in lewd-and-lascivious conduct with a 10-year-old California girl. *Atwood III*, 870 F.3d at 1039; *Atwood I*, 171 Ariz. at 593, 647 n.22. Atwood approached the girl on a public street, fondled her genitals, and kissed her on the mouth. *See* Petitioner's Exhibit ("Pet. Ex.") 35.

Two mental-health professionals evaluated Atwood in connection with this offense. Dr. Alfred Coodley deemed Atwood a mentally disordered sex offender. Pet. Ex. 28. He opined that Atwood was a danger and a "potential menace" to others. *Id.* He also recounted Atwood's lengthy history of criminal and antisocial behavior, including another child molestation accusation and acts of theft and assault. *Id.* Dr. George Abe also evaluated Atwood. Pet. Ex. 34. Atwood likewise disclosed his prior child molestation arrests to Dr. Abe. *Id.* Like Dr. Coodley, Dr.

Abe opined that Atwood was a mentally disordered sex offender, "predisposing him to be dangerous to the health and safety of minor girls." *Id.*

Atwood was placed in Atascadero State Hospital for treatment, where he remained until 1978. *Atwood III*, 870 F.3d at 1039. His admitting diagnosis was "[s]exual deviation, pedophilia, female." State's Exhibit ("Ex.") L, at 671[3]. Records from Atascadero portray Atwood as an unrepentant pedophile, prone to aggressive outbursts and devoid of personal accountability:

> Psychological reports in these records diagnosed Atwood with pedophilia. The records contained further details of Atwood's sexual offenses against minors. Among other items in the records, a report included Atwood's statement that a four-year-old girl that he molested "deserved it" because she was the block "tattletail." Atwood also stated that he molested the ten-year-old girl because he felt like "scaring someone." The records documented Atwood's aggressive pre-incarceration behavior, describing an incident in which Atwood threatened his mother "with a butcher knife and generally terroriz[ed] the family," and another incident in which Atwood threatened his cousin with a knife. While at Atascadero, Atwood was uncooperative and deemed "basically unamenable to treatment." A staff report noted that Atwood "kn[ew] the proper words to use in therapy," but did not make actual progress. Finally, the records contained details of Atwood's threatening and antisocial behavior at the hospital, describing multiple incidents in which Atwood verbally and physically assaulted patients and staff.

[3] The State's citations to the Atascadero records refer to the Bates number without the leading zeros, at the bottom right-hand corner of the document.

Atwood III, 870 F.3d at 1060–61; *see generally* Ex. L.[4] Ultimately, Atwood failed his inpatient rehabilitative efforts and was discharged to the court system, having been deemed unamenable to treatment. *See* Pet. Ex. 40 & 41. The hospital's medical director opined that Atwood "remains a danger to the health and safety of others." Pet. Ex. 40 (letter dated 7/18/78).

After his release, Atwood abducted and sexually abused an 8-year-old boy as the boy rode his bicycle. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 P.2d at 593, 654–55. Atwood forced the child to perform oral sex on him and warned the boy, "'If you scream, I will kill you.'" *Atwood I*, 171 Ariz. at 672. Atwood was convicted of guilty to kidnapping, and he was sent back to prison. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 593.

While incarcerated, Atwood developed a relationship with a pen pal, Ernest Bernsienne. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 613. Atwood unabashedly admitted to Bernsienne his sexual desire for children. In April 1982, Atwood wrote:

> Ya see, it's time for "true confessions." What I mean is, there is a fact about me that I am ashamed of. I believe it is considered so wrong that I have kept this part of me hidden from you.
>
> Rather than saying that I am attracted to people between the ages of seven and twelve, I feel a more complete explanation is necessary.
>
> Another fear is that I am still attracted to kids but I can't handle another arrest!

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[4] Both the State and Atwood have attached relevant excerpts of these reports. The parties are in possession of the entire 451-page file, and the State will submit a copy on request from this Court.

Atwood I, 171 Ariz. at 596, 637–38.[5] After Atwood was paroled in 1984, he admitted to Bernsienne that he had "considered going out and picking up a child." *Id.* at 596, 638; *Atwood III*, 870 F.3d at 1040. Bernsienne advised against this plan, pointing out that the child "would certainly go and tell someone." *Atwood I*, 171 Ariz. at 597. Atwood informed Bernsienne that "this time he would make sure the child wouldn't talk." *Id.* at 596, 638; *Atwood III*, 870 F.3d at 1040.

B. Atwood's murder of V.L.H.

Rather than remain in Los Angeles as his parole terms required, Atwood traversed the country with his friend Jack McDonald, living out of his black 1975 Datsun 280Z. *Atwood III*, 870 F.3d 1040; *Atwood I*, 171 Ariz. at 593. Atwood and McDonald visited Bernsienne in Enid, Oklahoma, in August 1984, and returned to California 2 weeks later. *Atwood III*, 870 F.3d 1040; *Atwood I*, 171 Ariz. at 593. The following month, they traveled to Tucson, where they frequented DeAnza Park, a gathering spot for transients and drug users. *Atwood III*, 870 F.3d 1040; *Atwood I*, 171 Ariz. at 593.

Atwood spent the first part of September 17, 1984, at DeAnza Park, leaving during the mid-afternoon. *Atwood III*, 870 F.3d 1040; *Atwood I*, 171 Ariz. at 593. Later, Sam Hall, a teacher at Homer Davis Elementary, which V.L.H. attended,

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[5] A redacted version of this letter was admitted at trial. *See Atwood I*, 171 Ariz. at 637–38. The complete version provides even more insight into Atwood's character. *See* Ex. D. He described having molested a 4-year-old girl and admitted to the charges that led to his Atascadero placement and his subsequent prison conviction for kidnapping. *Id.* Most concerning, he wrote, "I see no reason that sex between myself and pre-adolescent kids is not only not allowed but also illegal. *Id.* In his opinion, the only reason this activity harms children is because society makes them "feel so dirty and abused." *Id.* A second letter described Atwood's desire for "pure and innocent sex with a minor." *Id.* He wrote, "my love for innocent young boys is an earthly and physical desire." *Id.*

noticed a dark-colored "Z car" in an alley near the school. *Atwood I*, 171 Ariz. at 609. The driver—a medium-framed man with shoulder-length hair, a dark beard, and a mustache—behaved suspiciously, shaking his head and making odd gestures. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 593. The driver was so disturbing that he "'caused the hair on the back of [Hall's] head to rise up and [his] arm to get goose bumps and [his] adrenaline to start pumping.'" *Atwood I*, 171 Ariz. at 640. Hall wrote down the car's license plate number. *Id.* at 593; *Atwood III*, 870 F.3d at 1040.

At approximately 3:30 p.m., V.L.H. rode her pink bicycle from her home to a neighborhood mailbox to mail a birthday card. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 592, 594. Two teenage boys, also riding their bicycles, encountered the same car and driver Hall had seen, driving very slowly at the intersection of Root Lane and Pocito Place. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 593. The intersection is only a few hundred feet from Homer Davis and only a few blocks from V.L.H.'s home, on her route to the mailbox. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 592–93. As the boys rode away from the intersection, they passed V.L.H. riding her bicycle the opposite direction, toward the dark-colored Z car and its driver. *Atwood III*, 870 F.3d at 1040; *Atwood I*, 171 Ariz. at 593.

V.L.H. did not return home from her errand and her sister went to find her. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 592. V.L.H.'s sister found V.L.H.'s bicycle abandoned in the street near the intersection of Root and Pocito. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 592. Around the same time, three people saw Atwood driving toward northwest Tucson, with a small child in his car's passenger's seat. *Atwood I*, 171 Ariz. at 594–95. Hall gave officers the license plate number he had recorded earlier, and police learned that the car

belonged to Atwood. *Id.* at 592. They also learned of his history of crimes against children. *Id.*

Atwood returned to De Anza Park approximately 1 hour before sunset. *Id.* at 593; *Atwood III,* 870 F.3d at 1041. McDonald and another acquaintance, Thomas Parisien, saw blood on Atwood's hands, clothes, and knife. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 593, 596. Atwood discussed with McDonald and Parisien whether he should dispose of his clothes and spoke with Parisien about discarding his knife. *Atwood I*, 171 F.3d at 642. Another man, Brian Hall, confronted Atwood about the apparent blood on Atwood's hands. *Id.* Atwood did not deny that the substance was blood, but instead claimed to have stabbed a man in a drug transaction earlier that afternoon. *Id.* at 596, 635–36. Atwood repeated this version of events to McDonald and two others, explaining that he had left the murdered man's body in the desert near the mountains. *Id.* at 596. Atwood explained that he had been stuck by cacti while depositing the man's body, a claim corroborated by cactus needles extruding from his arms and legs. *Id.*

Later that night, Atwood and McDonald left Tucson, bound for New Orleans. *Id.* at 593; *Atwood III*, 870 F.3d at 1041. During the trip, McDonald observed Atwood sandpapering the blade of his knife.[6] *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 596, 642. As Atwood and McDonald traveled, Federal Bureau of Investigation (FBI) agents obtained a warrant to arrest Atwood on federal kidnapping charges. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 593.

[6] Atwood had sandpaper and two knives in his possession at the time of his arrest. *Atwood I*, 171 Ariz. at 641.

Atwood and McDonald encountered car trouble in Kerrville, Texas, and Atwood telephoned his mother for financial assistance, apparently after FBI agents had contacted her about his suspected involvement in V.L.H.'s disappearance. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 593, 596, 636–37. McDonald heard Atwood exclaim to his mother, "'Even if I did do it, you have to help me.'" *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 596, 636–37. Atwood later explained to McDonald that authorities "'were trying to stick something on him about a little girl.'" *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 596, 636–37. Atwood's parents told authorities he was in Kerrville and, on September 20, 1984, FBI agents arrested him there on the federal warrant and impounded his car.[7] *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 593–94.

Authorities soon noticed a smear of pink paint on the front bumper of Atwood's car. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 595. Accident reconstruction expert Paul Larmour subsequently found a "'nearly perfect match heightwise between [a] contact area on the backside of the bicycle and the [paint] transfer on the bumper.'" *Atwood III*, 870 F.3d at 1043; *Atwood I*, 171 Ariz. at 595. In addition, Larmour opined that the paint on the bumper visually matched the color of the bicycle and that marks on the car's gravel pan were consistent with the car having struck the bicycle at low speed, causing the bicycle to lodge beneath the car. *Atwood III*, 870 F.3d at 1043; *Atwood I*, 171 Ariz. at 595.

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[7] In an interview with FBI agents, Atwood claimed to have left De Anza Park sometime after noon on September 17 and to have returned around 5:00 p.m. *Atwood*, 832 P.2d at 611. He claimed that, during his absence from the park, he had met a man in V.L.H.'s neighborhood to purchase marijuana and visited an acquaintance at his home. *Id.* Neither man recalled seeing Atwood that day. *Id.* In a subsequent interview, Atwood altered his story, informing agents that he had returned to the park much earlier in the day, at 3:30 p.m. *Id.*

FBI criminalist James Corby found additional evidence that the bumper of Atwood's car had made contact with V.L.H.'s bicycle: based on various scientific tests, he concluded that the pink paint on the bumper either came from the bicycle or from an identical source. *Atwood III*, 870 F.3d at 1043; *Atwood I*, 171 Ariz. at 595. He also found nickel particles on the bicycle, and observed that the paint on Atwood's bumper was in an area where its chrome coating had flaked off, exposing nickel. *Atwood I*, 171 Ariz. at 595. Corby opined that there was only a remote possibility that the cross-transfer of paint and nickel resulted from any means other than forcible contact between the bumper and the bicycle. *Id.*

V.L.H.'s body remained undiscovered until April 11, 1985, when her skull and other small bones were found in the desert northwest of Tucson. *Atwood III*, 870 F.3d at 1042; *Atwood I*, 171 Ariz. at 594, 599. Several medical experts examined the remains but, due to the limited number of bones available, could not determine V.L.H.'s cause of death. *Atwood III*, 870 F.3d at 1042; *Atwood I*, 171 Ariz. 594, 599.

C. Trial and sentencing.

On September 27, 1984, before V.L.H.'s body was found, a Pima County grand jury indicted Atwood for kidnapping. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 594. After V.L.H.'s remains were located, a grand jury indicted Atwood for first-degree felony murder. *Atwood III*, 870 F.3d at 1041; *Atwood I*, 171 Ariz. at 594. The charges were consolidated for trial and, 3 years later, based on the evidence in § I(B), *supra*, a jury found Atwood guilty as charged. *Atwood III*, 870 F.3d at 1042–43; *Atwood I*, 171 Ariz. at 591, 594.

Prior to sentencing, the State alleged three capital aggravating factors, *see* A.R.S. § 13–703(F)(1), (F)(2), (F)(6), and Atwood offered several mitigating

circumstances.[8] Pet. Exs. 3, 7. At the aggravation/mitigation hearing, Atwood's father, General John Atwood ("John") testified regarding Atwood's family history, including John's exemplary military service and subsequent career in a management position for Hughes Aircraft Company. Ex. P, at 60–65. As a child, Atwood was an excellent student and participated enthusiastically in athletic, church, music, and family activities. *Id.* at 66–67. However, when Atwood was about 13 years old, the "drug scene" engulfed him, leading to poor academic performance and a lack of respect for his parents and other authority figures. *Id.* at 67–73. Atwood's "brains just seemed to be scrambled" from his drug use. *Id.* at 70–71. Atwood's poor academic performance continued in high school, despite his parents' attempts to intervene. *Id.* at 71–72.

By the time of his arrest for lewd and lascivious conduct at age 18, Atwood had lost all respect for authority. *Id.* at 72–73. He continued to use drugs during his subsequent incarcerations, but, with his IQ of approximately 130, was nonetheless able to earn a GED and gain admittance to Santa Monica College. *Id.* at 73–75. Upon his release from prison in 1984, Atwood briefly attempted to

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[8] Atwood offered as mitigation: 1) he was convicted of felony, not premeditated, first-degree murder; 2) he was under the influence of drugs at the time of V.L.H.'s murder, which significantly impaired his ability to appreciate "any wrongfulness of criminal conduct," and he suffered from "a significant history of mental disease ranging from the time he was thirteen years of age"; 3) he behaved well during trial; 4) his family loved and supported him; 5) the State could not establish V.L.H.'s cause of death; 6) he was 28 at the time of the murder; 7) residual doubt exists about his guilt; 8) he cooperated with authorities when arrested; 9) he expressed sympathy for V.L.H.'s family but could not express remorse because of his purported innocence; 10) he is intelligent and amenable to rehabilitation; and 11) he was concerned for his parents' welfare and had positively influenced other inmates. Pet. Ex. 7.

obtain a job, but his opportunities were limited by his refusal to change his physical appearance. *Id.* at 74.

John opined that Atwood could be rehabilitated and be a productive member of society. *Id.* at 74. He noted that Atwood had, with his parents' assistance, been trying to enroll in a program to earn a college degree from prison. *Id.* John further testified that Atwood's relationship with his parents had improved substantially during his incarceration, and that Atwood was particularly concerned about his trial's impact on his parents' health. *Id.* at 80–82.

Atwood also testified and admitted to having used a wide variety of drugs since the age of 13. *Id.* at 87–92. Although he denied killing V.L.H. and professed to have sympathy for her family's plight, he claimed that he had been using cocaine, codeine, Demerol, and marijuana the day of her murder, which had impaired his ability to think clearly. *Id.* at 92, 95–96. He briefly described his institutionalization at Atascadero State Hospital, claiming that he had been discharged because of an unspecified "verbal problem"; professed to have changed for the better since his arrest; and claimed that he had assisted other inmates by teaching them about the dangers of drugs. *Id.* at 92–101. But he admitted on cross-examination that he had failed to complete therapy as required by his parole conditions, had violated parole by leaving California without authorization, had been disciplined at the jail for various infractions, and had failed to complete a single rehabilitative program in his life. *Id.* at 102–17. He acknowledged that, at the end of his stay at Atascadero, he was classified as a mentally-disordered sex offender and considered a danger to others. *Id.*

In rebuttal, Deputy William Nelson, a correctional officer who had supervised Atwood at trial, testified that Atwood berated and threatened him after he instructed Atwood to reduce the number of suits he possessed in the holding tank. *Id.* at 122–32. Atwood told the officer, "You don't know who you're talking

with. … I can have you wasted. I'll take your gun away from you and blow your shit away." *Id.* at 125. The officer suggested that Atwood compose himself, and Atwood responded, "Fuck you. I will take care of you. I will have your shit blown away." *Id.* Atwood further exercised his right to allocution, during which he claimed remorse for his prior crimes but denied killing V.L.H., stated his intention to give back to society, and asked the court not to impose death. Pet. App. 1, at 20–21.

The sentencing judge also received a presentence investigation report, to which were appended various documents related to Atwood's California criminal history. Ex. Q.[9] The documents contained additional evidence of Atwood's social history, including his failure to complete high school, behavioral difficulties, failure to succeed on juvenile probation, "chaotic" home life (which included his conduct in breaking household property, threatening his mother with a butcher knife, and "generally terrorizing the family"), lengthy arrest record, polysubstance abuse, and experience being molested by an adult male at 14 years of age. *Id.* The documents also revealed the concern of California officials, spanning several years, that Atwood was a danger to society who could not be rehabilitated. *Id.* One report opined prophetically, "[A] repetition of [the lewd-and-lascivious] offense would appear likely." *Id.*

Also appended to the pre-sentence report were disciplinary documents from Atwood's pretrial incarceration for V.L.H.'s murder. *Id.* This material chronicled Atwood's pattern of abusive and assaultive behavior toward correctional officers and his refusal to adhere to jail rules. *Id.*

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[9] Atwood attaches the presentence report but omits the appended material. The State has attached a complete copy hereto as Ex. Q.

In his special verdict, the sentencing judge relied on Atwood's 1975 California conviction for lewd-and-lascivious conduct to find that he had been convicted of a crime for which, under Arizona law, a sentence of death or life imprisonment was imposable. *See* A.R.S. § 13–703(F)(1). The judge found, however, that the State had failed to prove the two remaining aggravating factors, *see* A.R.S. § 13–703(F)(2) & (F)(6). Pet. Ex. 4. The judge found Atwood's proffered mitigation insufficiently substantial to warrant leniency and sentenced him to death for the murder conviction. *Id.*; *see* Pet. Ex. 1, at 28. The judge sentenced Atwood to a concurrent term of life imprisonment for the kidnapping conviction. *Atwood I*, 171 Ariz. at 591.

D. Atwood's 5-year direct appeal.

Atwood appealed his convictions and sentences on numerous grounds, generating an Arizona Supreme Court opinion so lengthy it warranted a table of contents. *Atwood I*, 171 Ariz. at 588; *see id.* at 659 ("Rather than aiding our review of defendant's case by judiciously selecting, fully researching, and concisely arguing the colorable issues raised by the trial record, appellate counsel has bombarded this Court with a salvo of dubious claims serving little purpose other than to detract from those issues having arguable legal merit."). The court affirmed Atwood's convictions and, after independently reviewing the aggravating and mitigating circumstances, also affirmed his death sentence. *Id.* at 591–660. Atwood unsuccessfully moved for reconsideration, and the United States Supreme Court thereafter denied certiorari. *Id.* at 588; *see Atwood v. Arizona*, 506 U.S. 1084 (1993).

E. Atwood's 5-year first post-conviction petition.

Following the conclusion of his direct appeal, Atwood initiated a post-conviction relief proceeding, ultimately filing a lengthy petition raising numerous claims of law-enforcement misconduct, counsel's ineffectiveness, and newly-

discovered mitigation. *See* PCR Notice, filed 3/18/93; Amended PCR Petition, filed 10/16/96. This Court denied both relief and Atwood's subsequent motion for rehearing. *See* M.E., filed 1/28/97; M.R., filed 3/18/97. The Arizona Supreme Court denied review, *see* No. 97–0289–PC, and the United States Supreme Court denied certiorari. *Atwood v. Arizona*, 523 U.S. 1082 (April 20, 1998).

F. Atwood's 4-year second Rule 32 proceeding.

In 2007, Atwood obtained a stay of his then-pending federal habeas proceeding and filed a successive post-conviction petition in this Court, seeking to exhaust his newly-discovered evidence and actual-innocence claims. *See Atwood III*, 870 F.3d 1045. Those claims alleged that state law-enforcement officers had planted paint from V.L.H.'s bicycle on his car's bumper through a complicated scheme that required them to travel to Texas, where the FBI had impounded Atwood's car; remove the bumper from the car; extract it from FBI custody; transport it to Arizona via a commercial aircraft; apply paint from the victim's bicycle, at exactly the right height when considering the weight of Atwood's fully loaded car; return the bumper to Texas; and reattach it to the car. After more than 4 years of litigation, and an extensive investigation facilitated by the State, this Court found Atwood's claim "grounded in speculation with no link to provable reality" and dismissed it. *See* M.E., filed 9/23/10. The Arizona Supreme Court denied review. *See* No. CR–09–0109.

G. Atwood's 20-year federal habeas proceeding.

In 1998, Atwood initiated a federal habeas proceeding. *See* No. CV–98–116–TUC–JCC. The district court dismissed several claims on procedural grounds in 2005, and ordered merits briefing on the remainder. *Atwood III*, 870 F.3d at 1044. In 2007, the court denied relief on all claims except Atwood's allegation of law-enforcement misconduct, which, as discussed above, § I(F), the court stayed pending state-court exhaustion. *Id.* at 1045.

Shortly after the 4-year state-court proceeding concluded, the Supreme Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012). The district court denied relief on the misconduct claim's merits, but permitted Atwood to move to reconsider under *Martinez* an ineffective-assistance-at-sentencing claim it had previously dismissed as procedurally defaulted. *Atwood III*, 870 F.3d at 1046. Atwood, however, expanded his claim beyond that initially alleged in the habeas petition. *Id.* Following a 4-day evidentiary hearing,[10] the district court denied relief, finding that Atwood could not amend his habeas petition with his untimely, modified ineffective-assistance claim; that Atwood had not shown cause to excuse the claim's procedural default under *Martinez*; and that the claim failed on the merits. *Id.*; *see also Atwood v. Ryan (Atwood II)*, 2014 WL 289987 (D. Ariz. Jan. 27, 2014).

Atwood then appealed to the United States Court of Appeals for the Ninth Circuit. Following oral argument, a three-judge panel of that court unanimously affirmed the district court's ruling. *Atwood III*, 870 F.3d at 1065. Atwood failed to file a timely petition for writ of certiorari from this decision, and the Supreme Court denied his request to file the petition out-of-time. *Atwood v. Ryan*, 139 S. Ct. 298 (2018). Atwood's appeals were thus exhausted as of the date of the Court's ruling: October 1, 2018. *Id.*

II. APPLICABLE LAW.

Arizona Rule of Criminal Procedure 32 governs post-conviction relief proceedings. *See also* A.R.S. §§ 13–4231 – 4239 (codifying post-conviction relief procedure). Rule 32 allows a defendant to "raise issues unknown or unavailable at trial" and to "'furnish an evidentiary forum for the establishment of facts

[10] The State summarizes the hearing evidence relevant to this proceeding in § III(C), *infra*.

underlying a claim for relief, when such facts have not previously been established of record.'" *State v. Watton*, 164 Ariz. 323, 328 (1990) (quoting *State v. Scrivner*, 132 Ariz. 52, 54 (App. 1982)). The Rule's goal is "the elimination of confusion and avoidance of repetitious applications for relief while protecting a defendant's rights." *Watton*, 164 Ariz. at 328. It "provides a simple and efficient means of inquiry into a defendant's claim that the conviction or sentence was obtained in disregard of fundamental fairness, which is essential to our concept of justice." *Id.*

Although Rule 32 "is a safeguard in addition to the many others that are part of our system," it "may not be abused." *Carriger*, 143 Ariz. at 146. In particular, "[p]etitioners must strictly comply with Rule 32 or be denied relief." *Id.* And Rule 32 is not intended to provide a second appeal or "to unnecessarily delay the renditions of justice or add a third day in court when fewer days are sufficient to do substantial justice." *Id.* at 145; *see also McFord*, 132 Ariz. at 133 ("Rule 32 does not destroy the basic principle of finality in criminal proceedings."). Instead, as previously stated, it is "'designed to accommodate the unusual situation where justice ran its course and yet went awry.'" *Carriger*, 143 Ariz. at 146 (quoting *McFord*, 132 Ariz. at 133).

Only limited claims may be raised in a Rule 32 proceeding. Those claims are:

> (a) the defendant's conviction as obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions;
>
> (b) the court did not have subject matter jurisdiction to render a judgment or to impose a sentence on the defendant;
>
> (c) the sentence as imposed is not authorized by law;
>
> (d) the defendant continues to be or will continue to be in custody after his or her sentence expired;

(e) newly discovered material facts probably exist, and those facts probably would have changed the judgment or sentence. Newly discovered material facts exist if:

(1) the facts were discovered after the trial or sentencing;

(2) the defendant exercised due diligence in discovering these facts; and

(3) the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence.

(f) the failure to timely file a notice of appeal was not the defendant's fault;

(g) there has been a significant change in the law that, if applicable to the defendant's case, would probably overturn the defendant's judgment or sentence; or

(h) the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt, or that no reasonable fact-finder would find the defendant eligible for the death penalty in an aggravation phase held pursuant to A.R.S. § 13–752.

Ariz. R. Crim. P. 32.1.

A. This Court should apply the current procedural rules.

In 2018, the Chief Justice of the Arizona Supreme Court established a Task Force to evaluate and propose changes to Rule 32. *See* Ariz. Sup. Ct. Admin. Order No. 2018–07, filed 1/24/18.[11] The Task Force completed its mission in 2019

[11] https://www.azcourts.gov/Portals/22/admorder/Orders18/2018-07.pdf.

by submitting a comprehensive petition to amend Rule 32 and to create a new Rule 33 (relating exclusively to defendants who have pleaded guilty). *See* Az. Sup. Ct. No. R–19–0012.[12] On August 29, 2019, the Arizona Supreme Court entered an order abrogating the former Rule 32, adopting its replacement, renumbering the previously existing Rule 33, and creating a new Rule 33. *See* Ariz. Sup. Ct. No. R–19–0012, Order, filed 8/29/19.[13] The court ordered that the new Rules would become effective January 1, 2020, and would apply to all cases currently pending "except to the extent that the court in an affected action determines that applying the rule or amendment would be infeasible or work an injustice, in which event the former rule or procedure applies." *Id.*

For the most part, Atwood relies on the new Rules, especially the new preclusion rules. *See* § II(C), *infra*; *see also, e.g.*, Am. Pet. 21–22 (arguing that challenge to aggravating factor is exempt from preclusion under new version of Rule 32.1(c)). However, as discussed in response to individual claims below, Atwood at times seeks to apply the former rules, without explanation. At other times, Atwood claims that applying the new rules would work an injustice in his case. The State responds to those individual arguments as appropriate below. As a general matter, however, the State asks that this Court apply the newly amended Rules in this case, consistent with the Arizona Supreme Court's intention that they apply in all pending cases. Applying the new Rules here is even less likely to work an injustice in this case compared to others, as this is a successive Rule 32 proceeding that should be reserved for extraordinary errors.

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[12] https://www.azcourts.gov/Rules-Forum/aft/949 (Petition, filed 1/10/19).

[13] https://www.azcourts.gov/Portals/20/2019%20Rules/R-19-0012%20Final%20Order.pdf?ver=2019-08-29-150005-550

B. Rules regarding timeliness.

The time limits in Rule 32 "are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice." A.R.S. § 13–4234(G). A defendant must file a post-conviction notice for a claim arising under Rule 32.1(a) within, as applicable here, 30 days from the date of the direct-appeal mandate. Ariz. R. Crim. P. 32.4(b)(3)(A). If a defendant fails to meet this deadline, his petition may be considered timely only if he "adequately explains why the failure to timely file a notice was not [his] fault." Ariz. R. Crim. P. 32.4(b)(3)(D).

Claims arising under Rules 32.1(b) through (h) are exempt from the timeliness requirements. *See* Ariz. R. Crim. P. 32.2(b). However, a defendant must still file those claims "within a reasonable time after discovering the[ir] basis," Ariz. R. Crim. P. 32.4(b)(3)(B), and must "provide sufficient reasons" why the claim was not timely raised, Ariz. R. Crim. P. 32.2(b).

C. Rules regarding preclusion.

When evaluating a post-conviction petition, a court should first "identify[] all precluded and untimely claims" under Rule 32.2(a). Ariz. R. Crim. P. 32.11(a). Specifically, a defendant "is precluded from relief under Rule 32.1(a) based upon any ground:"

> (1) still raisable on direct appeal under Rule 31 or in a post-trial motion under Rule 24;
>
> (2) finally adjudicated on the merits in an appeal or in any previous post-conviction proceeding; or
>
> (3) waived at trial or on appeal, or in any previous post-conviction proceeding, except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.

Ariz. R. Crim. P. 32.2(a). The preclusion rule "'prevent[s] endless or nearly endless reviews of the same case in the same trial court." *Shrum*, 220 Ariz. at 118, ¶ 12 (quoting *Stewart v. Smith*, 202 Ariz. 446, 450, ¶ 11 (2002)). "Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions." *Shrum*, 220 Ariz. at 118, ¶ 13.

Claims arising under Rules 32.1(b) through (h) "are not subject to preclusion under Rule 32.1(a)(3)." Ariz. R. Crim. P. 32.2(b). However, they are still subject to preclusion under Rules 32.2(a)(1) and (a)(2). *See id.* Further, in addition to raising such claims within a reasonable time of discovery for timeliness purposes—*see* Ariz. R. Crim. P. 32.4(b)(3)(B); § II(B), *supra*—a defendant filing a successive Rule 32 must provide "sufficient reasons" why the claim was not raised in a prior post-conviction petition. Ariz. R. Crim. P. 32.2(b).

D. The colorable-claim requirement.

"[A] petition that fails to state a colorable claim may be dismissed without an evidentiary hearing." *State v. Kolmann*, 239 Ariz. 157, 160, ¶ 8 (2016). Accordingly, if, after identifying all precluded claims, a court "determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule," it should dismiss the petition. Ariz. R. Crim. P. 32.11(a). A court should order an evidentiary hearing only if it finds that a petitioner has presented a colorable claim, which is a claim which if the allegations are true probably would have changed the outcome. *Kolmann*, 239 Ariz. at 160, ¶ 8 (citing *State v. Amaral*, 239 Ariz. 220, ¶ 11 (2016)).

Whether a defendant has stated a colorable claim "is, to some extent, a discretionary decision" for a court, and when doubt exists a court should order a hearing "to allow the defendant to raise the relevant issues, to resolve the matter, and to make a record for review." *State v. Bowers*, 192 Ariz. 419, 422, ¶ 10 (App. 1998) (quotations omitted). But a court should not grant an evidentiary hearing

"based on mere generalizations and unsubstantiated claims." *State v. Borbon*, 146 Ariz. 392, 399 (1985). If a hearing is held, the Arizona Rules of Evidence apply, except that the State may call a defendant to testify, and the defendant bears "the burden of proving factual allegations by a preponderance of the evidence." Ariz. R. Crim. P. 32.13(b), (c). The State has the burden of proving harmless error if a constitutional violation is found. Ariz. R. Crim. P. 32.13(c).

III. THIS COURT SHOULD DENY RELIEF.

Atwood has had decades of appellate review, during which he was represented by some of the most competent capital defense attorneys in the State.[14] Nonetheless, he has failed at each turn to convince a single judge to grant relief as to his convictions or sentences. Atwood's latest petition should fare no better. His claims are untimely, precluded, and meritless, and they warrant summary dismissal.

A. Atwood's challenge to the aggravating factor based on the statutory elements test is untimely, precluded, and meritless (Claim 1).

The sentencing judge found one death-qualifying aggravating factor: that Atwood "has been convicted of another offense in the United States for which

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[14] Specifically, well-known capital appellate attorney Carla Ryan represented Atwood on direct appeal. She raised every arguable issue and more. *See Atwood I*, 171 Ariz. at 658–69 (criticizing Ryan's kitchen-sink approach). In his federal habeas and second state post-conviction proceedings, Atwood was represented by esteemed and highly experienced capital defense attorney Larry Hammond. *E.g. Kayer v. Ryan*, 923 F.3d 692, 707 (9th Cir. 2019) (summarizing Mr. Hammond's experience and qualifications). Paula Harms of the Arizona Federal Public Defender's Office was later appointed to Atwood's case, as co-counsel to Mr. Hammond. *See Washington v. Ryan*, 833 F.3d 1087, 1102 (9th Cir. 2016) (Bybee, J., dissenting) ("The office of the Arizona Public Defender is well known to this court and enjoys an outstanding reputation.").

under Arizona law a sentence of life imprisonment or death was imposable." A.R.S. § 13–703(F)(1); *see* Ex. C; Pet. Ex. 4, at 3.[15] Atwood spent decades unsuccessfully challenging this factor on the ground that Arizona law did not provide for a life sentence for lewd-and-lascivious conduct at the time he was sentenced for V.L.H.'s murder. *See Atwood III*, 870 F.3d at 1048–50; *Atwood I*, 171 Ariz. at 646–48. Now, 33 years after sentencing, Atwood attacks the (F)(1) factor on a new legal theory that he admits he failed to argue in any of his *four* prior rounds of appeal: that the (F)(1) required application of the statutory elements test applied in other contexts when proving foreign prior convictions. Am. Pet. 2–32. This test requires a foreign prior felony conviction to align perfectly, element-to-element, with Arizona's analogous statute before it can be used to enhance or aggravate a sentence, and precludes consideration of the prior's facts in that determination. This claim is precluded under Rule 32.2(a)(2) by virtue of the Arizona Supreme Court's independent review. Alternatively, it is precluded under Rule 32.2(a)(3) because Atwood waived it in prior proceedings, and no exceptions to preclusion apply. The claim is meritless in any event.

1. *Pertinent facts.*

The sentencing judge found that Atwood's California conviction for lewd-and-lascivious conduct, which involved a 10-year-old victim, *see* § I, *infra*, satisfied the (F)(1) aggravator. Pet. Ex. 4, at 3. This conviction was based on California Penal Code § 288 which, in 1974, provided:

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[15] Had the offense been committed today, at least three additional aggravating factors would apply to Atwood's murder of V.L.H. *See* A.R.S. §§ 13–751(F)(2) (2020) (conviction for kidnapping as contemporaneous serious offense); (F)(5)(a)) (offense committed while released from confinement); (F)(7) (age of victim).

> Any person who shall wilfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in part one of this code upon or with the body, or any part or member thereof, of a child under the age of fourteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the State prison for a term of from one year to life.

Ex. A. Arizona's corresponding statute, A.R.S. § 13–652 (1974), provided:

> A person who wilfully commits, in any unnatural manner, any lewd or lascivious act upon or which the body or any part or member thereof of a male or female person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of either of such persons, is guilty of a felony punishable by imprisonment for not less than one nor more than five years. If such person commits the act as described in this section upon or with a child under the age of fifteen years, such person shall be punished by imprisonment in the state prison for not less than five years nor more than life without the possibility of parole until the minimum sentence has been served.

Ex. B.

On direct appeal, Atwood argued, as he had at sentencing, that his California conviction could not establish the (F)(1) circumstance because, by the time he was *sentenced for V.L.H.'s murder*, the Arizona Legislature had removed life imprisonment as an available penalty for lewd-and-lascivious conduct. *Atwood I*, 171 Ariz. at 646–48. The court rejected this argument and held that the (F)(1) is established if life was an available punishment in Arizona at the time a defendant *committed the prior offense*. *Id.* Atwood committed the lewd-and-lascivious offense in June 1974, at which time A.R.S. § 13–652 provided for a 5-year to life sentence. *Id.* Atwood's California conviction therefore proved the (F)(1) circumstance. *Id.*

Separate from resolving the above argument, the Arizona Supreme Court recognized its obligation to "'independently review the record to determine the absence or existence of both aggravating and mitigating circumstances.'" *Id.* at 648 (quoting *State v. Gillies*, 135 Ariz. 500, 511 (1983)); *see generally State v. Richmond*, 114 Ariz. 186, 196 (1976), *abrogated on other grounds by State v. Salazar*, 173 Ariz. 399 (1992). The court concluded, "We … affirm the trial court's finding of one aggravating circumstance and no mitigating circumstances sufficiently substantial to call for leniency, and because *we* believe that the death penalty should be imposed, we affirm defendant's death sentence." *Id.* (citations omitted and emphasis in original). The court also reviewed the record for fundamental error, as Arizona statute then required, and found none. *Id.* at 660; *see* A.R.S. 13–4055 (1984).

2. *Claim 1 is untimely.*

Timeliness under Rule 32.4 and preclusion are separate and independent bases for dismissal. *See State v. Lopez*, 234 Ariz. 513, 515, ¶ 8 (App. 2014). As discussed previously, Rule 32 requires a defendant to justify his untimely filing:

- Rule 32.2(b) requires a defendant filing an untimely or successive post-conviction claim to "provide sufficient reasons" why he did not raise the claim in a timely and procedurally appropriate manner;

- Rule 32.4(b)(3)(B) requires a defendant to raise a claim arising under Rules 32.1(b) through (h) "within a reasonable time after discovering the basis of the claim"; and

- Rule 32.4(b)(3)(D) provides that an untimely claim arising under Rule 32.1(a) must be excused if "the defendant adequately explains why the failure to timely file a notice was not the defendant's fault." Ariz. R. Crim. P. 32.4(b)(3)(D).

See §§ III(B) & (C).

Atwood has not satisfied these provisions. First, Atwood's petition is devoid of any effort to comply with Rule 32.2(b). And there can be no "sufficient reasons" for not raising this legal, record-based claim decades ago.

Second, pursuant to Rule 32.4(b)(3)(B), in his Amended Post-Conviction Notice (filed on October 3, 2019), Atwood asserted that his Rule 32.1(c), (d), and (h) claims are timely because he raised them within a reasonable time of learning their basis. But Claim 1 is a pure legal issue that has been available to Atwood since he was sentenced. Allowing a defendant to "discover" new legal claims based on long-existing statutes and to raise them in a successive petition within a reasonable time after that "discovery" would encourage capital defendants to withhold claims and prolong litigation, thereby rendering the preclusion and timeliness rules meaningless.

Third, pursuant to Rule 32.4(b)(3)(D), Atwood announced in his amended notice his intent to raise an untimely Rule 32.1(a) claim, and proposed that counsel's purported ineffectiveness excused that claim's untimeliness. *See* Am. Notice of PCR, filed 10/3/2019. The Arizona Court of Appeals, however, has held that counsel's ineffectiveness does not exempt a claim from preclusion:

> in an effort to avoid the rule of preclusion, petitioner argues that his earlier failure to raise these claims was itself due to ineffective assistance of counsel. Petitioner offers no support for this claim. Moreover, there is a quality of infinite regression to it. If, with each successive claim, a petitioner could avoid preclusion merely by asserting that all prior counsel were ineffective, Rule 32.2(a)(3) would be stripped of effect.

State v. Curtis, 185 Ariz. 112, 115 (App. 1995), *disapproved on other grounds by Smith*, 202 Ariz. at 450, ¶ 10. The same reasoning should apply to timeliness. Otherwise, defendants—especially capital defendants motivated to delay their

cases[16]—could drag the State and the victims into an infinite loop of litigation, each round predicated on the prior attorney's purported ineffectiveness. That result would destroy the finality interest Rule 32 was intended to safeguard and guarantee "'endless reviews of the same case in the same trial court.'" *Shrum*, 220 Ariz. at 118, ¶ 112 (quoting *Smith*, 202 Ariz. 450, ¶ 11).

3. *Claim 1 was implicitly adjudicated on direct appeal and is precluded under Rule 32.2(a)(2).*

As discussed above, pursuant to the procedure it then followed in every case, the Arizona Supreme Court independently reviewed the aggravating and mitigating circumstances and searched the record for fundamental error.[17] *Atwood I*, 171 Ariz. at 645–57. As part of the independent review procedure, the court necessarily "review[ed] the entire record and independently consider[ed] whether a capital sentence [was] not only *legally correct*, but also appropriate." *State v. Roseberry*, 237 Ariz. 507, 509, ¶ 13 (2015) (emphasis added).

In fact, the supreme court's independent-review process specifically involved a determination whether the aggravation the sentencing judge found was proven beyond a reasonable doubt:

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[16] *See Rhines v. Weber*, 544 U.S. 269, 277–78 (2005) ("[N]ot all petitioners have an incentive to obtain federal relief as quickly as possible. In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death.").

[17] The independent-review procedure was codified in 1994. *See* A.R.S. § 13–755. In 2002, as part of the statutory overhaul in response to *Ring v. Arizona*, 536 U.S. 584 (2002), the legislature divested the supreme court of its independent-review power in cases where the crime was committed on or after August 1, 2002. *See* A.R.S. § 13–756; *State v. Morris*, 215 Ariz. 324, 340, ¶ 72 (2007). In such cases, the supreme court may only review death sentences for an abuse of the jury's discretion. *See* A.R.S. § 13–756; *Morris*, 215 Ariz. at 340, ¶ 72.

> the gravity of the death penalty requires that we painstakingly examine the record to determine whether it has been erroneously imposed. Furthermore, because [our statute] sets out the factors which must be found and considered by the sentencing court, we necessarily undertake an independent review *of the facts that establish the presence or absence of aggravating and mitigating circumstances*. We must determine for ourselves if the latter outweigh the former when we find both to be present.
>
> In performing this review we find it necessary to determine … *whether the evidence supports the sentencing court's finding the existence of a statutory aggravating circumstance(s)* …."

Richmond, 114 Ariz. at 196 (emphasis added and citations omitted); *see also State v. Brewer*, 170 Ariz. 486, 494 (1992) (emphasis added) ("The automatic appeal mechanism guarantees this court both the opportunity and the vehicle to assess the legality of the sentence in each capital case. … If the record reveals that the trial court, *for whatever reason*, improperly sentenced a defendant to death, we must overturn that sentence."); *State v. Walton*, 159 Ariz. 571, 586 (1989) (on independent review Arizona Supreme Court determines whether facts establish presence of aggravating factor and whether factor is proven beyond a reasonable doubt); *State v. Poland*, 144 Ariz. 412, 415 (1985) ("[T]his court will, in all death cases, make an independent review of the facts to determine for itself the aggravating and mitigating factors."); *State v. Watson*, 129 Ariz. 60, 63 (1981) ("A finding merely that the imposition of the death penalty by the trial court was 'factually supported' or 'justified by the evidence' is not the separate and independent judgment by this court that the death penalty warrants.").

The supreme court conducted its independent review regardless what sentencing issues the defendant raised—or whether he raised any issues at all. *See Brewer*, 170 Ariz. at 493 (holding that defendant cannot waive mandatory death-

penalty appeal and stating, "once a defendant files an appeal, which is automatic in capital cases, we are expressly required by statute to review issues affecting both judgment and sentencing in our search for fundamental error"). *Roseberry* illustrates this practice. There, appellate counsel failed to challenge a jury instruction that unconstitutionally imposed a causal-nexus screening test on mitigation. 237 Ariz. at 508, ¶ 4. In his post-conviction petition, Roseberry argued that counsel's omission was constitutionally ineffective. *Id.* The Supreme Court found no prejudice, stating that, regardless of the jury instructions, on independent review it had "considered all the mitigation evidence presented, without requiring a causal connection to the crimes," and had "comprehensively reviewed the record and the sentence." *Roseberry*, 237 Ariz. at 508, 510, ¶¶ 5, 13. The court recognized that "independent review serves as a constitutional means to cure sentencing errors."[18] *Id.* at 510, ¶ 14. Counsel's failure to specifically present a causal-nexus challenge in the opening brief did not matter:

> In reviewing Roseberry's death sentence on direct appeal, this Court was, of course, aware of the Supreme Court's then-recent ruling in *Tennard [v. Dretke]*, 542 U.S. [274] 285 [(2004)]. Indeed, just one week before we issued the opinion affirming Roseberry's death sentence, we issued an opinion explicitly recognizing that "a jury cannot be prevented from giving effect to mitigating evidence solely because the evidence has no causal 'nexus' to a defendant's crimes." *State v. Anderson*, 210 Ariz. 327, 349 ¶ 93 (2005) (quoting *Tennard*, 542 U.S. at 282–87, 124 S.Ct. 2562). Moreover, we reviewed Roseberry's amended opening brief, as well as his motion for reconsideration of our opinion, both of which addressed the causal nexus issue. Thus, although we denied Roseberry permission to

[18] The United States Supreme Court recently reaffirmed this principle. *See McKinney v. Arizona*, __ U.S. __, 2020 WL 889190, *2–*5 (Feb. 25, 2020).

> amend his brief to include the nexus issue, this Court was well aware that all mitigation evidence must be considered and that its causal relationship to the crimes goes to the weight to be given to the evidence, not to its admissibility. *See id.*

Roseberry, 237 Ariz. at 509, ¶ 12 (S. Ct., L.Ed., and P.2d citations omitted).[19]

Here, the Arizona Supreme Court applied its independent-review procedure and necessarily determined that the (F)(1) factor was proven beyond a reasonable doubt. *Atwood I*, 171 Ariz. at 645–57. Further, in the course of analyzing the argument Atwood raised, the court made a threshold legal determination that A.R.S. § 13–652 was Arizona's equivalent to § 288 of the California Penal Code. The court had reached the same conclusion more than a decade earlier, finding that a conviction under the same California statute satisfied the (F)(1) and identifying A.R.S. § 13–652 as Arizona's analogue to the California offense. *State v. Arnett (Arnett I)*, 119 Ariz. 38, 40, 47 (1978); *see also State v. Arnett (Arnett III)*, 158 Ariz. 15, 20–21 (1988) (rejecting, on review of post-conviction relief ruling, argument that trial court impermissibly used California conviction to satisfy both (F)(1) and (F)(2)); *State v. Arnett (Arnett II)*, 125 Ariz. 201, 203–04 (1983) (affirming (F)(1) on appeal from resentencing).

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[19] In the related context of exhaustion of state-court remedies, federal habeas courts have determined that the Arizona Supreme Court's independent review impliedly exhausts sufficiency-of-the-evidence challenges to aggravating factors. *See Apelt v. Ryan*, 2011 WL 1377015, *10 (D. Ariz. April 12, 2011); *Kayer v. Ryan*, 2009 WL 3352188, *33 (D. Ariz. Oct. 19, 2009). *Cf. Gerlaugh v. Stewart*, 129 F.3d 1027, 1045 (9th Cir. 1997) (finding, in context of ineffective-assistance claim, that counsel reasonably declined to raise any issues relating to sentencing in direct-appeal opening brief because "Arizona statutory law required the Arizona Supreme Court to make an independent examination of the propriety and legality of the death penalty").

Atwood's suggests that the supreme court's failure to specifically apply the statutory elements test means it overlooked that test. Am. Pet. 14 n.11. Assuming the test applies in the first place, *see* § III(A)(4)(a), *infra*, the court's failure to specifically reference it does not call into question its implicit finding that the aggravator was proven beyond a reasonable doubt. *See Clark v. Ricketts*, 958 F.2d 851, 859–60 (9th Cir. 1991) (rejecting argument that Arizona Supreme Court's failure to mention reasonable-doubt standard in independent review of aggravator signified that it did not apply that standard and did not review aggravator for proof beyond a reasonable doubt merely because it did not mention that standard, and finding "[t]he Arizona Supreme Court having independently reviewed the facts in Clark's case and having concluded that the aggravating circumstances had been 'established,' it is ludicrous to suggest the court did not find the aggravating circumstances established according to the standard it so recently announced ....").

Finally, Atwood appears to agree that a sufficiency-of-the-evidence review was subsumed in the supreme court's independent review of the aggravating factor. *See* Am. Pet. 30–31. However, he speculates that the court "overlooked" the alleged error here and asks this Court to "correct" that oversight now. *Id.* But as discussed above, the supreme court found the aggravator proven beyond a reasonable doubt. And this Court, respectfully, cannot "correct" the Arizona Supreme Court, even if that Court were wrong. *See, e.g., State v. Healer*, 246 Ariz. 441, 446, ¶ 12 (App. 2019). Accordingly, Claim 1 is precluded under Rule 32.2(a)(2), and that Rule has no exceptions. This Court should summarily deny and dismiss Claim 1.

4. *Atwood has waived Claim 1 and it is precluded under Rule 32.2(a)(3).*

Should this Court disagree with the State's argument that Claim 1 is precluded under Rule 32.2(a)(2), it should find the claim precluded under Rule

32.2(a)(3). As a constitutional challenge to the aggravating factor, Claim 1 arises under Rule 32.1(a), and that Rule is subject to preclusion. *See* Rule 32.2(a). Atwood could have raised Claim 1 on direct appeal (or at any time in the 33 years since sentencing) but he admits he did not do so. Atwood's argument that his claim is cognizable under Rules 32.1(c), 32.1(d), or 32.1(h), and thus exempt from Rule 32.1(a)(3) preclusion, is unpersuasive, as is his assertion that Claim 1 required a personal waiver under Rule 32.2(a)(3).

As a preliminary matter, the State incorporates its arguments in § III(A)(2), *supra*, concerning Atwood's failure to state sufficient reasons for omitting this claim from earlier direct and collateral proceedings. *See* Ariz. R. Crim. P. 32.2(b). And from a policy perspective, awarding relief to Atwood based on a legal claim that has been available to him for decades would eviscerate the preclusion rules, convert Rule 32 into a second direct appeal, and "unnecessarily delay the renditions of justice [and] add a third day in court when fewer days are sufficient to do substantial justice." *See Carriger*, 143 Ariz. at 145. This is particularly true where, as set forth in detail below, Atwood does not seek application of an existing, well-established legal principle. Rather, he asks this Court to extend an existing rule to the (F)(1) aggravating factor when that rule did not clearly apply either at the time of sentencing or now, and to construe a long-repealed Arizona statute to determine what conduct it proscribes and whether its elements are coterminous with California's analogue. These exercises are appropriately suited for direct appeal, not this (*second*) successive collateral-review proceeding.

a. <u>Atwood cannot evade preclusion under Rule 32.1(c).</u>

As a threshold concern, Atwood cites Rule 32.1(c)'s pre-2020 language and authority applying it. Am. Pet. 21–22. That version of the Rule was much broader, providing for relief when "the sentence imposed exceeds the maximum authorized by law *or is otherwise not in accordance with the sentence authorized by law*."

Ariz. R. Crim. P. 32.1(c) (2019) (emphasis added). Before the 2020 revisions, Rule 32.1(c) claims were subject to preclusion. *See* Ariz. R. Crim. P. 32.2(b) (2019). When Rule 32.1(c) was exempted from preclusion, it was contemporaneously narrowed by removing the clause permitting relief from a sentence "otherwise not in accordance with the sentence authorized by law." Atwood cannot benefit both from Rule 32.1(c)'s current preclusion-exempt status *and* its broad pre-2020 language. As argued in § II(A), *supra*, this Court should apply the current version of Rule 32. But if this Court applies the pre-2020 version of the Rule, it should also apply the pre-2020 version of Rule 32.2(b), which did not exempt Rule 32.1(c) claims from preclusion. *See* Ariz. R. Crim. P. 32.2(b) (2019).

Turning to the merits, Rule 32.1(c) currently provides for relief when a defendant's "sentence as imposed is not authorized by law." Atwood has failed to state a Rule 32.1(c) claim, for several reasons.

i. *Rule 32.1(c) does not apply to capital sentences.*

Rule 32.1(c) applies to non-capital sentences; challenges to death-penalty aggravators must be brought on direct appeal or, in appropriate circumstances, under Rules 32.1(a) or (h). Atwood has failed to cite, and the State has not found, any authority applying Rule 32.1(c) in the death-penalty context. And construing Rule 32.1(c), which does not have a clear-and-convincing evidence burden of proof—or, for that matter, any other limiting principle—to death sentences would render Rule 32.1(h), with its more restrictive provisions and exacting burden of proof, obsolete. Death-sentenced defendants could simply sidestep Rule 32.1(h) and bring their claims under Rule 32.1(c). *See Brenda D. v. Dep't. of Child Safety*, 243 Ariz. 437, 443, ¶¶ 20–21 (2018) (court "will not interpret statutes or rules in a manner that renders portions of their text superfluous" and will harmonize rules whenever possible).

Nor does the Rule's history support such an interpretation. *See id.* at 442, ¶ 15 (when Rule's language could be read multiple ways, court looks to history). The Task Force proposed amending Rule 32.1(c) and removing it from preclusion to address rare circumstances in which judges sentence defendants under incorrect statutory ranges.[20] *See* Arizona Supreme Court No. R–19–0012, Petition filed 1/10/19, at 7–8.[21] Proponents of removing the claim from preclusion cited, for example, cases in which defendants were sentenced under the dangerous crimes against children (DCAC) statutes for attempted sexual conduct with a minor under the age of 12, even though that offense was not DCAC. *See*; Task Force Minutes, 8/31/18[22]; Task Force Minutes, 11/9/18, at 6[23]; Task Force Supplemental Meeting Packet (Memorandum of Hon. Peter Eckerstrom and Beth Beckmann)[24]; *see also State v. Gonzalez*, 216 Ariz. 11, 13, ¶ 8 (App. 2007). The Arizona Supreme Court later found that the case recognizing the offense as not DCAC did not apply

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[20] At one point, it was proposed that the death-penalty provisions of Rule 32.1(h) be excised from that Rule and incorporated in Rule 32.1(c), but that proposal was defeated. *See* Task Force Minutes, 11/9/18, at 3–5, available at https://www.azcourts.gov/Portals/74/Rule%2032%20TF/Minutes110918R32.pdf?ver=2019-03-07-122556-327. That this proposal was defeated reinforces the conclusion that Rule 32.1(c) was intended to apply to non-capital sentencing errors and that death-penalty issues were intended to be raised through Rule 32.1(h).

[21] https://www.azcourts.gov/Rules-Forum/aft/949

[22] https://www.azcourts.gov/Portals/74/Rule%2032%20TF/Minutes083118R32.pdf?ver=2019-03-07-122556-017

[23] https://www.azcourts.gov/Portals/74/Rule%2032%20TF/MtgPkt110918R32.pdf?ver=2019-03-07-154500-767

[24] https://www.azcourts.gov/Portals/74/Rule%2032%20TF/MtgPktSUP110918R32.pdf?ver=2019-03-07-154501-360

retroactively under Rule 32.1(g). *Shrum*, 220 Ariz. at 122, ¶ 23. Accordingly, a class of defendants were unable to obtain relief for their illegally enhanced sentences.

The Task Force's rule-change petition leaves no doubt that Rule 32.1(c) is intended to apply to term-of-years sentences:

> Members also discussed the troubling circumstance of a defendant whose sentence exceeds what the trial court intended to impose, or what was permitted by law; but who did not become aware of the discrepancy in a timely manner, or who had that awareness only after he or she has already concluded a post-conviction proceeding. Although these defendants might file a Rule 32 petition as soon as they become aware of the discrepancy, that is often not until the Department of Corrections provided computations of their sentences pending the approach of their anticipated release dates. The notice or the petition would be subject to summary dismissal on grounds of preclusion or untimeliness, leaving the defendant with no remedy.

Arizona Supreme Court No. R–19–0012, Petition filed 1/10/19, at 7–8.[25] Accordingly, to be cognizable under Rule 32, a challenge to a death-penalty aggravator must fall within Rule 32.1(a) or (h). Atwood cannot avoid preclusion by attempting to refashion his claim into a non-existent, Rule 32.1(c)-based challenge to his death-qualifying aggravating factor.

ii. *Atwood's sentence was "authorized" by law.*

Even if Rule 32.1(c) applies to death sentences, Arizona law authorized in 1984, and still authorizes today, the death penalty for first degree murder. *See* A.R.S. § 13–703(A); Ex. C. Atwood accordingly does not claim that he was sentenced under the wrong statute or that he received an enhancement inapplicable to his conviction; he instead alleges that the sentencing judge erroneously found an

[25] https://www.azcourts.gov/Rules-Forum/aft/949

aggravating factor, in violation of his constitutional rights. In contrast, in *Shrum* and *Gonzalez*, the law did not authorize a DCAC enhancement for the crime of conviction. *See Shrum*, 220 Ariz. at 119, ¶ 19 (noting that statute "contained no language expressly authorizing DCAC enhancement of sentences for attempted sexual conduct with a minor under the age of twelve") (citing *Gonzalez*, 216 Ariz. at 13–15, ¶¶ 5–15).

iii. *Rule 32.1(c) is backward-looking and there was no error in the sentence "as imposed."*

Rule 32.1(c) requires a court to assess a sentence's legality at the time it was imposed. A Rule 32.1(c) claim cannot rest on subsequent changes in or clarifications to the law. Otherwise, Rule 32.1(c) would enable an end-run around Rule 32.1(g), which permits post-conviction relief based on changes in the law and contains a retroactivity requirement. *See* Ariz. R. Crim. P. 32.1(g) (providing ground for relief if change in the law is "applicable to the defendant's case"); *State v. Towery*, 204 Ariz. 386, 389, ¶¶ 5–6 (2003) (Arizona courts have adopted federal retroactivity analysis for purposes of Rule 32.1(g)).

Atwood does not allege a stark, undeniable sentencing error that was apparent from the face of the sentencing statutes and should have been known at the time of sentencing, as occurred in *Gonzalez* and *Shrum*.[26] Rather, he seeks to extend a line of authority relating primarily to the A.R.S. § 13–703(F)(2)

[26] Nor does Atwood allege that the sentencing judge actually considered the facts underlying the California conviction to determine whether it applied in Arizona. And had the judge done so, it would have been because *Atwood* invited this outcome. Atwood described that offense's facts and minimized their significance, depicting the charge as a minor one and proposing that making him death-eligible based on such conduct would be unfair. Ex. P, at 33–34. The State, in contrast, relied exclusively on the statutes to prove the (F)(1). *Id.* at 41–42, 45–46; Pet. Ex. 3, at 2–5.

aggravator (much of it post-dating sentencing) to the (F)(1) aggravator. He then asks this Court to compare the Arizona and California lewd-and-lascivious acts statutes and determine that his California prior does not satisfy the (F)(1) because California's statute sweeps more broadly than Arizona's. In other words, Atwood does not allege that his sentence *as imposed* was not authorized by law, but asserts that legal principles should be recognized and then applied to *find his sentence unauthorized*. Even if Atwood could make a plausible argument that the elements test should apply to (F)(1), or that the two relevant statutes are not coterminous, the time for that argument has passed: it should have been made on direct appeal decades ago, or presented as an ineffective-assistance claim in his first Rule 32.

1. The sentence "as imposed" was not erroneous because the statutory elements test had not been applied to the (F)(1) in 1987. Moreover, it has not been applied to the (F)(1) since.

Both the (F)(1) and the (F)(2) aggravating factors relate to prior convictions. However, they are distinct: the (F)(1) factor focuses on the severity of the prior crime as measured by the sentence available, while the (F)(2) focuses on the conviction's existence and nature. The (F)(2) factor also contained, in 1984, a crime-of-violence requirement that was absent from the (F)(1). *See* A.R.S. § 13–703(F)(2) ("The defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person."[27] *See also* Ex. C. The purpose of the death-penalty scheme in general is to determine a defendant's character and propensities. *Atwood III*, 870 F.3d at 1049 (citing *State v. Gretzler*,

[27] The (F)(2) factor has since been amended to replace the crime-of-violence element with a list of enumerated "prior serious offenses." A.R.S. § 13–751(F)(2) (2020).

135 Ariz. 42, 57 n.2 (1983)). And the (F)(1)'s specific purpose is to provide "information about the defendant … to the sentencing judge" concerning the defendant's willingness to engage in conduct society deems most severe. *Arnett I*, 119 Ariz. at 48; *see Atwood III*, 870 F.3d at 1049 (state court could reasonably have found that the (F)(1) "identified an important propensity factor, namely the defendant's willingness to engage in criminal behavior that society deemed at the time to be the most serious, thereby risking life imprisonment or death").

As the sentencing judge recognized, *see* Pet. Ex. 1, at 26, the Arizona Supreme Court had held well before Atwood's sentencing that, for the (F)(2)'s crime-of-violence element to be satisfied, "the prior conviction must be for a felony which by its *statutory definition* involves violence or the threat of violence on another person." *Gillies*, 135 Ariz. at 511 (emphasis added). Extrinsic evidence, such as testimony from the victim of the prior crime, was not admissible to determine whether a crime involved violence and a sentencer could not look to the facts of the prior felony to make that determination:

> This reading of the statute guarantees due process to a criminal defendant. Evidence of a prior conviction is reliable, the defendant having had his trial and exercised his full panoply of rights which accompany his conviction. However, to drag in a victim of appellant's prior crime to establish the necessary element of violence outside the presence of a jury, long after a crime has been committed, violates the basic tenets of due process.

Id. The Arizona Supreme Court also had also held, in the non-capital context, that foreign prior convictions could be used for enhancement or aggravation if they included every element that would be required to prove an offense in Arizona. *See State v. Wilson*, 152 Ariz. 127, 128–31 (1996); *State v. Ault*, 157 Ariz. 516, 521 (1988); *State v. Phillips*, 139 Ariz. 327, 330 (App. 1983).

But the Arizona Supreme Court had never applied any sort of elements test to the (F)(1) aggravating factor. In fact, the sentencing judge's special verdict and the Arizona Supreme Court's opinion in this very case confirm that the test had not been recognized and applied to the (F)(1). The sentencing judge (later affirmed by the Arizona Supreme Court, *see Atwood I*, 171 Ariz. at 660) expressly applied the elements test to reject the A.R.S. § 13–703(F)(2) factor but not to find the (F)(1). Pet. Exh. 1, at 26. Contrary to Atwood's implication, *see* Am. Pet. 4 n.4, these courts' failure to expressly apply the elements test to the (F)(1), despite applying it to the (F)(2), does not signify an oversight or some kind of "irony." Rather, it shows the courts' awareness of the test and provides affirmative evidence that the test was limited to the (F)(2) and did not apply to the (F)(1). The (F)(1)/(F)(2) distinction is not illusory, as the Arizona Supreme Court has applied different rules to the factors in other different contexts. *See State v. Nordstrom*, 230 Ariz. 110, 117–18, ¶¶ 32–35 (2012) (noting court's prior holdings that contemporaneous convictions could satisfy the (F)(1) but not the (F)(2), which prompted the legislature to amend the (F)(2)); *State v. Ring*, 204 Ariz. 534, 558–59, ¶¶ 67–68 (2003) (exempting (F)(1) and post-1993 (F)(2) aggravators from *Ring* jury trial-mandate but declining to exempt pre-1993 (F)(2) because the threat-of-violence factor constitutes a required "additional finding … beyond the bare fact that a prior conviction exists").

Atwood has pointed to no case applying an elements test to the (F)(1), and his attempt to show by inference that the test was firmly in place at the time of sentencing falls flat.[28] Am. Pet. 9–15. Atwood identifies *State v. (Charles) Lee*,

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[28] Atwood relegates one of the more significant cases—*Arnett I*—to a footnote. Am. Pet. 12 n.10. As previously discussed, that case affirmed the use of a conviction involving a child under California Penal Code § 288. *See* § III(A)(3), *supra*.

114 Ariz. 101 (1976), as the test's genesis. Am. Pet. 10. *Charles Lee*, however, did not involve a foreign prior conviction, let alone address the appropriate method of using such a conviction to prove the (F)(1). *Id.* at 105–06. Further, in *Charles Lee*, the sentencing judge found both the (F)(1) and the (F)(2) and it is unclear from the face of the opinion which of the two priors the judge used to find which factor.[29] *Id.* at 105.

In any event, at issue in *Charles Lee* was whether the trial court erred by taking judicial notice of various documents to find Lee's prior assault conviction. *Id.* at 105–06. The court had also found a prior armed-robbery conviction stemming from another case over which the judge had presided. *Id.* The finding of the aggravated-assault conviction, however, appeared to be based on Lee's testimony that "he had been to 'the joint' and that he had been convicted of an assault," a reference to the assault conviction within the court file for the armed-robbery case, and information in the presentence report. *Id.* The supreme court held:

> There is insufficient evidence of support [for] the trial court's finding [of] a conviction for Assault with a Deadly Weapon. We do not approve the procedure of asking the court to take judicial notice of a conviction for the purpose of establishing such a conviction as an aggravating circumstance. The proper procedure to establish the prior conviction is for the state to offer in evidence a certified copy of the conviction and establish the defendant as the person to whom the document refers.

Id. at 105–06 (citations omitted). Thus, *Charles Lee* did not hold that the elements test applies to the (F)(1), or give any insight at all into how to prove a foreign

[29] The *Charles Lee* opinion as a whole is, in fact, somewhat unclear.

prior; rather, it disapproved of the judicial-notice procedure the court had employed and announced the correct one.[30] Subsequent cases confirm that *Charles Lee* was concerned with the type and quantum of proof necessary to establish a prior. *See State v. Hauss*, 140 Ariz. 230, 231–32 (1984).

Atwood next turns to a series of cases in which the Arizona Supreme Court found the (F)(1) proven by foreign prior convictions. Am. Pet. 10–11 (citing *State v. Bracy*, 145 Ariz. 520, 536 (1985); *State v. Hooper*, 145 Ariz. 538, 550 (1985); *State v. Smith*, 125 Ariz. 412 (1980)). These decisions do not show the adoption or application of an elements test to the (F)(1). In *Smith*, the defendant had been convicted of a murder in Texas in 1968, but the sentencing judge had judicially noticed a 1973 Texas statute in assessing the (F)(1). 125 Ariz. at 516. The supreme court found no reversible error, itself taking judicial notice of the correct statute and confirming the offense carried a life penalty. *Id.* at 416–17. And the court reviewed the judgment of conviction to confirm that Smith was convicted of murder with malice, a crime that in Arizona carried a life sentence. *Id.* at 417. The court did not conduct an element-to-element comparison or suggest one was required. *Id.* Likewise, the court did not hold in *Bracy* or *Hooper* that an elements test was required, or assess in any way the quantum of proof required for the (F)(1). It merely found that the evidence, which consisted in each case of extra-jurisdictional judgments of conviction for murder, was sufficient to support the (F)(1). *See Bracy*, 145 Ariz. at 536; *Hooper*, 145 Ariz. at 550.

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[30] The Arizona Supreme Court also found that Lee's armed-robbery conviction, which formed the basis for "one of the aggravating circumstances," had been reversed, and therefore set aside Lee's death sentence. *Charles Lee*, 116 Ariz. at 661–62.

State v. Harding, 141 Ariz. 492, 500 (1984), which Atwood also cites, involved Arizona priors. Am. Pet. 11. And in *State v. Watson*, 120 Ariz. 441, 448 (1978), the court concluded that the (F)(1) applies if the defendant could have received a life sentence, regardless of the sentence actually imposed: "It is the nature of the prior conviction and the sentence possible that is the aggravating circumstance" under both (F)(1) and (F)(2). *Watson* does not discuss the issue of proving foreign priors. *Id.*

Nor did *State v. Greenawalt*, 128 Ariz. 150 (1981), require the statutory elements test for the (F)(1). Am. Pet. 11. There, the (F)(2)—not the (F)(1)—was at issue. *Id.* at 171. The defendant invoked *Charles Lee* for the rule that a sentencing judge could not receive "any evidence other than certified copies of prior convictions." The court clarified *Charles Lee* as being concerned only with the introduction of prior convictions for the (F)(1). *Id.* "We did not hold that other forms of evidence were not relevant and admissible to the other aggravating circumstances specified in the statute." *Id.* The court then determined that the trial court had appropriately heard extrinsic evidence on the (F)(2). *Id.* *Greenawalt*, like *Charles Lee*, did not require application of the statutory elements test to the (F)(1). *Id.* And *Greenawalt* was itself subsequently clarified in *Gillies*, which adopted the statutory elements test for the (F)(2) (but not for the (F)(1)):

> *Greenawalt* allows consideration of evidence of the circumstances surrounding defendant's prior criminal conduct for the purpose of determining the weight to be given a prior conviction. We cannot allow what is, in effect, a second trial on defendant's prior conviction to establish the existence of an A.R.S. § 13–703(F)(2) aggravating circumstance.

Gillies, 135 Ariz. at 511; *see also State v. Ysea*, 191 Ariz. 372, 374–76, ¶¶ 5–9 (1998) (in context of ineffective-assistance claim, finding that the law was well-

established in 1986 that the (F)(2)'s crime-of-violence element could not rest on extrinsic evidence).[31]

Atwood has also failed to identify any authority applying the elements test to the (F)(1) after his sentencing. Atwood's cited authority on this point concerns the (F)(2)'s crime-of-violence factor. *See State v. Schackart*, 190 Ariz. 238, 246–48 (1997); *State v. Kemp*, 185 Ariz. 52, 64 (1996); *State v. McKinney*, 185 Ariz. 567, 581–83 (1996); *State v. (Darrel) Lee*, 185 Ariz. 549, 557 (1996); *State v. Williams*, 183 Ariz. 368, 382–83 (1995); *State v. Bible*, 175 Ariz. 549, 604 (1993); *State v. Kiles*, 175 Ariz. 358, 369–70 (1993); *State v. Hill*, 174 Ariz. 313, 327–28 (1993); *State v. Hinchey*, 165 Ariz. 432, 437 (1990); *State v. Serna*, 163 Ariz. 260, 269 (1990); *State v. Lopez*, 163 Ariz. 108, 114 (1990); *State v. Romanosky*, 162 Ariz. 217, 227–28 (1989).[32]

In fact, in only five of Atwood's cited cases was the (F)(1) even found. *See State v. (Chad) Lee*, 189 Ariz. 608, 613, 618, 620 (1997); *State v. Walden*, 183 Ariz. 595, 615–18 (1995); *State v. Richmond*, 180 Ariz. 573, 578–79 (1994); *State v. Spencer*, 176 Ariz. 36, 42–44 (1993); *State v. Schaaf*, 169 Ariz. 323, 326, 333–34 (1991). And in three of those cases the factor was not discussed in any

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[31] *State v. Evans*, 147 Ariz. 57, 58 (1985), which Atwood also cites, concerns only the (F)(2).

[32] *State v. Roque*, 213 Ariz. 193, 215, ¶¶ 78–84 (2006), and *State v. Van Adams*, 194 Ariz. 408, 419–20, ¶ 43 (1999), involved the post-1993 statute and the question whether a prior qualified as a "serious offense" under the statutory definition. *See* Am. Pet. 17–18. *Roque* applied the elements test from the former (F)(2) to the revised (F)(2). 213 Ariz. at 215, ¶¶ 78–84. And *State v. Murdaugh*, 209 Ariz. 19, 30–31, ¶¶ 53–55 (2004), is a *Ring* harmless-error review recognizing that the (F)(1) and (F)(2) generally fall outside *Ring*'s mandate; that case is of little significance here.

meaningful fashion. *See Chad Lee*, 189 Ariz. at 613, 620; *Richmond*, 180 Ariz. at 580; *Shaaf*, 169 Ariz. at 326. The other two, *Spencer* and *Walden*, do not help Atwood, for the reasons discussed *infra*.

Further undermining Atwood's argument are several Arizona Supreme Court opinions from the time period of his direct appeal analyzing the (F)(1) in a manner inconsistent with the (F)(2)'s elements test. The most significant of these cases is *State v. Schad*, 163 Ariz. 411, 418–19 (1989). There, Schad had been convicted of second-degree felony murder in Utah, which had occurred during mutual acts of sodomy, and the State had alleged that conviction for purposes of the (F)(1). *Id.* Schad argued that the (F)(1) was inappropriate because Arizona lacked a crime of second-degree felony murder and because, in Arizona, sodomy had been reduced to a misdemeanor. *Id.*

The Arizona Supreme Court examined in detail the facts of the Utah conviction to reject Schad's claim. *Id.* The court specifically concluded that Schad had mischaracterized "the nature of [his] Utah conviction," which did not merely involve sodomy but auto-erotic asphyxiation—a dangerous act. *Id.* Accordingly, the court continued, the second-degree felony murder conviction was not based only on an act of sodomy but on the dangerous conditions under which the sodomy was conducted. *Id.* Under similar circumstances, the court concluded, Schad would be guilty of second-degree murder in Arizona, which at the time carried a life sentence. *Id.*; *see also Schad v. Schriro*, 454 F. Supp. 2d 897, 924 (D. Ariz. 2006) (habeas decision noting that on direct appeal the Arizona Supreme Court "explain[ed] that the *facts surrounding the 1986 offense* brought it into accord with Arizona's definition of second-degree murder") (emphasis added).

Similarly, in *Spencer*, 176 Ariz. at 42–44, Spencer was serving a life sentence on an armed robbery conviction only because the sentence was enhanced. Spencer argued that the (F)(1) was not established because, without the

enhancement, his crime of conviction did not carry a life sentence. *Id.* at 43. He also argued that the analysis required the court to look beyond the four corners of the relevant statute to the nature of the offense. *Id.* The court found that the enhanced sentence qualified for the (F)(1), and specifically declined to reach Spencer's argument concerning the nature of the offense because he had actually received a life sentence. *Id.*; *see also Walden*, 183 Ariz. at 616 (applying *Spencer*).

Finally, Atwood's reliance on non-capital sentencing authority is unavailing. As Atwood admits, *see id.* at 21 n.19, the statutory elements test is obsolete in non-capital sentencing because the legislature has amended the enhancement and aggravation statutes. *See State v. Johnson*, 240 Ariz. 402, 405, ¶ 17 (App. 2016). Regardless, non-capital aggravators or enhancements are not comparable to capital aggravating factors because the capital statute is not recidivist in nature. *See Walden*, 183 Ariz. at 615–16.[33]

Accordingly, Atwood has failed to identify a single case applying the "statutory elements test" to the (F)(1) factor, either at the time of sentencing or since, and the State has likewise not found any such case. Atwood dramatically overstates his position's strength when he claims that the same elements test has routinely been applied to *both* the (F)(1) and the (F)(2). And as stated previously, awarding Atwood relief on a new legal theory in the case's present posture—at the end of Atwood's 33-year appellate odyssey, and nearly 36 years after V.L.H.'s murder—would afford him a substantial and unjustified windfall and amount to an end-run around the preclusion rules. This Court should deny relief.

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[33] However, the supreme court did look to capital sentencing when applying the elements test to noncapital sentencing enhancements. *See State v. Crawford*, 214 Ariz. 129, 131–32, ¶¶ 8–9 (2007). Notably, the court cited the test as applying to the (F)(2), and did not mention the (F)(1). *Id.*

2. The sentence "as imposed" was not unauthorized because the Arizona and California statutes are coterminous.

Arizona's statute, like California's, covers all forms of sexual contact. *See* Hon. Rudolph Gerber, *Lawyer's Language: Sentences Measurable Only by Carpenters*, 21 JUL-Ariz. B.J. 23–24 (June/July 1986) ("The 'lewd or lascivious' umbrella covers all sexual contact."); *see also People v. Greer*, 184 P.2d 512, 519–21 (Ca. 1947), *overruled on other grounds by People v. Fields*, 914 P.2d 832 (1996) (summarizing history of statute). Atwood, however, contends that Arizona's statute contains an element California's does not: that the sexual act be committed in an "unnatural manner." Am. Pet. 4–9; *compare* A.R.S. § 13–652 (Ex. B) *with* Cal. Pen. Code § 288 (Ex. A). Because published opinions applying Arizona's statute involve cunnilingus, fellatio, or homosexual conduct, Atwood reasons that a sexual act can only be "unnatural" if it falls within those categories, thereby apparently excluding from Arizona's statute (but not California's) heterosexual intercourse between a child and an adult. *Id.*

In other words, Atwood asks this Court to interpret § 13–652 to reach the absurd result that, under certain circumstances, adult-child sexual contact is not "unnatural." *See State ex. Rel. Montgomery v. Harris*, 237 Ariz. 98, 101, ¶ 13 (2014) ("Statutes should be construed sensibly to avoid reaching an absurd conclusion."). This Court should decline to do so.

Absurd results aside, the definition of "unnatural manner" is not as restrictive—or as clear—as Atwood suggests. The statute itself did not define the term. *See* A.R.S. § 13–652 (Ex. B); Gerber, supra, at 23–24 (noting that statute "penalizes conduct without defining its chief feature, its 'unnaturalness'"). Nor did

any appellate court ever concretely define it.[34] Atwood's cited authority neither expressly defines the term "unnatural" nor limits it to cunnilingus, fellatio, and homosexual conduct. Rather, it establishes only that those types of sexual conduct were *included* in the definition of unnatural.[35] *See State v. Bateman*, 25 Ariz. App. 1, 3 (1975), *vacated on other grounds*, 113 Ariz. 107 (1976) ("A.R.S. s 13–652

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[34] In *State v. Mortimer*, 105 Ariz. 472, 473 (1970), the Arizona Supreme Court remarked, "Through the ages sexuality for purposes other than having children has been called unnatural or sinful. Although to many the foregoing … may smack of victorian morality, and represent a standard not a keeping with the times, this is a problem for the legislative process rather than the courts." (quotations omitted). The court further found no "difficulty with the meaning of the words of the statute." *Id.* Though *Mortimer*'s discussion appears to the State to be *dicta*, the Arizona Court of Appeals seemed to treat it as a construction of the meaning of "unnatural," while simultaneously expressing concern that the term still had no concrete, common-law meaning. *State v. Valdez*, 23 Ariz. App. 518, 522 (1975) (citing *Jellum v. Cupp*, 475 P.2d 829 (9th Cir. 1973)); *see also State v. Pickett*, 121 Ariz. 142, 145–46 (1978) (observing that "[e]ven though A.R.S. § 13–652 may not be a model of clarity, especially the phrase in question," fellatio is undoubtedly included).

[35] *See State v. Jerousek*, 121 Ariz. 420, 423 (1979); *Pickett*, 121 Ariz. at 145; *State v. Williams*, 111 Ariz. 511, 513–15 (1978); *State v. King*, 110 Ariz. 36, 38 (1973); *State v. Taylor*, 109 Ariz. 481, 482 (1973); *Mortimer*, 105 Ariz. at 472–73; *State v. Zakbar*, 105 Ariz. 31, 31 (1969); *State v. Hill*, 104 Ariz. 238, 238 (1969); *State v. Phillips*, 102 Ariz. 377, 381 (1967); *State v. Howard*, 97 Ariz. 339, 341 (1965); *State v. Sheldon*, 91 Ariz. 73, 74–75 (1962); *Lovelace v. Clark*, 83 Ariz. 27, 27–28 (1957); *State v. Thomas*, 79 Ariz. 355, 357–58 (1955); *State ex rel. Jones v. Superior Court*, 78 Ariz. 367, 373–74 (1955); *State v. Farmer*, 61 Ariz. 266, 267–68 (1944); *Dutzler v. State*, 41 Ariz. 436, 436 (1933); *State v. Bridges*, 123 Ariz. 452, 452 (App. 1979); *State v. Morris*, 26 Ariz. App. 342, 343 (1976); *State v. Baker*, 26 Ariz. App. 255, 256–57 (1976); *State v. Natzke*, 25 Ariz. App. 520, 523 (1976); *State v. Smallwood*, 7 Ariz. App. 266, 267 (1968); *Faber v. State*, 62 Ariz. 16, 18–20 (1944); *State v. Snyder*, 25 Ariz. App. 406, 409 (1976); *State v. Bateman*, 25 Ariz. App. 1, 2–3 (1975); *State v. Callaway*, 25 Ariz. App. 267, 268 (1975).

prohibiting 'lewd and lascivious acts' has been interpreted to mean, *among other things* a prohibition against fellatio and cunnilingus (oral copulation).") (emphasis added).

In reality, child-adult sexual contact is inherently unnatural under any definition of the word. *See, e.g., State v. Mahaney*, 193 Ariz. 566, 568, ¶ 12 (App. 1999) ("Unless the legislature clearly expresses an intent to give a term a special meaning, we give the words used in statutes their plain and ordinary meaning. In determining the ordinary meaning of a word, we may refer to an established and widely used dictionary."); *see Merriam-Webster Online Dictionary*,[36] (defining unnatural as "1: not being in accordance with nature or consistent with a normal course of events; 2a: not being in accordance with normal human feelings or behavior; b: lacking ease and naturalness; c: inconsistent with what is reasonable or expected") (synonyms and examples deleted). The Arizona Supreme Court has recognized this fact in other contexts. *See State v. McFarlin*, 110 Ariz. 225, 228 (1973) (aberrant sexual propensity). Accordingly, a sexual offense committed against a child under § 288 would qualify as "unnatural" under Arizona law.[37]

Atwood argues incorrectly that the statute's history supports his construction. Am. Pet. 6, 7–8. He contends that the California statute was specifically intended to protect children and the Arizona statute was not. However,

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[36] https://www.merriam-webster.com/dictionary/unnatural?src=search-dict-hed (last accessed February 27, 2020).

[37] Atwood's reliance on *Valdez* to demonstrate the scope of the unnatural manner element does not undermine the State's argument above. Am. Pet. 8. That case involved an adult woman. As the state has shown above, any type of sexual act involving a child is unnatural, thus making any offense under § 288 likewise criminal under § 13–652.

this statute initially applied *only* to children and was substantially the same as California's statute. *See May v. Ryan*, 245 F. Supp. 3d 1145, 1153–54 & n. 4 (D. Ariz. 2017), *vacated in part on other grounds by May v. Ryan*, 766 Fed. Appx. 505 (9th Cir. Mar. 26, 2019) (citing Rev. Stat. of Ariz. (Penal Code) § 282 (1913)). In 1917, the Legislature added a separate statute applying to adults, which tracked § 13–652 and contained the "unnatural manner" provision. *May*, 245 F. Supp. 3d at 1153–54 & n.4 (citing 1917 Ariz. Sess. Laws, ch. 2 § 1). The child-specific statute, however, remained. *See May*, 245 F. Supp. 3d at 1153–54 & n. 4; *see also Bocchi v. State*, 25 Ariz. 37, 39–46 (1923) (discussing both statutes). In 1928, the child-specific statute was removed but the more general provision remained, likely because it was "assum[ed] [the general] law also covered child molestation." *May*, 245 F. Supp. 3d at 1153–54 & n. 4 (citing Rev. Code of Ariz. § 4651 (1928)).

In 1965, the Legislature amended the statute, then codified at § 13–652, to add its concluding sentence, proscribing harsher penalties for committing lewd and lascivious acts against a child. *May*, 245 F. Supp. 3d at 1153–54 & n. 4; *see also Snyder*, 21 Ariz. App. at 409. The Legislature simultaneously added several other criminal offenses regulating sexual activity with children, and the enactment's title related exclusively to child-related crimes.[38] *Id.* at 409 & n.2; *see also* Ex. B; *see generally Harris*, 237 Ariz. at 102, ¶ 13 ("[A]lthough statutory title headings are not part of the law, they can aid in its interpretation."). Thus, the statute, and in particular the 1965 amendments, in fact, intended to protect children. For the reasons set forth above, Atwood's claim does not fit within Rule 32.1(c).

[38] Those acts included child molestation and child sodomy. *Snyder*, 25 Ariz. App. at 208 n. 2.

b. Atwood cannot evade preclusion under Rule 32.1(d).

Rule 32.1(d) provides for relief when a defendant "continues to be or will continue to be in custody after his or her sentence expired." Atwood reasons that, without a valid aggravating factor, he must receive a parole-eligible life sentence, and he is overdue for a parole hearing. *See* A.R.S. § 13–703(A) (Ex. C); Am. Pet. 22–24. Atwood's reliance on Rule 32.1(d) is unavailing, for two reasons.

First, Claim 1 falls outside Rule 32.1(d)'s scope. The Rule was intended to provide a remedy for erroneous time computations by the Arizona Department of Corrections, Rehabilitation, and Reentry (ADCRR). *See* 2020 Cmt., Ariz. R. Crim. P. 32.1(d) ("This provision is intended to include claims such as miscalculation of sentence or computation of sentence credits that result in the defendant remaining in custody when he or she should be free. It is not intended to include challenges to the conditions of imprisonment or correctional practices.").[39] A life sentence does not *expire* when a defendant becomes parole-eligible. Nor does it *expire* even if a defendant successfully receives parole because that defendant is still serving his sentence while on parole. And parole is discretionary with the parole board in any

[39] *State v. Davis*, 148 Ariz. 62, 63 (App. 1985), which Atwood cites, is not to the contrary. *Davis* dealt with miscalculated good-time credits. Am. Pet. 23. Under the pre-2020 version of Rule 32.1(d), such a claim was not ripe until the inmate's sentence expired and he was being held overtime. *Id.* at 64. The court, however, nonetheless ordered relief after construing the inmate's petition as one seeking special-action, rather than post-conviction, relief. *Id.* at 65–66. The two unpublished opinions Atwood cites are not helpful because the court of appeals in each case assumed *without deciding* that 32.1(d) applied to parole eligibility determinations. *See State v. Ybarra*, 2018 WL 6434779, *2, ¶ 6 (Ariz. App. Dec. 7, 2018); *State v. Ross*, 2017 WL 6371339, *2, ¶ 8 n.2 (Ariz. App. Dec. 13, 2017).

event.[40] *See* A.R.S. § 13–412(A); *Cooper v. Arizona Bd. of Pardons and Paroles*, 149 Ariz. 182, 185 (1986).

Second, any Rule 32.1(d) claim is not ripe. Atwood has not been improperly denied a parole hearing because he has been serving a valid death sentence. This Court has not invalidated (and should not invalidate) the aggravating factor and, even if it does, resentencing—not a life sentence—is the remedy. *See* § III(a)(4)(e), *infra*, Accordingly, any Rule 32.1(d) claim would not become ripe unless and until: 1) this Court sets aside the (F)(1), 2) a jury does not impose death at resentencing, 3) Atwood receives a life sentence, and 4) Atwood is improperly denied a parole hearing. Rule 32.1(d) does not provide an independent basis for relief from the aggravating factor or somehow serve as a vehicle to exempt Atwood's constitutional claim from preclusion. The Rule simply does not apply here.

c. Atwood cannot evade preclusion under Rule 32.1(h).

Atwood next argues that Claim 1 is exempt from preclusion under Rule 32.1(h). Am. Pet. 35. Under that Rule, a defendant is entitled to relief if he shows that "the *facts* underlying his claim" establish that no reasonable fact-finder would have found the defendant eligible for the death penalty (i.e. that no reasonable sentencer would have found an aggravating factor).[41] Ariz. R. Crim. P. 32.1(h)

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[40] It would be foolish indeed to grant parole to Atwood, given that he was on parole when he absconded from California without authorization and killed V.L.H. *See*, § I, *infra*; *Cooper*, 149 Ariz. at 185 (parole board must consider offender's entire record, including gravity of offense and age of victim).

[41] Atwood again cites the pre-2020 Rule, without explanation. Am. Pet. 25. In this instance, however, this error is not material because the State agrees that both rules permit relief upon a *factual* showing that an aggravating factor is invalid. *See* § III(C), *infra*. But as discussed above, the State maintains that Atwood has not alleged, let alone proven, a *factual* error.

(emphasis added). Rule 32.1(h) therefore expressly applies to fact-based claims, not to legal ones like Atwood's. And at its core, Rule 32.1(h) is an actual-innocence rule, and "'actual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623–24 (1998) (citing *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)[42]); *accord State v. Pineda-Navarro*, 2017 WL 4927692, at *2, ¶ 5 (Ariz. App. Oct. 31, 2017); *State v. Espino-Torres*, 2017 WL 2871509, *2, ¶ 6 (Ariz. App. July 6, 2017).

Atwood's claim alleges *legal insufficiency*, not *factual innocence*. Atwood specifically does not challenge the (F)(1)'s factual component (that he was the person convicted in California). *See* Am. Pet. 25. Instead, he alleges error in the aggravator's legal application. This claim arises under Rule 32.1(a), not Rule 32.1(h). Applying Rule 32.1(h)'s exception to this record-based legal claim that could have been raised decades earlier but was overlooked would, as previously explained, frustrate the preclusion rules and unfairly advantage Atwood.

Finally, for the reasons discussed in § III(A)(4)(a), *supra*, and incorporated here, Atwood cannot show by clear-and-convincing evidence that no reasonable sentencer would have found the (F)(1). And since Atwood can still be retried on the (F)(6) factor, he cannot establish by clear-and-convincing evidence that no reasonable sentencer would have imposed the death penalty. *See* § III(A)(4)(e).

d. Claim 1 did not require a personal waiver and is not exempt from preclusion under Rule 32.1(a).

Finally, Atwood alleges that, if his claim arises under Rule 32.1(a) such that it is subject to preclusion, it involves a right that "can only be waived knowingly, voluntarily, and personally by the defendant." Ariz. R. Crim. P. 32.2(a)(3).

[42] The current version of Rule 32.1(h) was modeled after *Sawyer*. *See* § III(C), *infra*.

Atwood is incorrect. "The question whether an asserted ground is of sufficient constitutional magnitude to require a knowing, voluntary, and intelligent waiver for purposes of Rule 32.2(a)(3) … does not depend upon the merits of the particular ground for relief. It depends merely "upon the particular right alleged to have been violated." *Smith*, 202 Ariz. at 450, ¶ 10 (quotations omitted). These rights include the right to counsel and the right to a jury trial. *See State v. Swoopes*, 216 Ariz. 390, 399, ¶ 28 (App. 2007).

Atwood, however, alleges due-process and Eighth Amendment errors. His due-process claim does not qualify as one for which a personal waiver is required. *See id.*, 216 Ariz. at 399, ¶ 27 ("[A]ny error, including trial error, could be characterized as affecting a defendant's right to a fair trial. If that were sufficient to bring the error under the umbrella of sufficient constitutional magnitude for purposes of Rule 32.2, all error could be so characterized, and arguably, no claim could be precluded without a personal waiver."). Atwood's Eighth Amendment claim does not qualify for the same reason. *See id.*

Finally, Atwood discusses at length various standards of appellate review. Am. Pet. 27–30. However, the question whether a claim involves a right that is of sufficient constitutional magnitude to require a personal waiver is distinct from whether the claim alleges fundamental or structural error. *See Swoopes*, 216 Ariz. at 403, ¶¶ 41–42 (finding no fundamental-error exception to preclusion and recognizing that such an exception "that does not implicate a personal, constitutional right would swallow the rule"). Regardless, no error at all—let alone fundamental or structural error—occurred for the reasons stated in § III(A)(4)(a), *supra*. This Court should enforce the preclusion rules and deny Atwood's claim.

e. <u>If this Court strikes the (F)(1) factor, resentencing—not a life sentence—is the remedy.</u>

Atwood argues he is entitled to a life sentence because, without the (F)(1), there is no valid death-qualifying aggravating factor. Am. Pet. 22–23. Atwood overlooks that the State also alleged the A.R.S. § 13–703(F)(6) (1984) cruel, heinous, or depraved factor. Pet. Ex. 3, at 2. The State cross-appealed from the sentencing judge's failure to find this factor. *Atwood I*, 171 Ariz. at 660. The Arizona Supreme Court declined to address the cross-appeal because it affirmed the death sentence on other grounds. *Id.* However, Justice Corcoran stated that he "did 'not believe that the trial court's refusal to find the especially heinous, cruel, or depraved aggravating circumstance would, as defendant argues, bar it on double jeopardy grounds from making such a finding on the event defendant is resentenced for any reason in the future." *Atwood I*, 171 Ariz. at 660 n.30, 672 (citing *Poland v. Arizona*, 476 U.S. 147, 156–57 (1986)).

Justice Corcoran was correct. In *Poland*, 476 U.S. at 155–56, the Supreme Court clarified that the double-jeopardy test governing death-penalty retrials is not whether the State has failed to prove a particular aggravator but whether it has failed to prove its case "that the death penalty is appropriate." Accordingly, if a defendant successfully shows that the evidence is insufficient to support an aggravating factor, a reviewing court need not "ignore evidence in the record supporting another aggravating circumstance which the sentencer has erroneously rejected." *Id.* at 56–57. Rather, a defendant may be retried on that circumstance. *Id.*; *see also State v. Lehr*, 227 Ariz. 140, 148, ¶ 26 (2011).

Here, the appellate briefing focused on physical cruelty, and whether it could be shown by an informant's testimony recounting Atwood's statements. *See*

Atwood I, 171 Ariz. at 660.[43] The State also alleged facts sufficient to prove cruelty based on mental anguish. Pet. Ex. 3, at 10–11; *see, e.g., Gillies*, 135 Ariz. at 513 ("Cruelty involves the mental and physical distress suffered by a victim. … Evidence of the mental anguish of a victim, resulting from such factors as being held captive for an extended period, uncertain as to his ultimate fate, is also relevant to establish cruelty.") (quotations and citations omitted). The evidence established that Atwood kidnapped V.L.H. from her neighborhood after striking her with her bicycle, and several witnesses saw her conscious in Atwood's car after the abduction. *See Atwood I*, 171 Ariz. at 594. Accordingly, if this Court sets aside the (F)(1), it should order a resentencing rather than impose a life sentence as Atwood requests.

B. Atwood's claim that his California prior was supported by an inadequate factual basis is untimely, precluded, and meritless (Claim 2).

Atwood argues that the California prior conviction that underlies the (F)(1) factor is constitutionally infirm because the California court failed to elicit a factual basis. Am. Pet. 31–32. Like Claim 1, this record-based claim—which has been available to Atwood for decades—is untimely and precluded. Alternatively, it fails on the merits because Atwood's California prior has not been set aside by the California courts, and he cannot collaterally attack that conviction through this proceeding. Finally, the record establishes a factual basis for the prior conviction and any error in the plea colloquy was technical and does not warrant relief.

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[43] The court did not reach the issue whether the informant's testimony was admissible. *Atwood I*, 171 Ariz. at 559–60. The State has attached the informant's deposition transcript hereto at Exhibit R. The transcript proves physical cruelty beyond a reasonable doubt.

1. *Claim 2 is untimely.*

The State incorporates herein the arguments on timeliness set forth in § III(A)(2), *supra*. For these reasons, this Court should deny and dismiss Claim 2 as untimely.

2. *Claim 2 is precluded under Rule 32.2(a)(3) and no exception to preclusion applies.*

Atwood could have raised Claim 2 at sentencing and then on direct appeal but did not. His failure to do so results in the claim's waiver and preclusion under Rule 32.2(a)(3). Claim 2 is not exempt from preclusion under Rules 32.1(c), (d), or (h). To show his perceived entitlement to relief under these sections, Atwood incorporates his arguments on Claim 1. Am. Pet. 32. The State accordingly incorporates herein its responses to those arguments, as set forth in § III(A)(4), *supra*.

3. *Claim 2 fails on the merits.*

If this Court reaches the merits of Atwood's claim, it should deny relief. First, a defendant may not collaterally attack the validity of a death-qualifying prior conviction through appellate proceedings in his death penalty case. Rather, he must attack the conviction's validity through the appropriate procedures before the court that entered the relevant judgment (here, the California courts). *See State v. Gunches*, 240 Ariz. 198, 205–06, ¶¶ 24–32 (2016); *Nordstrom*, 230 Ariz. at 117, ¶ 29; *State v. Cropper*, 205 Ariz. 101, 185, ¶¶ 18–20 (2003). Until a defendant successfully has his prior conviction invalidated, it is presumed valid and supports a capital aggravating factor. *See Gunches*, 240 Ariz. at 205–06, ¶¶ 29–30 (recognizing that, when prior conviction is reversed, court must reweigh the death sentence in light of the reversal and that a presumption of regularity attaches to prior convictions) (citing *State v. Cornell*, 179 Ariz. 314 (1994), and *State v.*

McCann, 200 Ariz. 28 (2001)). Atwood provides no evidence that his California conviction has been set aside.

Second, Atwood's plea was supported by a factual basis. A technical failure to comply with aspects of the *Boykin*[44] colloquy does not invalidate a plea. *See State v. Superior Court in and for Pima County (Gretzler)*, 128 Ariz. 583, 585 (1981) ("The United States Supreme Court has held that a judgment of guilt based upon a plea of guilty is not void for technical violations and is not subject to collateral attack.") (citing *United States v. Timmreck*, 441 U.S. 780 (1979)). "[E]ven when a factual basis is not set forth in the record of the change of plea hearing, such a deficiency in the record is technical not reversible error when the extended record establishes a factual basis for a guilty plea." *State v. Johnson*, 181 Ariz. 346, 349 (App. 1995). The "'factual basis may be ascertained from the record including pre-sentence reports, preliminary hearing reports, admissions of the defendant, and from other sources.'" *Id.* (quoting *State v. Varela*, 120 Ariz. 596, 598 (1978)) (emphasis deleted). Here, the presentence report contained a more-than-sufficient factual basis for the guilty plea. *See* Ex. Q, at attached California report dated 2/3/75. This Court should deny relief on Claim 2.

C. Atwood's claim that no reasonable sentencer would have imposed death based on his enhanced mitigation profile is untimely and precluded, is not cognizable under Rule 32.1(h), and fails on the merits (Claim 3).

Atwood contends that mitigation discovered after sentencing shows that no reasonable sentencer would have imposed the death penalty. Am. Pet. 32–63. This claim is untimely and precluded. Further, for the reasons discussed below and in § II(A), *supra*, this Court should apply the current version of Rule 32.1(h), which

[44] *Boykin v. Alabama*, 395 U.S. 238 (1969).

excludes mitigation-based claims like this one. Alternatively, even under the former Rule 32.1(h), Atwood is not entitled to relief. Atwood has already unsuccessfully attempted, under a much lower burden of proof, to persuade the federal courts that the *identical* mitigation warrants leniency. He cannot carry his much higher clear-and-convincing burden under Rule 32.1(h).

1. *Claim 3 is untimely and precluded.*

As a threshold matter, as discussed in § III(A)(2), *supra*, a defendant raising a claim under Rule 32.1(h) in a successive or untimely post-conviction petition must 1) "provide sufficient reasons" why the claim was not raised in a timely manner, Ariz. R. Crim. P. 32.2(b); and 2) raise the claim within a reasonable time after discovering its basis, Ariz. R. Crim. P. 32.4(b)(3)(B). Atwood has not met these obligations, warranting summary dismissal.

First, Atwood has, of course, known of his childhood-related evidence his entire life, and he has been in possession of his new expert opinion since 2012. *See* Pet. Ex. 32 (noting first evaluation in 2012). Instead of raising a Rule 32.1(h) claim in his 2009[45] post-conviction proceeding, which the federal court had stayed the habeas case to accommodate, *see* § I(G), *supra*, Atwood chose to instead raise an ineffective-assistance claim in federal court and, when that claim failed, to repackage his evidence into a state-court Rule 32.1(h) claim. Atwood's litigation strategy is not a "sufficient reason" to excuse his failure to raise this claim in state court earlier.

Second, along the same lines, Atwood failed to raise Claim 3 within a reasonable time after learning its basis. Atwood has known of his claim's factual

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[45] A Rule 32.1(h) claim was unavailable at the time of Atwood's first post-conviction petition because the ground for relief was added in 2000. *See State v. Miles*, 243 Ariz. 511, 517, ¶ 27 (2018) (Pelander, J., concurring)

basis since, at the very latest, 2012, when Dr. Schwartz-Watts conducted her first evaluation. Pet. Ex. 32, at 1. Yet Atwood waited until 2020 to bring his Rule 32.1(h) claim. Nothing prevented Atwood from initiating his state-court proceeding while his federal proceeding was pending.

Finally, because Atwood's claim does not qualify as a true Rule 32.1(h) claim, *see* § III(C)(2), *infra*, and because Atwood failed to raise it in his 2009 petition, the claim is waived and precluded under Rule 32.2(a)(3). As previously explained, Atwood does not articulate sufficient reasons for not raising the claim earlier. *See* Ariz. R. Crim. P. 32.2(b). This Court should summarily deny and dismiss Atwood's petition.

2. The new version of Rule 32.1(h) applies and Atwood's mitigation-based claim is not cognizable under that version.

Rule 32.1(h), as amended effective January 1, 2020, provides a ground for relief where:

> the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt, or that no reasonable fact-finder *would find the defendant eligible for the death penalty in an aggravation phase held pursuant to A.R.S. § 13–752.*

(Emphasis added). Atwood's claim does not include a factual challenge to the aggravating factor, *see* § III(A)(4)(c), *supra*; it is based entirely on new mitigation. Accordingly, the claim is not cognizable under Rule 32.1(h) and this Court should dismiss it.

Atwood, however, asks this Court to apply the Rule's pre-2020 version, which he interprets to permit mitigation-based claims.[46] Am. Pet. 33 n.29. But as discussed in § II(A), *supra*, the Arizona Supreme Court's order adopting the new rule presumptively applies to *all* pending post-conviction actions. *See* Ariz. Sup. Ct. No. R–19–0012, Order filed 8/29/19.[47] A court may apply the Rule's former version *only* if applying the revised Rule would "be infeasible or work an injustice." *Id.* Here, it is feasible and just to apply the current Rule 32.1(h). Atwood's arguments to the contrary fail.

Atwood contends that applying the new Rule "would deny [him] an avenue for challenging his sentence and foreclose consideration of important evidence never previously presented to this Court." Am. Pet. 33 n.9. But under Atwood's logic, the new version of Rule 32.1(h) could never be applied to a mitigation-based claim because it would always deny a defendant an avenue to challenge his sentence based on new mitigation evidence. Precluding such claims does not work an injustice—it instead *furthers* justice by safeguarding finality and the Victims' Bill of Rights. Ariz. Const. art. II, § 2.1(10) (affording right "[t]o a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence").

To the extent Atwood attacks the Rule itself as unjust, rather than its specific application here, that argument, too, is unpersuasive. The federal courts have been enforcing a similar rule for years to restrict the availability of federal habeas relief. *See Sawyer*, 505 U.S. at 342–43 (prisoner may only show innocence of the death

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[46] Atwood's view of the former Rule 32.1(h) is erroneous, as discussed in § III(C)(3)(a), *infra*.

[47] https://www.azcourts.gov/Portals/20/2019%20Rules/R-19-0012%20Final%20Order.pdf?ver=2019-08-29-150005-550

penalty, to excuse successive, abusive, or defaulted federal claim, by showing that defendant is not *eligible* for the death penalty). Likewise, several states apply comparable rules. *See* Cal. Penal Code § 1509(d); N.C. Gen. Stat. Ann. § 15A-1415(c); Ohio Rev Code Ann. § 2953.21(A)(1)(a)(b); *Lisle v. State*, 351 P.3d 725, 730–34 (Nev. 2015); *Ex Parte Blue*, 230 S.W.3d 151, 160–62 (Tex. Ct. Crim. App. 2007); *Knight v. State*, 923 So. 2d 387, 411–23 (Fla. 2005); *Bowling v. Com*, 163 S.W.3d 361, 372–73 (Ky. 2005); *Clay v. Dormire*, 37 S.W.3d 214, 218 & n.1 (Mo. 2000). And the Supreme Court has not recognized a constitutional right to bring a post-conviction actual-innocence claim in the first place. *Herrera v. Collins*, 506 U.S. 390 (1993).

Moreover, while Atwood is correct that his mitigation has not been presented to *this Court*, it has been heard, considered, and rejected by no fewer than four federal judges, in the context of a *Strickland* claim. *See Atwood III*, 870 F.3d 1058–65 (three-judge panel unanimously denying denial of relief); *Atwood II*, 2014 WL 289987, at *32–33 (district-court judge denying relief). The mitigation Atwood proffers in this Court is taken directly from the record of his federal evidentiary hearing.

Notably, Atwood's federal *Strickland* claim required him to meet a far lower burden of proof (reasonable probability) than his current Rule 32.1(h) claim (clear-and-convincing evidence). *Compare Harrington v. Richter*, 562 U.S. 86, 111–12 (2011) ("*Strickland* asks whether it is reasonably likely the result would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case.") (quotations and citations omitted) *with State v. King*, 158 Ariz. 419, 424 (1988) (clear-and-convincing evidence "is evidence that makes the existence of the issue propounded highly probable"). Atwood was unable to meet that lower

burden, eliminating any possible injustice in refusing to hear the same evidence under a *higher* burden of proof.

Atwood also argues that "[r]etroactive application of a rule which eliminates without replacement a remedy is impermissible." Am. Pet. 33 n.29. But the revisions to Rule 32.1(h) did not *eliminate* any remedy. To the contrary, it was at best unclear before the revisions whether Rule 32.1(h) permitted a mitigation-based claim. In fact, the 2020 revisions are most reasonably viewed as a clarification of the prior rule and an answer to the question left open in *Miles*. *See* § III(C)(3)(a), *infra*.[48]

Aside from the foregoing, Atwood proffers no reason why applying the current Rule 32.1(h) would lead to an injustice. Atwood had more than 4 months' notice in advance of his petition that Rule 32.1(h) would be changing, so he cannot reasonably argue that the Rules were changed midstream. *See* Ariz. Sup. Ct. No. R–19–0012, Order filed 8/29/19. As previously discussed, Rule 32.1(h)'s current version tracks the federal rule. And Atwood's mitigation has been considered and found lacking by several judges, under a lower burden of proof. For these reasons, it would not be "infeasible or work an injustice" to apply the Rule's current version. *See id.*

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[48] Atwood's citation to *Town of Chino Valley v. State Land Dept.*, 119 Ariz. 243, 247 (1978), which involved a separation-of-powers issue, is not helpful. Am. Pet. 33 n.29. There, the Arizona Supreme Court stated, "Parties have no vested right in a particular remedy or mode of procedure and the Legislature may change existing remedies or prescribe new modes of relief provided an efficacious remedy remains." *Id.* at 247–48. Here, Atwood's remedy has not changed. As an aside, Atwood does not argue that Rule 32.1(h) violates separation of powers, despite it not being listed as a ground for relief in Rule 32's enacting legislation. *See* A.R.S. § 13–4231.

3. *Even under the former version of Rule 32.1(h), Atwood is not entitled to relief.*

Atwood's claim fails even under the former version of Rule 32.1(h). First, this Court should construe the Rule's former version to also exclude mitigation-based claims like Atwood's. Second, even if Atwood's claim is cognizable under Rule 32.1(h), it fails on the merits. The evidence Atwood proffers is profoundly double-edged. In fact, Atwood's evidence shows that he is "dangerous and simply beyond rehabilitation." *Sully v. Ayers*, 725 F.3d 1057, 1069 (9th Cir. 2013) (quotations deleted). The record confirms this. As a result, Atwood cannot show that no reasonable factfinder would have sentenced him to death.

a. **This Court should construe the former version of Rule 32.1(h) as limited to factual, aggravation-based claims.**

Prior to the 2020 amendments, Rule 32.1(h) provided for relief when:

> the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty beyond a reasonable doubt, or that the death penalty would not have been imposed.

Ariz. R. Crim. P. 32.1(h) (2019).

As Atwood acknowledges, the Arizona Supreme Court interpreted the pre-2020 Rule as stating an objective standard, and directed post-conviction courts to assess Rule 32.1(h) claims from the perspective of a reasonable sentencer. *See Miles*, 243 Ariz. at 514, ¶ 11. However, the Arizona Supreme Court never resolved whether the Rule's previous version was, like the new version, limited to circumstances in which a defendant is *ineligible* for death, or whether it permitted relief based on newly proffered mitigation. *See id.* at 513–14, ¶¶ 9–10 (noting State's request that Rule 32.1(h) should be construed consistent with *Sawyer* but

declining to interpret Rule because lower court's ruling was correct regardless of Rule's interpretation).

As discussed previously, § III(A)(4)(c), Rule 32.1(h) requires a showing of *factual* innocence. But the determination whether a defendant's mitigation is sufficient to warrant a life sentence is not a factual question—the process is instead "'inherently subjective' and not the equivalent of a 'mathematical formula.'" *State v. Glassel*, 211 Ariz. 33, 46, ¶ 40 (2005) (quoting *State v. Hoskins*, 199 Ariz. 127, 154, ¶ 123 (2000)); *see State ex rel. Thomas v. Granville (Baldwin)*, 211 Ariz. 468, 473, ¶ 21 (2005) ("[T]he determination whether mitigation is sufficiently substantial to warrant leniency is not a fact question to be decided based on the weight of the evidence, but rather is a sentencing decision to be made by each juror based upon the juror's assessment of the quality and significance of the mitigating evidence."). This subjectivity is the reason the Supreme Court in *Sawyer* defined "innocence of the death penalty," for purposes of excusing a successive, abusive, or defaulted federal-habeas claim, as *ineligibility* for the death penalty. *See Sawyer*, 505 U.S. at 342–43 ("once eligibility for the death penalty has been established to the satisfaction of the jury, its deliberations assume a different tenor" and, rather than focus on concrete, objectively-defined aggravators, the jury makes a highly-subjective, discretionary, individualized determination whether death is appropriate).

Since the standard is inherently subjective, it is nearly impossible to assess at all—let alone prove by clear-and-convincing evidence—how a sentencer "would have reacted to additional showings of mitigating factors, particularly considering the breadth of those factors that a jury … must be allowed to consider." *Id.* at 346. For these reasons, it is unreasonable to construe the prior version of Rule 32.1(h) as permitting relief based on subjective, non-factual mitigation claims. And as a

practical matter, it is impossible for a defendant to prove—under Rule 32.1(h)'s objective, clear-and-convincing evidence standard—that mitigation warrants relief.

When the Arizona Supreme Court adopted the amended Rule 32.1(h) in August 2019, it rejected the recommendation of the Rule 32 Task Force that the court modify the Rule in a way that would leave open the interpretive dispute the Court declined to resolve in *Miles*. *See* Ariz. Sup. Ct. No. R–19–0012, Petition, filed 1/10/19, at 8–11[49] (proposing modification to Rule 32.1(h) to read, "the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt, or that no reasonable fact-finder would have imposed the death penalty"). The court instead adopted the current Rule, which had been proposed and supported by a minority of the Task Force. *See id.*, Rule 32.1(h) position paper. Because the court selected Rule 32.1(h)'s current version over an alternative that would have retained the status quo from *Miles*, the modification to Rule 32.1(h) should be read as a clarification of the prior Rule and an answer to the question *Miles* left open. Accordingly, even if this Court applies the prior Rule, it should construe it to exclude mitigation-based claims like Atwood's and dismiss Atwood's claim.

b. Atwood cannot show that no reasonable sentencer would have imposed the death penalty based on the double-edged, non-explanatory mitigation he now proffers.

As discussed above, this Court should view Atwood's claim from the perspective of a reasonable sentencer. *See Miles*, 243 Ariz. at 514, ¶ 11. The inquiry thus is whether Atwood has shown by clear and convincing evidence that a

[49] https://www.azcourts.gov/Rules-Forum/aft/949

reasonable sentencer would not have imposed the death penalty had it heard his additional mitigation evidence. Atwood has not carried his burden.

i. *Summary of Atwood's new mitigation and the federal court hearing.*

Atwood presents several social-history documents, as well as a report from Dr. Donna Schwartz-Watts opining that he suffers from PTSD. As mentioned in § I, the federal district court conducted a multi-day evidentiary hearing on an ineffective-assistance claim Atwood raised based on this *identical* evidence—even Dr. Schwartz-Watt's report is the same.[50] Dr. Schwartz-Watts testified at that hearing, and was subject to cross-examination. She testified as follows.[51]

Dr. Schwartz-Watts first evaluated Atwood in October 2012 and authored a report which—consistent with her express instructions from Atwood's then-counsel—focused only on identifying mitigating factors and was not a complete mental-health evaluation. Ex. K, at 116, 165–66; *see* Pet. Ex. 32. After the district court ordered an evidentiary hearing, Dr. Schwartz-Watts evaluated Atwood again

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[50] The majority of the hearing concerned *Strickland*'s deficient-performance prong, which is not at issue here. With respect to prejudice, the State presented rebuttal testimony from Dr. Erin Nelson. However, the district court entered a protective order covering statements Atwood made about the crime to Dr. Nelson during the evaluation, which order prohibits the use of those statements in state court. Respondents accordingly have not attached Dr. Nelson's report, as it appends and refers to a transcript that includes those statements. In an abundance of caution, Respondents have likewise redacted Dr. Schwartz-Watts's minimal references during testimony to Atwood's statements to Dr. Nelson. *See* Ex. K. On request from this Court, or if this Court orders an evidentiary hearing, Respondents will ask the district court to modify or vacate the protective order so that the report may be provided. However, as shown above, Atwood cannot carry his burden, even without Dr. Nelson's rebuttal opinions.

[51] Atwood has submitted excerpts of Dr. Schwartz-Watts' testimony. The State has attached her testimony in its entirety as Exhibit K.

to complete a comprehensive mental-health evaluation. Ex. K, at 116, 165–57. During the time between the two evaluations, Atwood had reviewed both Dr. Schwartz-Watts' initial report and the State's expert's report, and had recalled additional instances of sexual victimization. *Id.* at 166–68.

In her supplemental report, Dr. Schwartz-Watts not only diagnosed PTSD, avoidant personality disorder, and various substance-abuse disorders, but also diagnosed "by history" pedophilia and antisocial personality disorder. Pet. Ex. 32. Dr. Schwartz-Watts opined that Atwood's experience being molested at age 14, and purportedly being sexually abused thereafter at a juvenile detention facility, on a family vacation in Aspen, and at Atascadero, qualified as triggering events for PTSD and pointed to certain portions of the Atascadero records in which Atwood exhibited avoidant, aggressive, explosive or other behavior she found consistent with that disorder. Ex. K, at 20–21. Dr. Schwartz-Watts attributed Atwood's drug use to his experience being molested. *Id.* at 30–31. She also testified regarding her conversations with a mental-health professional who had treated Atwood and his mother almost 50 years earlier, and with a woman who knew Atwood's family. *Id.* at 72–90, 132–38. These conversations had led Dr. Schwartz-Watts to believe that Atwood's family was chaotic and dysfunctional and that Atwood's parents had psychological issues, which could have predisposed Atwood to mental problems. *Id.* Dr. Schwartz-Watts also noted that Atwood had been institutionalized at two mental hospitals as a teenager. *Id.*

Dr. Schwartz-Watts, however, admitted that the records she had reviewed (including those from Atascadero and the California Department of Corrections and Rehabilitation) document a pattern of manipulative behavior consistent with antisocial personality disorder. *Id.* at 151–29. She admitted that Atwood's substance abuse preceded his molestation. *Id.* at 108. And most critically, she could not identify when Atwood developed PTSD and acknowledged that he may

have developed it in response to traumatic events he suffered in prison after V.L.H.'s murder. *Id.* at 100–01, 107–08, 121–27, 171–72. She also acknowledged that Atwood's PTSD bore no direct relationship to V.L.H.'s murder and did not cause him to commit that offense. *Id.* at 172–73.

The district court also admitted into evidence 451 pages of records from Atwood's treatment at Atascadero. Atwood's admitting diagnosis was sexual deviation, pedophilia, female. Ex. C, at 671.[52] His stay at Atascadero was marked by numerous instances of disruptive and antisocial behavior, noncompliance, and substance abuse. For example, a staff member noted that Atwood was "very adept in his manipulations of others." *Id.* at 495. Other notes refer to Atwood's failure to follow rules and continued belief that molesting children was not wrong. *Id.* at 273, 282–83. Atwood stole drugs from the hospital's medication room, was suspected of dealing drugs within the facility, engaged in inappropriate sexual activities, behaved belligerently, and was identified as a danger to society. *Id.* at 257–58, 262–63, 309, 322, 334–37.

The district court also admitted into evidence several mental-health reports generated during Atwood's various contacts with the criminal-justice system. Dr. Coodley's and Dr. Abe's reports were summarized in § I, *infra*. In addition:

- In December 1978, Dr. E. Rivlin diagnosed Atwood with "inadequate" personality disorder and "sexual deviation, female pedophilia, by history." Ex. G. He attributed Atwood's criminal behavior to his conflict with his parents and inability to fulfill their expectations. *Id.*
- In November 1979, Dr. Robert Orling opined that Atwood was "predisposed to alcohol and sexual deviation," had poor impulse control, would likely continue being a drug user, and was "expected to be a recidivist." Ex. E. He opined that a person with

[52] *See* n.3, *supra*.

Atwood's psychological profile "generally ha[s] a very poor prognosis" and is "usually unpredictable in action and thought." *Id.*

- In February 1981, Dr. R. Rose opined that Atwood had an immature personality disorder and male pedophilic tendencies. Ex. H. He stated that Atwood had "no real intentions of giving up his privileged status to do whatever he likes, whenever he likes," and noted that Atwood preferred sexual relationships with males, "the younger the better." *Id.*

The district court also admitted two post-conviction reports. First, in October 1988, psychologist Dr. Richard Hinton offered several opinions in connection with a civil lawsuit V.L.H.'s family had filed. Ex. I. Dr. Hinton reviewed records from Atwood's prior convictions; police reports regarding other offenses for which he had been arrested; his correspondence with Bernsienne; and "pages and pages" of sexually-explicit letters, photographs and other material, much of it pedophilic in nature, which appeared to have been seized from Atwood's home by his parole officer 3 days before Atwood killed V.L.H. *Id.* Dr. Hinton observed that Atwood had engaged in a "highly consistent" pattern of behavior involving six child victims with "an increase in the force, threat, and intimidation used with each successive victim." *Id.* He also noted Atwood's drug abuse, resistance to treatment, and pattern of controlling his parents through "his use of threat and intimidation." *Id.* Dr. Hinton opined that, in 1984, "[i]t was … reasonable to anticipate that … Atwood would molest another child because in virtually every way, the factors which raised the likelihood of another molest were operating." *Id.*

Second, in July 1995, prison psychologists Walt Walton and Dr. Ronald Sheldon diagnosed Atwood with sexual dysfunction not otherwise specified, polysubstance dependence, and antisocial personality disorder. Ex. J. The psychologists noted Atwood's "pervasive and long standing pattern of antisocial behavior," and his traits of irritability, impulsivity, aggressiveness, recklessness,

and untruthfulness. *Id.* The report notes that Atwood "takes no responsibility for his actions." *Id.* In addition, the district court admitted various ADCRR disciplinary reports, including one in which Atwood, in 1995, had been caught attempting to sponsor a child and requesting the organization to send photographs of the child. Ex. F.

Following the hearing, the district court judge found, as relevant here, that Atwood had failed to show prejudice. *Atwood II*, 2014 WL 289987, at *32–*33. The court found Atwood's claim that he suffered from PTSD at the time of V.L.H.'s murder speculative because Dr. Schwartz-Watts could not identify the time of that condition's onset and the evidence suggested it did not result from his childhood molestation. Id. at *32–*34. The judge further found that the PTSD diagnosis, if Atwood could prove it existed at the time of the offense, would have carried little weight because it does not explain his criminal conduct. *Id.* The judge also found that mental-health mitigation would have opened the door to "a mass of harmful evidence," including his escalating pattern of violence against children, which "would have portrayed [Atwood] as a remorseless pedophile who rejected numerous opportunities for treatment and rehabilitation and who engaged in escalating violence against children." *Id.* The Ninth Circuit agreed:

> As noted above, nothing in the Atascadero records indicated that Atwood suffered trauma-related symptoms, and Atwood's own expert admitted that she could not determine when Atwood might have developed his alleged trauma-related impairment. Speculation that Atwood may have some type of brain dysfunction or disorder "is not sufficient to establish prejudice." *Bible v. Ryan*, 571 F.3d 860, 871 (9th Cir. 2009). Moreover, even if such evidence could have been presented, it may well have opened the door to the damaging rebuttal evidence described above. Therefore, taking into account "the totality of the evidence," we hold that Atwood failed to establish "a reasonable probability that, but for [sentencing] counsel's

> unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694–95, 104 S.Ct. 2052.

Atwood III, 870 F.3d at 1064.

ii. *A reasonable sentencer could find that Atwood's mitigation is double-edged and entitled to minimal weight.*

Atwood's mitigation shows, at most, that he had a somewhat dysfunctional home life; that he may have been molested as a teenager; that he developed PTSD at some point in time, perhaps as a result of the molestation or perhaps in response to events in prison; and that he had a drug problem (which the sentencing judge knew, *see* § I, *infra*). A reasonable sentencer could have—and likely would have—given this mitigation minimal weight. Atwood has not shown by clear and convincing evidence that this mitigation would have gained a life sentence.

First, in general, a difficult family history receives minimal weight. *See State v. Pandeli*, 215 Ariz. 514, 532, ¶ 72 (2007). This is particularly true where the offender is an older adult at the time of the offense, as Atwood was (28 years of age), and is far removed from his childhood circumstances. *See State v. McCray*, 218 Ariz. 252, 250, ¶ 36 (2008) (recognizing that "a difficult childhood is given less weight when the defendant is older" and giving defendant's "less-than-ideal" childhood minimal mitigating weight because defendant was 28 at the time of the offense and had not causally connected it to his childhood). Prior to V.L.H.'s murder, Atwood had spent significant time institutionalized and thus removed from any negative influence his family carried. Although he resided with—and was financially dependent on—his parents when not incarcerated, he lived an adult lifestyle and traveled cross-country more than once. *See Atwood*, 171 Ariz. at 652–53 (noting that 28 "is not a young or immature age" and that "defendant had experienced a great deal in his 28 years.") Under these circumstances, Atwood's family background—even assuming it was difficult—is entitled to little weight in

mitigation. Likewise, the molestation evidence is remote in time to V.L.H.'s murder and thus minimally mitigating. *See McCray*, 218 Ariz. at 250, ¶ 36. Second, even assuming that Dr. Schwartz-Watts's PTSD diagnosis is accurate, she is unable to determine when Atwood developed PTSD, and she has in fact conceded that the disorder may have resulted from his experiences in prison. *Id.* at 100–01, 107–08, 122–27, 171–92.

Third, even if Atwood suffered from PTSD, that fact would have carried minimal weight in the sentencing equation. Dr. Schwartz-Watts admitted that Atwood's PTSD, if it existed at the time of the offense, did not explain Atwood's actions in killing V.L.H. Ex. K, at 172–73. She also opined that Atwood could control his actions, regardless of any mental illness. Under Arizona law, mitigation that does not explain a defendant's behavior in committing an offense is entitled to minimal weight in the sentencing calculus. *See, e.g., State v. Newell*, 212 Ariz. 389, 405, ¶ 82 (2006).

Fourth, Atwood's evidence is double-edged and equally proves that he does not deserve leniency. Atwood's Atascadero records, standing alone, are more damaging than mitigating. *See Cullen v. Pinholster*, 562 U.S. 170, 201 (2011) (observing that omitted evidence was "by no means clearly mitigating, as the jury might have concluded that [the defendant] was simply beyond rehabilitation"). Dr. Schwartz-Watts relied on those records and they are an integral part of the analysis. In addition to these records, Dr. Schwartz-Watts reviewed and relied on highly prejudicial information relating to Atwood's prior antisocial behavior, myriad offenses against children, and deviant views of adult-child sex, as described above. Dr. Schwartz-Watts conceded that diagnoses of pedophilia and antisocial personality disorder were appropriate. In light of the double-edged nature of Atwood's mitigation, he cannot show that no reasonable juror would have imposed a death sentence.

iii. *The facts and circumstances of the crime, as well as Atwood's propensities and record as an offender, rebut Atwood's mitigation and militate against leniency.*

As shown throughout this brief, and as the district court found, *see Atwood II*, 2014 WL 289987, at *32–*33, the evidence supports the conclusion that Atwood is a remorseless predator. His danger to the community has been known since the 1970s. *See* § I, *supra*. Atwood's California criminal history alone could have led a reasonable sentencer to conclude that death is appropriate regardless of his purported PTSD and other issues.

A probation report prepared for Atwood's February 3, 1975, sentencing on his lewd-and-lascivious acts conviction, documented the following: Atwood's failure to complete high school; behavioral difficulties; failure to succeed on juvenile probation; "bizarre behavior" and "chaotic" home life (which included his conduct in breaking household property, threatening his mother with a butcher knife, and "generally terrorizing the family"); lengthy arrest record; and polysubstance abuse. Ex. Q, at attached 2/3/75 California Probation Report, pp. 1–5, 7–8. The report recommended that the court classify Atwood as a mentally-disordered sex offender and commit him to Atascadero State Hospital for inpatient treatment. *Id.* at 10. The report further noted that Atwood's "self-destructive behavior has become a matter of public concern," and observed that he had failed to make "a sincere and genuine effort to overcome [his] drug problem." *Id.* at 9–10. The Atascadero records, as summarized in § I, show Atwood's unwillingness to attempt to modify his behavior.

On August 8, 1978, the court conducted a hearing on Atascadero's request to resume criminal proceedings against Atwood. Ex. Q, at attached 8/8/78 California Probation Report. A probation officer summarized Atwood's failure to cooperate with his treatment program; noted that, in addition to remaining a mentally-

disordered sex offender, Atwood "also has problems in the areas of substance abuse, assaultive behavior, lack of self-maintenance skills, family skills, impulsiveness, apathy, lack of sex knowledge and poor social skills"; relayed the opinion of Atascadero's staff that Atwood is "unamenable to treatment" and represents a continuing danger to the community; and recommended that he be sentenced to prison. *Id.* at pp. 1–3.

Shortly thereafter, Atwood left a residential drug treatment program, in which he had been placed after Atascadero, without approval. Ex. Q, at 8/25/78 California Probation Report, pp. 1–6. The next day, Atwood returned and sought readmission; his request was denied after he was found in possession of drugs and admitted previously using marijuana in the facility. *Id.* Atwood subsequently left a second residential treatment program without authorization, and was thereafter arrested for possessing marijuana and cocaine and committing a property-related offense. *Id.* at 11/1/78 California Probation Report, pp. 1–4.

In January 1981, Atwood was sentenced for kidnapping, two counts of oral copulation, and child molestation. Ex. Q, at 1/20/81 California Probation Report. The kidnapping victim's grand-jury testimony—which, although inadmissible to prove the (F)(2), *see* Pet. App. 1, at 26—is admissible to determine the weight of Atwood's mitigation and whether leniency is appropriate. *See Pandeli*, 215 Ariz. at 571–72, ¶¶ 51–53. The kidnapping offense was extraordinarily violent—Atwood even threatened to kill the child—and is strikingly similar to the offense against V.L.H. *See* Ex. L. And the probation report for this offense further summarized Atwood's lengthy criminal history, which included arrests for burglary, drug possession, possession of deadly weapons, and grand theft auto. *Id.* at 6–9. A psychiatric report prepared approximately 1 month before the hearing described Atwood as of "bright normal or higher" intelligence and described him as "a basically passive aggressive, emotionally immature, homosexual young man

with a significant anti-social component in his personality."[53] *Id.* at 13. The psychiatrist expressed doubt that Atwood could successfully complete out-patient therapy without relapsing and endangering others, and recommended that he instead receive psychiatric treatment in a correctional facility. *Id.* at 13–14.

While incarcerated for the kidnapping this offense, Atwood wrote letters to Bernsienne professing his continued sexual interest in children, and asserting such conduct should be legal. *See* § I, *supra*. These letters further confirm Atwood's inability (or unwillingness) to abandon his sexual attraction to children. *See* Ex. D. And Atwood's vow to make sure the next child he victimized would not talk, *Atwood I*, 171 Ariz. at 596, shows the true depravity of his character.

Finally, the facts and circumstances of V.L.H.'s murder also militate against a life sentence. Although the current A.R.S.§ 13–751(F)(7) age-of-victim aggravator does not apply, V.L.H.'s age (8) is still a relevant fact and circumstance showing that Atwood should not relieve leniency. The deposition of Jonas Bowen—which can be considered to resolve Atwood's Rule 32.1(h) claim[54]—

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[53] This report is unavailable; its reference in the probation report is the only record of which the State is aware.

[54] Atwood's current claim alleges the capital-sentencing equivalent of actual innocence. Accordingly, an examination of all relevant evidence is appropriate. Further, although Bowen's statements were excluded from trial and the aggravation phase on Sixth Amendment grounds, they arguably are admissible to rebut mitigation at sentencing. *See Atwood*, 171 Ariz. 669–71 (Corcoran, J., specially concurring). In an exercise of restraint, the prosecutor did not offer Bowen's testimony at the aggravation/mitigation hearing, and filed the deposition transcript at sentencing as an offer of proof on the A.R.S. § 13–703(F)(6) factor and as rebuttal to Atwood's residual-doubt mitigation, which the trial court had deemed irrelevant. Ex. P, at 101; Pet. Ex. 1, at 21–22. But the prosecutor could have offered the transcript to show the facts and circumstance of the crime, which are inherently relevant to the sentencing decision. *See* A.R.S. § 13–703(G).

confirms that Atwood stalked, kidnapped, sexually abused, and killed V.L.H. in a calculated and premeditated manner. Ex. R. And Atwood killed V.L.H. while on parole. Although this fact did not establish a capital aggravating factor in 1984, *compare* A.R.S. § 13–703(F)(7) (1984) (establishing as an aggravating factor that defendant is in custody of correctional institution) *with* A.R.S. § 13–751(F)(7) (2012) (establishing as an aggravating factor that defendant is in the custody of or on release from correctional institution), it nonetheless weighs heavily against showing him leniency. *Cf. State v. Cropper*, 223 Ariz. 552, 529, ¶ 32 (2010) ("The (F)(7) aggravator … represents a legislative judgment that inmates who commit first degree murder while incarcerated have failed to make even minimal efforts to comply with societal norms and thus warrant particularly serious treatment.")

iv. *A reasonable sentencer could conclude, on balance, that a life sentence is inappropriate.*

Weighed against Atwood's mitigation of PTSD (which may not have existed at the time of the offense and, in any event, does not explain his behavior during the murder), drug use, molestation, and family problems, is an aggravating factor that is entitled to significant weight because it is based on Atwood's conviction for victimizing another child. *See* A.R.S. § 13–703(F)(1). Conversely, the double-edged mitigation does not humanize Atwood but, instead, leads to the conclusion that he is "dangerous and simply beyond rehabilitation" and that death is appropriate. *Sully*, 725 F.3d at 1068–69. This Court should deny relief.

v. *An evidentiary hearing would duplicate the federal proceedings and is unwarranted.*

Finally, Atwood seeks an evidentiary hearing on his claim. "The purpose of an evidentiary hearing in the Rule 32 context is to allow the court to receive evidence, make factual determinations, and resolve material issues of fact." *State v. Gutierrez*, 229 Ariz. 573, 579, ¶ 31 (2012). A hearing would be inappropriate

here. The facts underlying this claim were developed exhaustively in federal court, and rehashing that litigation in state court would serve little purpose. Moreover, there is no material factual dispute because, as set forth above, Atwood cannot prove his claim when only his proffered evidence (including his already cross-examined expert's opinions) is considered. *Id.* at 572, ¶ 32 ("[W]hen there are no material facts in dispute and the only issue is the legal consequence of undisputed material facts, the superior court need not hold an evidentiary hearing."). This Court should summarily dismiss Atwood's claim.[55]

D. Atwood's claim that his death sentence is unconstitutional because he has spent 33 years appealing is untimely and precluded. Alternatively, it fails on the merits. (Claim 4.)

Oblivious to the inconsistency of arguing that his death sentence is both inappropriate and carried out too slowly, and to the hypocrisy inherent in the fact that his own actions are primarily to blame for the delay in his execution, Atwood contends that the "extreme duration" of his incarceration violates the Eighth Amendment and the Arizona constitution (hereinafter referred to as a "*Lackey* claim"). Am. Pet. 61–68. This claim is precluded and, alternatively, meritless.

1. The claim is untimely and precluded under Rule 32.2(a)(3).

Although it is unclear at precisely what point Atwood believes his incarceration became "extended" and exceeded constitutional limits, at a minimum, Atwood could have raised this claim in his second Rule 32 petition, which he filed in 2009. By that point, he had spent 25 years incarcerated. Even by the time of his first petition—in 1996, Atwood had been imprisoned for approximately 12 years. *See Allen v. Ornoski*, 435 F.3d 946, 957–58 (9th Cir. 2006) (finding that defendant could have raised *Lackey* claim in first habeas

[55] Should this Court grant relief, the appropriate remedy is resentencing, not imposition of a life sentence. *See* § III(A)(4)(e), *supra*.

petition, "when he had already been on death row for six years"). Accordingly, the claim is untimely under Rule 32.4. It is also precluded under Rule 32.2(a)(3). Atwood has failed to proffer explanations for his failure to raise his claim in a procedurally appropriate and timely manner. *See* § III(A)(2), *supra*.

Atwood's argument that the claim was not ripe until now and is therefore not waived fails.[56] Am. Pet. 67; *see Allen*, 435 F.3d at 958 ("Unlike a *Ford* claim of incompetence, a Lackey claim does not become ripe only after a certain number of years or as the final hour of execution nears. There is no fluctuation or rapid change at the heart of a *Lackey* claim, but rather just the steady and predictable passage of time."). As previously discussed, at a minimum, Atwood could have brought this claim in 2009, after 25 years of incarceration. His time spent confined is no more harmful now than it was then.

Atwood also argues that Claim 3 requires a knowing, intelligent, and voluntary waiver. Am. Pet. 67 (citing Am. Pet. § III(A)(3)(d)). He is incorrect. As stated in § III(A)(4)(d), *supra*, this is not the type of right that requires a knowing and voluntary waiver.

Atwood proposes that his "extreme sentence constitutes a newly discovered material fact that would change his sentence" and thus is exempt from preclusion under Rule 32.1(e). Am. Pet. 67. While the duration of Atwood's incarceration may be a fact, it is not a "newly discovered" one. For one thing, it did not exist at the time of trial, precluding a Rule 32.1(e) claim. *See State v. Amaral*, 239 Ariz. 217, 219, ¶ 9 (2016). Instead, the duration of Atwood's incarceration is a newly *developed* fact and a natural consequence of the passage of time, which could arise

[56] Alternatively, if the claim was not ripe before now, it is not ripe now, either, and will not ripen until an execution warrant issues.

in any case. Finally, for the reasons stated above, Atwood could have raised this claim years ago. He therefore fails Rule 32.1(e)(2)'s diligence requirement.

Finally, Atwood seeks to extend Rule 32.1(c) to this circumstance, arguing that his execution "would be unconstitutional and therefore unauthorized by law" under Rule 32.1(c). Am. Pet. 67. But as discussed in § III(A)(4)(a)(i), *supra*, Rule 32.1(c) applies to term-of-years sentences. Setting that limitation aside, the Rule applies to sentences which, "as imposed," are not authorized. *Id.* Here, Atwood's sentence, "as imposed" was lawful: death was, and still is, a permissible punishment for first-degree murder. *See* A.R.S. 13–703(A) (Ex. C). The sentence did not somehow become unauthorized once a certain amount of time had passed. Holding otherwise would encourage petitioners to prolong their appellate proceedings only to then use the self-imposed delay to invalidate their death sentences. This Court should not permit such a result.

2. This Court should not allow Atwood to profit from delay that he has caused.

As discussed in § I, *supra*, Atwood has spent decades appealing his convictions and sentences. His federal habeas proceeding alone spanned 20 years. The present post-conviction proceeding is his *third*, and has so far stretched nearly 11 months. Atwood now asks this Court to reward him for this delay by doing what no court did during his automatic appeals: releasing him from his death sentence. This Court should decline Atwood's invitation.

Atwood proposes that his death sentence became unconstitutional, under both the Arizona and federal constitutions, at some unspecified point in the 33 years since it was imposed. He laments his conditions of confinement,[57] claims to

[57] Under Atwood's logic, it would be *more* cruel and unusual to commute an offender's sentence to life, rather than to actually carry that sentence out. *See Glossip v. Gross*, 135 S. Ct. 2726, 2748 (2015) (Scalia, J. concurring) ("Life
(continued ...)

be "enfeebled and confined to a wheelchair," and asserts that his execution under these circumstances serves no legitimate penological purpose. *Id.* This argument arises from a 25-year old memorandum by Justice Stevens, respecting the denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045, 1046 (1995). Since *Lackey*, Justice Breyer has raised similar concerns. *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1144 (2019) (Breyer, J., dissenting); *Reynolds v. Florida*, 139 S. Ct. 27, 28 (2018) (Breyer, J., statement respecting denial of certiorari); *Glossip*, 135 S. Ct. at 2764–67 (Breyer, J., dissenting); *Valle v. Florida*, 132 S. Ct. 1 (2011) (Breyer, J., dissenting from denial of stay); *Knight v. Florida*, 120 S. Ct. 459, 461–65 (1999) (Breyer, J., dissenting from denial of certiorari).

The views expressed by Justice Breyer and Justice Stevens do not command a majority of the Court. Just last year, a majority of the United States Supreme Court responded to Justice Breyer's observations as follows:

> Even the principal dissent acknowledges that "the long delays that now typically occur between the time an offender is sentenced to death and his execution" are "excessive." *Post*, at 1144. The answer is not, as the dissent incongruously suggests, to reward those who interpose delay with a decree ending capital punishment by judicial fiat. *Post*, at 1145. Under our Constitution, the question of capital punishment belongs to the people and their representatives, not the courts, to resolve.

Bucklew, 139 S. Ct. at 1134; *see also Knight*, 120 S. Ct. at 459 (Thomas, J., concurring in denial of certiorari) ("I write only to point out that I am unaware of any support in the American constitutional tradition or in this Court's precedent for the proposition that a defendant can avail himself of the panoply of appellate and

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(... continued)

without parole is an even lengthier period than the wait on death row; and if the objection is that death row is a more confining environment, the solution should be modifying the environment rather than abolishing the death penalty.").

collateral procedures and then complain when his execution is delayed. … It is incongruous to arm capital defendants with an arsenal of 'constitutional' claims with which they may delay their executions, and simultaneously to complain when executions are inevitably delayed."). Numerous federal appellate and district courts have likewise rejected these so-called "*Lackey* claims." *See Allen*, 435 F.3d at 958–59 (collecting cases). In *McKenzie v. Day*, 57 F.3d 1461, 1466 (9th Cir. 1995), the Ninth Circuit captured the unfairness inherent in such claims:

> A defendant must not be penalized for pursuing his constitutional rights, but he also should not be able to benefit from the ultimately unsuccessful pursuit of those rights. It would indeed be a mockery of justice if the delay incurred during the prosecution of claims that fail on the merits could itself accrue into a substantive claim to the very relief that had been sought and properly denied in the first place. If that were the law, death-row inmates would be able to avoid their sentences simply by delaying proceedings beyond some threshold amount of time, while other death-row inmates—less successful in their attempts to delay—would be forced to face their sentences. Such differential treatment would be far more "arbitrary and unfair" and "cruel and unusual" than the current system of fulfilling sentences when the last in the line of appeals fails on the merits. We thus decline to recognize [a defendant's] lengthy incarceration on death row during the pendency of his appeals as substantively and independently violative of the Constitution.

(quoting *Richmond v. Lewis*, 948 F.2d 948, 1491–92 (9th Cir. 1995)).[58]

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[58] Atwood's reliance on the Arizona Supreme Court's subsequent decision in *State v. Richmond*, 180 Ariz. 573, 577 (1994), is especially unavailing. Am. Pet. 66–67. The court observed that additional delay would potentially impede the Victims' Bill of Rights, and noted Richmond's argument that his delayed execution would violate the state and federal constitutions. *Id.* Ultimately, the court declined to reach these issues because the case's history was a "legal maze" that made it "troublesome for [the court] to reaffirm [Richmond's] death sentence in a sensible
(continued ...)

Finally, granting Atwood relief on this claim would frustrate the Victims' Bill of Rights (VBR), which gives crime victims the right to a prompt and final resolution of a criminal case. *See* Ariz. Const. art. II, § 2.1(10). Atwood has successfully delayed his execution for decades, which itself impedes the VBR. Granting relief as to his sentence, after he has completed the appellate process and his sentence has been finally affirmed, would not only reward him for that delay, but also deny the victims the resolution to which they are entitled and render the last three decades of appellate proceedings meaningless. This Court should refuse to relieve Atwood of his death sentence based on delay generated by his decision to challenge it. *See McKenzie*, 57 F.3d at 1467 ("We cannot conclude that delays caused by satisfying the Eighth Amendment themselves violate it."). This Court should summarily dismiss Claim 4.[59]

IV. CONCLUSION.

For the reasons set forth above, this Court should deny Atwood's most recent petition for post-conviction relief.

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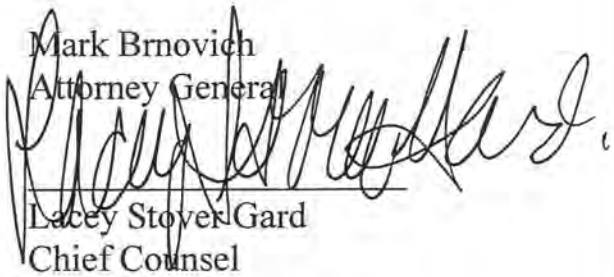
and nonarbitrary manner." *Id.* at 578. Because of this concern, as well as Richmond's substantial mitigation, the court reduced his sentence to life. *Id.* at 578–82.

[59] For the reasons stated in § III(A)(4)(e), resentencing, not imposition of a life sentence, is appropriate if this Court grants relief.

RESPECTFULLY SUBMITTED this 5th day of March, 20202

Mark Brnovich
Attorney General



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Originals of the foregoing document for each cause number filed with the Clerk of the Court this 5th day of March, 2020.

Copy of the foregoing delivered via First Legal Messenger, this 5th day of March, 2020, to:

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LIST OF EXHIBITS

A: California Penal Code § 288

B: A.R.S. § 13–652

C: A.R.S. § 13–703 (1984)

D: Letters from Atwood to Bernsienne

E: Report of Dr. Robert Orling

F: ADCRR Disciplinary reports

G: Report of Dr. E. Rivlin

H: Report of Dr. R. Rose

I: Affidavit of Dr. Richard Hinton

J: Report of Dr. Ronald Shelton & Walt Walton

K: Complete testimony of Dr. Donna Schwartz-Watts

L: Excerpts from Atascadero records

M: Defendant's sentencing memorandum re: aggravation

N: Defendant's sentencing memorandum re: mitigation

O: State's reply to defendant's sentencing memorandum

P: Aggravation/mitigation hearing transcript

Q: Presentence report

R: Bowen deposition

S: Preliminary hearing transcript for California kidnapping prior

Exhibit 75

ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, Appellee, v. STEVEN MORA, Appellant.	1 CA–CR 19–0342 Maricopa County Superior Court No. CR2018–000891–001

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QUESTIONS PRESENTED IN SUPPLEMENTAL BRIEFING ORDER

1. Assuming that out-of-state convictions can serve as predicate felonies for the purpose of sentencing enhancement under A.R.S. §§ 13–705(I) & (Q)(2), does Arizona law require that the out-of-state felony be punishable as an Arizona felony to qualify as a predicate felony?

2. Assuming Mora's Texas convictions must be punishable as Arizona felonies to qualify as "sexual offenses" under A.R.S. § 13–705(Q)(2), must there be "strict conformity" between the elements of Tex. Penal Code Ann. § 21.11(a)(1) and the elements of an Arizona statute?

   a. If strict conformity is required, should this determination be made by the superior court in the first instance, or is it a pure question of law that this Court may properly consider as part of Mora's appeal?

   b. May the underlying facts of Mora's Texas convictions be considered when making this determination?

   c. Does strict conformity exist between the elements of Texas statute and an analogous Arizona statute?

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STATEMENT OF THE CASE

On November 10, 2020, this Court ordered supplemental briefing directing the parties to file briefs addressing: (1) whether Arizona law requires that out-of-state felonies be punishable as an Arizona felony to qualify as a predicate felony for sentencing enhancement purposes under A.R.S. § 13–705; and (2) whether there must be "strict conformity" between the elements of Mora's Texas convictions and the elements of an Arizona statute and, assuming strict conformity is required, whether it exists here.

As discussed below, an out-of-state felony must strictly conform to an Arizona felony for sentencing purposes under § 13–705, but Mora's Texas convictions do not satisfy that requirement here.[1]

ARGUMENTS

I. Arizona Law Requires That Out-of-State Felonies Be Punishable as an Arizona Felony to Qualify as a Predicate Felony Under A.R.S. § 13–705.

Section 13–705(Q)(2) states, in relevant part, that a "[p]redicate felony" is "any felony involving … a sexual offense[.]"[2] In turn, Arizona law defines

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[1] This Court, of course, is not bound by the State's concession of error. *See State v. Solis*, 236 Ariz. 242, 249, ¶ 23 (App. 2014).

"[f]elony" as "an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state." A.R.S. § 13–105(18). And "[o]ffense" is defined in relevant part as an act that "occurred in a state other than this state" that would be "punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state." A.R.S. § 13–105(27). Accordingly, the plain language of A.R.S. § 13–705(Q)(2) requires Arizona courts to first determine whether an out-of-state conviction involving a sexual offense would be punishable as a felony under Arizona law if the act had occurred here to decide whether the out-of-state conviction qualifies as a "predicate felony."

The Court's supplemental briefing order indicates this is an issue of first impression regarding the application of A.R.S. § 13–705. Arizona courts have held in analogous cases that before an out-of-state conviction can be used for sentencing enhancement purposes, the sentencing court "must first conclude that the foreign conviction includes every element that would be required to prove an

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(... continued)

[2] The State cites to the current version of all applicable Arizona statutes because there is no material difference between the current versions of the statutes and those in effect at the time Mora committed his offenses. *See* R.O.A. 1 (listing date range of offenses). On January 1, 2009, former A.R.S. § 13–604.01 was renumbered A.R.S. § 13–705. *See* 2008 Ariz. Legis. Serv. Ch. 301 (H.B. 2207) (WEST).

enumerated Arizona offense." *State v. Crawford*, 214 Ariz. 129, 131, ¶ 7 (2007); *see also State v. Large*, 234 Ariz. 274, 281, ¶¶ 21–22 (App. 2014) (concluding that, in order "to impose a flat-time, presumptive sentence based upon a defendant's parole status from an out-of-state conviction, the foreign offense for which the defendant is on parole must have been punishable as a felony in Arizona."). Although *Crawford* specifically addressed the application of A.R.S. § 13–703, *see* 214 Ariz. at 131, ¶ 7; *see also Large*, 234 Ariz. at 281, ¶ 22, n. 7 (noting that A.R.S. § 13–703 was numbered A.R.S. § 13–604 at the time *Crawford* was decided), its holding is not limited to A.R.S. § 13–703.[3] *See Large*, 234 Ariz. at 281–82, ¶¶ 24, 26 (recognizing "that *Crawford* remained applicable in other contexts not affected by the [2012] amendments" to A.R.S. § 13–703, and that this Court has "applied a *Crawford*-type analysis equally to prior conviction enhancements and release status enhancements"); *see also State v. Moran*, 232 Ariz. 528, 533–34, ¶¶ 15–16 (App. 2013) (noting this Court applies the *Crawford* test to determine if out-of-state DUI convictions qualify as prior DUI convictions for purposes of aggravated DUI charge).

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[3] Section 13–703 was amended in 2012 and now, in relevant part, provides: "A person who has been convicted in any court outside the jurisdiction of this state of an offense that was punishable by that jurisdiction as a felony is subject to this section." A.R.S. § 13–703(M); *see also* 2012 Ariz. Legis. Serv. Ch. 190 (S.B. 1151) (WEST). This amendment, however, has no application in the present case.

Given the plain language of A.R.S. § 13–705, and because *Crawford* applies to sentence enhancements beyond A.R.S. § 13–703, Arizona law requires that out-of-state convictions must be punishable as an Arizona felony in order to qualify as predicate felonies under A.R.S. § 13–705.

II. There Must Be "Strict Conformity" Between the Elements of an Out-of-State Conviction and the Elements of an Arizona Statute.

Consistent with *Crawford*, there must be "strict conformity" between the elements of an out-of-state conviction and an Arizona statute before the out-of-state conviction can be considered a predicate felony under A.R.S. §§ 13–705(I) & (Q)(2). *See Large*, 234 Ariz. at 282, ¶ 27 (stating that courts determine if an out-of-state conviction has "an analog under Arizona law" by "comparing the elements of the foreign offense with those in the relevant Arizona statute," and that there "must be strict conformity between the elements of the foreign offense and an Arizona felony"). As discussed below, this is a purely legal question that this Court can address for the first time on appeal which does not take into account the underlying facts of the out-of-state conviction. Strict conformity, however, does not exist between Mora's Texas convictions and an applicable Arizona statute.

A. Whether there is "strict conformity" is a question of law.

In *Crawford*, the Arizona Supreme Court stated that sentencing courts are to focus "solely on the elements of the foreign statute under which the defendant was convicted, *a purely legal issue*," in determining whether an out-of-state conviction

constitutes a prior felony for sentencing enhancement purposes. 214 Ariz. at 131–31, ¶¶ 6–9 (emphasis added); *see also State v. Smith*, 219 Ariz. 132, 136, ¶¶ 20–22 (2008) (holding that a claim that a sentence was illegally enhanced by a prior foreign felony can be raised for the first time on appeal). Whether there is "strict conformity" thus presents a legal issue this Court can properly consider for the first time on appeal.

B. The facts of the underlying conviction may not be considered in determining whether there is strict conformity.

"[O]nly the statutory definition of the prior crime, and not its specific factual basis can be considered in determining whether a foreign conviction" qualifies as a predicate felony. *Crawford*, 214 Ariz. at 131, ¶ 8. Although courts may not consider the facts underlying an out-of-state conviction to determine if there is strict conformity, they may consider other information—such as charging or sentencing documents—to determine which subsection of the foreign statute underpins the conviction. *See id.* at 132, ¶ 11 (stating courts may use "a charging document only to narrow the foreign conviction to a particular subsection of the statute that served as the basis of the foreign conviction") (internal quotation marks omitted); *see also Moran*, 232 Ariz. at 534, ¶ 16 ("A charging document or judgment of conviction may be used only to narrow the statutory basis of the foreign conviction, not establish the conduct underlying it."); *State v. Thompson*, 186 Ariz. 529, 532–33 (App. 1996) (affirming a defendant's enhanced sentence

based upon information contained in sentencing documents which "narrowed the frame of reference" of the statute underlying the out-of-state conviction); *cf. State v. Joyner*, 215 Ariz. 134, 141–43, ¶¶ 21–25 (App. 2007) (discussing whether courts may consider "evidence of the conviction," such as jury instructions, plea agreements and plea colloquies, to determine the facts necessarily found in reaching a verdict to further narrow the statute underlying a conviction under certain circumstances) (internal quotation marks omitted, citing collected authorities). This Court may thus refer to Mora's sentencing documents to "narrow the frame of reference" and determine the subsection of the Texas statute under which he was convicted.

C. Strict conformity does not exist between Texas Penal Code § 21.11(a)(1) and a comparable Arizona statute.

The State concedes there is not strict conformity between Texas Penal Code § 21.11(a)(1) and an Arizona statute because a conviction under the Texas statute will not necessarily support a conviction under a comparable Arizona offense.[4]

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[4] The State argued in its answering brief that it was "impossible to commit a violation of the Texas statute without committing a sexual felony offense in Arizona." A.B., at 18–20. The State's concession here represents its position regarding whether strict conformity exists going forward with respect to this case; however, the State does not abandon the remaining arguments in its answering brief—that A.R.S. § 13–705 applies to out-of-state convictions and that the jury need not find that a predicate felony is a sexual offense—by this concession.

Strict conformity exists between two criminal statutes if the fact finder in the out-of-state case would be required to "actually [find] beyond a reasonable doubt that the defendant had committed every element that would be required to prove the Arizona offense." *State v. Clough*, 171 Ariz. 217, 219–20 (App. 1992); *see also State v. Ault*, 157 Ariz. 516, 521 (1988) ("In order to say that the California convictions would constitute one of the felonies enumerated in [the statute at issue], we must be sure that the juries in the prior cases actually found beyond a reasonable doubt every element that would be required to prove an enumerated Arizona offense.") (internal quotation marks omitted). "If under any scenario it would have been legally possible for the defendant to have been convicted of the foreign offense but not the Arizona offense, then the foreign offense fails the comparative elements test," and there is not strict conformity. *State v. Dunbar*, 249 Ariz. 37, 465 P.3d 527, 540, ¶ 37 (App. 2020).

On March 15, 2010, Mora was convicted in Texas for two counts of "Indecency With a Child–Contact." Exh. 31. Both of his convictions were classified as "Second Degree" offenses under Texas law. *Id.* Because his convictions were classified as second-degree offenses, he was convicted under Texas Penal Code § 21.11(a)(1). *See* Texas Penal Code § 21.11(d) (defining a conviction pursuant to § 21.11(a)(1) as "a felony in the second degree").

A person commits indecency with a child in Texas "if, with a child younger than 17 years of age, whether the child is of the same or opposite sex …, the person… engages in sexual contact with the child or causes the child to engage in sexual contact[.]" Texas Penal Code § 21.11(a)(1).[5] "Sexual contact" is defined as

> the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:
>
> (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or
>
> (2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

Texas Penal Code § 21.11(c). As discussed below, there is not strict conformity between the Texas statutes and similar Arizona statutes.

In Arizona, "[a] person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except contact with the female breast, with a child who is under [15] years of age." A.R.S. § 13–1410(A). "A person commits sexual abuse by intentionally or

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[5] In 2017, the Texas legislature amended § 21.11(a) to provide that a "person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex *and regardless of whether the person knows the age of the child at the time of the offense*[.]" 2017 Tex. Sess. Law Serv. Ch. 685 (H.B. 29) (VERNON'S) (emphasis indicated differently in original). Because this change to the statute from the version in effect at the time of Mora's conviction does not affect the State's analysis, the State cites to the current version of the statute.

knowingly engaging in sexual contact with any person who is [15] or more years of age *without consent* of that person or with any person who is under [15] years of age if the sexual contact involves only the female breast." A.R.S. § 13–1404(A) (emphasis added). "Sexual contact" is defined as "any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such conduct." A.R.S. § 13–1401(3)(a). Conduct is without consent if the victim: "is coerced by the immediate use or threatened use of force;" "is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition;" "is intentionally deceived as to the nature of the act[;]" or "is intentionally deceived to erroneously believe that the person is the victim's spouse." A.R.S. § 13–1401(7).

A conviction under Texas Penal Code § 21.11(a)(1) will not necessarily support a conviction under either A.R.S. § 13–1410 or § 13–1404 despite there being some similarity between the offenses. Although the sexual contact proscribed by Texas Penal Code § 21.11(c) is substantively identical to the sexual contact proscribed by A.R.S. § 13–1401(3)(a), the differences between § 21.11(a)(1) and the Arizona statutes preclude a finding of strict conformity.

The Texas statute includes a different age range than A.R.S. § 13–1410(A). The Texas statute applies to children younger than 17, Texas Penal Code

§ 21.11(a), whereas A.R.S. § 13–1410(A) generally applies to children younger than 15.[6] A.R.S. § 13–1410(A). A conviction under Texas Penal Code § 21.11(a) thus will not necessarily support a conviction under A.R.S. § 13–1410(A) because a defendant in Texas can be convicted of engaging in sexual conduct with a 16 year-old, while an Arizona defendant could not under § 13–1410(A).

Similarly, the "without consent" language of A.R.S. § 13–1404(A) also precludes a finding of strict conformity. While A.R.S. § 13–1404(A) also prohibits sexual conduct, it requires the sexual conduct be "without consent." A.R.S. § 13–1404(A). The Texas statute, however, does not require that the sexual conduct be without consent.[7] *See* Texas Penal Code § 21.11(a). A Texas defendant could accordingly be convicted of engaging in consensual sexual conduct with a 16 year-old, whereas an Arizona defendant could not.

Moreover, whether conduct is "without consent" is specifically defined under Arizona law. A.R.S. § 13–1401(7). Although "a child cannot consent to sexual contact or intercourse" under Texas law, *Smallwood v. State*, 471 S.W.3d

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[6] Section 13–1404(A) also applies where a defendant touches the breast of a female younger than 15.

[7] The Texas statute does provide for an affirmative defense where the defendant "was not more than three years older than the victim," and "did not use duress, force, or a threat against the victim at the time of the offense[.]" Texas Penal Code § 21.11(b).

601, 607 (Tex. App. 2015), this lack of consent under Texas law is not the same as "without consent" under Arizona law. As such, a conviction under the Texas statute would not necessarily support a conviction under A.R.S. § 13–1404(A) because the conduct could be consensual under A.R.S. § 13–1401(7).

Nor would a conviction under Texas Penal Code § 21.11(a)(1) necessarily support a conviction under Arizona's sexual-conduct-with-a-minor statute. "A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under [18] years of age." A.R.S. § 13–1405(A). While a conviction under the Texas statute would necessarily cover the same age range, and sexual contact as defined in Texas Penal Code § 21.11(c) would necessarily include sexual intercourse or oral sexual contact, the Texas statute also covers more conduct than is criminalized under A.R.S. § 13–1405(A).[8] As such, a conviction under the Texas statute will not necessarily support a conviction under A.R.S. § 13–1405(A).

Finally, there could not be strict conformity between the Texas statute and Arizona by looking at all three statutes in conjunction with each other. Under

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[8] "'Oral sexual contact' means oral contact with the penis, vulva or anus," while "'[s]exual intercourse' means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva." A.R.S. §§ 13–1401(1), (4).

Texas Penal Code § 21.11(a)(1), a defendant could be convicted of engaging in consensual sexual contact short of intercourse or oral sexual contact with a 16 year-old. A conviction under this scenario would not support a conviction under any of the Arizona statutes discussed above.

Accordingly, there is not strict conformity between Texas Penal Code § 21.11(a)(1) and a comparable Arizona statute. Mora's prior Texas convictions therefore do not qualify as predicate felonies pursuant to A.R.S. § 13–705.

CONCLUSION

For these reasons, the State respectfully requests that this Court affirm Mora's convictions, but concedes that the case should be remanded for resentencing.

Respectfully submitted,

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