20.050 Substantial evidence is more that a mere scintilla and is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of the defendant's guilt beyond a reasonable doubt.

State v. Gray, 231 Ariz. 374, 295 P.3d 951, ¶¶ 5–10 (Ct. App. 2013) (defendant was convicted of burglary; officer testified person he found in warehouse was "Randall Gray," but pointed to codefendant (Wallace) rather than defendant when asked to identify person in court; defendant moved for judgment of acquittal, contending state had failed to prove he was person officer found in warehouse; court noted defendant's attorney said in opening statement, "Mr. Gray and Mr. Wallace were both in the building"; court noted admissions made by counsel in opening statements are generally binding on party, and held admission by defendant's attorney was substantial evidence from which jurors could conclude defendant was person arrested in warehouse).

20.090 An acquittal on one charge does not affect a court's analysis of the sufficiency of evidence supporting another charge.

State v. Williams, 233 Ariz. 271, 311 P.3d 1084, ¶¶ 3–11 (Ct. App. 2013) (victim responded to advertisement offering "iPhone" for $400; when victim arrived at arranged meeting place, man in red four-door Dodge sedan with numbers "252" on license plate handed victim empty iPhone box, while another man approached on foot, displayed handgun, and demanded that victim surrender his money; victim identified defendant and Hawkins as persons who had robbed him; 2 weeks later victim saw similar advertisement offering "iPhone" for $350 and with same telephone number; this time victim contacted police; when victim arrived at arranged meeting place, police found Hawkins carrying empty cell phone box, but he was not carrying any weapons; officers found defendant sitting in red four-door Dodge sedan with numbers "252" on license plate; for first incident, defendant was charged with Count 1, armed robbery, and Count 2, aggravated robbery; for second incident, defendant was charged with Count 3, attempted robbery, and Count 4, attempted aggravated robbery; trial court granted defendant's motion for judgment of acquittal for Count 4; jurors found defendant not guilty of Count 1 and Count 2, but guilty of Count 3; based on judgment of acquittal for Count 4 and not guilty verdicts for Count 1 and Count 2, defendant contended state presented insufficient evidence to support conviction for Court 3; court held each count must be viewed independently, and concluded there was sufficient evidence to support conviction for Count 3).

RULE 21. INSTRUCTIONS.

Rule 21.1 Applicable law.

21.1.030 The trial court is not required to give an instruction that is an incorrect statement of the law, and should instead give an instruction only if it is a correct statement of the law.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 51–56 (2013) (defendant conceded his proposed instruction on third-party culpability improperly commented on law; court rejected defendant's contention that trial court should have given that part of instruction that correctly stated law).

21.1.045 The trial court is not required to give a requested instruction that is covered by the instructions given.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 51–56 (2013) (defendant's proposed instruction on third-party culpability was adequately cover by other by other instructions).

21.1.100 When the trial court had dismissed some charges, the trial court is not required to instruct the jurors about the dismissal and that the dismissals should not affect their deliberations.

State v. Reyes, 232 Ariz. 468, 307 P.3d 35, ¶¶ 3–7 (Ct. App. 2013) (court noted various cases when such instruction was given did not require that it be given; fact that jurors found defendant guilty of lesser-included offense for one charge and hung on another charge showed defendant was not prejudiced).

Causation

21.1.095 In order for a subsequent act to be a superseding cause, it does not matter whether the subsequent act is in response to something the defendant did or was entirely coincidental to what the defendant did; in order

for such an act to be a superseding cause and thus excuse criminal liability, the subsequent act must be both unforeseeable and either abnormal or extraordinary.

State v. Almaguer, 232 Ariz. 190, 303 P.3d 84, ¶ 17 (Ct. App. 2013) (defendant was charged with second-degree murder as result of killing victim during fight; when defendant began struggling with victim, it was not either unforeseeable, abnormal, or extraordinary that victim's family would enter into fight, thus defendant was not entitled to "proximate cause" instruction based on family's actions).

Lesser-included offenses.

21.1.350 The trial court is required to instruct on a lesser-included offense only if the element that distinguishes the greater offense from the lesser is in dispute because there is some affirmative evidence that calls that element into question; trial court is not required to instruct on a lesserincluded offense on the mere possibility that the jurors might disbelieve a portion of the state's case.

State v. Larin, 233 Ariz. 202, 310 P.3d 990, ¶¶ 6–17 (Ct. App. 2013) (defendant was charged with first-degree burglary and armed robbery, and defended on mere presence; because witness testified all three persons handled gun, and because defendant was charged both as principal and as accomplice, defendant was not entitled to instruction on either second-degree burglary or robbery).

State v. Larin, 233 Ariz. 202, 310 P.3d 990, ¶¶ 18–20 (Ct. App. 2013) (defendant was charged with kidnapping and contended trial court should have instructed on unlawful imprisonment; defendant defended on mere presence; because evidence show at minimum aided in commission of robbery and burglary, there was no evidence to support instruction for unlawful imprisonment).

Missing witness.

21.1.450 To be entitled to a missing witness instruction, a defendant must establish that the witness was in the exclusive control of the state and would have provided exculpatory evidence had the witness testified.

State v. Brown, 233 Ariz. 153, 310 P.3d 29, ¶¶ 25–26 (Ct. App. 2013) (because (1) defendant never listed E.V. as witness or attempted to serve him with subpoena and (2) state also took steps to secure E.V.'s attendance, but these were unsuccessful, trial court did not err in not giving defendant's requested missing witness instruction,).

RAJI S.C. 9 Flight.

9.sc.020 The flight does not have to be immediate; delay goes instead to the weight of the flight evidence.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 43–46 (2013) (defendant did not leave until day after murders ostensibly occurred).

9.sc.030 Neither pursuit by law enforcement nor complete concealment is required to support a flight instruction.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 47–48 (2013) (court noted defendant gave false name to hitchhicker, so there was some evidence of concealment, and once defendant heard police were looking for him, he went to Santa Barbara and then to Las Vegas; court said evidence justifies flight instruction as long as it invites some suspicion of guilt).

RAJI S.C. 17 Intention inferred from voluntary act.

17.sc.010 The first sentence of this instruction, which provides that the state must prove that the defendant did a voluntary act forbidden by law, is the *actus reus,* and should be given only if there was presented some evidence from which the jurors could conclude that the defendant performed the bodily movements unconsciously and without effort and determination.

State v. Almaguer, 232 Ariz. 190, 303 P.3d 84, ¶¶ x–xx (Ct. App. 2013) (defendant was charged with second-degree murder as result of killing victim during fight; defendant contended he was entitled to "voluntary act"

instruction based on his theory that gun discharged while he was holding it and someone hit his arm during fight; court held this theory was based on speculation rather than any evidence directly supporting it, thus defendant was not entitled to this instruction).

***Willits* instruction.**

21.1.815 A defendant is entitled to a *Willits* instruction if the defendant shows that (1) the state failed to preserve material evidence that was accessible, (2) the evidence might have exonerated the defendant, and (3) as a result, the defendant suffered prejudice.

State v. Glissenforf, 233 Ariz. 222, 311 P.3d 244, ¶¶ 10–22 (Ct. App. 2013) (in 2001, O. reported defendant had molested her, and detective videotaped interview with her; state chose not to prosecute because it was single victim case with no corroboration; police did not retain videotape because policy at time provided for destruction of evidence within 6 to 12 months of closing case; in 2010, T. alleged defendant had molested her, so state charged defendant with molesting both O. and T.; court held defendant showed (1a) state failed to preserve videotape, (1b) videotape was material and had been accessible, (2) videotape might have exonerated defendant, and (3) as result, defendant suffered prejudice, thus trial court should have given *Willits* instruction).

RULE 23. VERDICT.

Rule 23.2(a) Types of verdict—General verdicts.

23.2.a.010 Although a defendant is entitled to a unanimous jury verdict on whether the criminal act charged was committed, the trial court is not entitled to a unanimous jury verdict on the precise manner in which the act was committed.

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 79–92 (2013) (because child abuse is one crime that person can commit in different ways, defendant was not entitle to have the jurors agree unanimously on the manner in which he committed child abuse).

Rule 23.3 Conviction of necessarily included offense.

23.3.010 The specification of an offense in the charging document constitutes a charge of that offense and all necessarily included offenses, and so the trial court shall submit forms of verdict for all necessarily-included offenses.

State v. Hines, 232 Ariz. 607, 307 P.3d 1034, ¶¶ 11–15 (Ct. App. 2013) (court rejected defendant's argument that use of disjunctive "or" in A.R.S. § 13–2501(1) to define contraband described separate crimes with different elements, and instead held all the items listed by name are articles "whose use or possession would endanger the safety, security, or preservation of order in a correctional facility," thus promoting prison contraband is one offense with different ways of committing it, rather that several separate offenses with different elements; court therefore held promoting prison contraband as Class 5 felony under A.R.S. § 13–2505(F) was lesser-included offense of promoting prison contraband as Class 2 felony).

ARTICLE VII. POST-VERDICT PROCEEDINGS.

RULE 24. POST-TRIAL MOTIONS.

Rule 24.1(b) Motion for new trial—Timeliness.

24.1.b.020 In a death penalty case, there could be three verdicts: a "general" verdict of guilty or not guilty; an aggravation verdict; and a capital (or "death") verdict; in a capital case, this rule requires a defendant to move timely for a new trial after each contested capital-case phase, and does not permit a defendant to wait until a penalty-phase verdict before moving for a new trial on a prior phase of the trial.

State v. Fitzgerald, 232 Ariz. 208, 303 P.3d 519, ¶¶ 10–22 (2013) (jurors found defendant guilty and 2 days later jurors found aggravating factors; approximately 4 months later before penalty phase, defendant filed

motion for new trial challenging both trial and aggravation phase; court held trial court properly ruled it had no jurisdiction because defendant filed more that 10 days after challenged proceedings ended).

Rule 24.1(c)(1) Motion for new trial—Weight of the evidence.

24.1.c.110 The court must uphold the jurors' verdict if there is substantial evidence in the entire record from which a rational trier of fact could have found guilt beyond a reasonable doubt, and may reverse the verdict only if there is a complete absence of probative facts to support the jurors' conclusion.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 74–75 (2013) (court held evidence was sufficient to support jurors' verdict; no indication trial court applied wrong standard).

24.1.c.280 The cumulative error doctrine does not apply to trial errors because, if several actions are not errors in and of themselves, they do not become errors when taken together.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶ 81 (2013) (court declines defendant's invitation to adopt cumulative error doctrine).

RULE 26. JUDGMENT, PRE-SENTENCE REPORT, PRE-SENTENCE HEARING, SENTENCE.

Rule 26.10(b) Pronouncement of judgment and sentence—Pronouncement of sentence.

26.10.b.025 An oral judgment is valid and complete when the trial court pronounces it in open court, and when the transcript and the minute entry do not agree, the question is which one accurately reflects what the trial court said; when the appellate court is able to determine this from the record, no remand is necessary, but if unable to do so, a remand will be necessary.

State v. Ovante, 231 Ariz. 180, 291 P.3d 974, ¶¶ 37–39 (2013) (trial court said orally that sentences would be consecutive, but minute entry provided they would be concurrent; because court was able to resolve conflict by reviewing record, no remand was necessary).

ARTICLE VIII. APPEAL AND OTHER POST-CONVICTION RELIEF.

RULE 30. APPEALS FROM NON-RECORD COURTS.

SECTION 30A. SUPERIOR COURT RULES OF APPELLATE PROCEDURE—CRIMINAL.

Rule 2(d) Record of proceedings—Trial de novo when record is insufficient.

2.d.010 A superior court should order a trial *de novo* if the record is insufficient to determine the issues.

Whillock v. Bee, 232 Ariz. 139, 302 P.3d 664, ¶¶ 6–8 (Ct. App. 2013) (defendant filed timely notice of appeal, then filed request for trial *de novo,* which court denied; court held trial court erred in considering defendant's request for trial *de novo* as his appeal and then refusing to allow defendant to file appellate memorandum).

Rule 7(c) Record on appeal—Content of the record on appeal.

7.c.010 Although Rule 7(c)(9) provides that the record on appeal shall consist of originals or certified copies of the recording or certified transcript of the trial, as the Superior Court may require, Rule 32.4(d) provides, for a petition for post-conviction relief, if the trial court proceedings have not been transcribed, the defendant may make a request that certified transcripts be prepared, and the trial court shall order those transcripts it deems necessary to resolve the issues; thus, for a petition for post-conviction relief, the use of the word "transcripts" means written transcripts, and not recordings, so for a petition for post-conviction relief, the defendant is entitled to written transcripts.

Stout v. Taylor, 233 Ariz. 275, 311 P.3d 1088, ¶¶ 8–18 (Ct. App. 2013) (defendant pled guilty in justice court to misdemeanor; defendant requested transcripts of proceedings for his petition for post-conviction relief; court held trial court erred in ordering that audio recordings be provided to defendant).

Rule 7(g) Record on appeal—Trial *de novo* if the record is insufficient for an appeal.

7.g.010 A superior court should order a trial *de novo* if the record is insufficient to determine the issues.

Whillock v. Bee, 232 Ariz. 139, 302 P.3d 664, ¶¶ 6–8 (Ct. App. 2013) (defendant filed timely notice of appeal, then filed request for trial *de novo,* which court denied; court held trial court erred in considering defendant's request for trial *de novo* as his appeal and then refusing to allow defendant to file appellate memorandum).

Rule 8(a)(2) Appellate Memoranda—Time for filing memoranda.

8.a.2.010 The appellant's memorandum shall be filed with the trial court within 60 calendar days from the deadline to file the notice of appeal.

Whillock v. Bee, 232 Ariz. 139, 302 P.3d 664, ¶¶ 6–8 (Ct. App. 2013) (defendant filed timely notice of appeal, then filed request for trial *de novo,* which was procedural motion and thus suspended filing of appellant's memorandum; when court denied request for trial *de novo,* trial court erred in considering defendant's request for trial *de novo* as his appeal and then refusing to allow defendant to file appellate memorandum).

Rule 8(a)(3) Appellate Memoranda—Contents.

8.a.3.010 This rule requires the memoranda to include a short statement of facts with references to the record; when a party submits a written transcript, the party must cite to number of page that contains evidence supporting party's contention; when a party is permitted to submit a recording of the proceedings, the party must, by some reasonable and understandable fashion, provide the superior court on appeal with references to that portion of the recording that contains evidence supporting party's contention.

Jordan v. McClennen, 232 Ariz. 572, 307 P.3d 999, ¶¶ 9–12 (Ct. App. 2013) (court rejected defendant's contention that, when by local rule party is permitted to submit recording of proceedings, party is only required to refer generally to the existence of recording filed with appeal record).

Rule 8(c)(1) Procedural Motions—Nature.

8.c.1.010 A procedural motion is a motion that may determine whether the appeal should go forward.

Whillock v. Bee, 232 Ariz. 139, 302 P.3d 664, ¶¶ 6–8 (Ct. App. 2013) (defendant filed timely notice of appeal, then filed request for trial *de novo,* which was procedural motion and thus suspended filing of appellant's memorandum; when court denied request for trial *de novo,* trial court erred in considering defendant's request for trial *de novo* as his appeal and then refusing to allow defendant to file appellate memorandum).

Rule 8(c)(4) Procedural Motions—Suspension of proceedings.

8.c.4.010 When a procedural motion is pending, further preparation of the record and the deadline for the filing of appellate memoranda are suspended, and perfection of the appeal shall be as provided in Rule 8(c)(5).

Whillock v. Bee, 232 Ariz. 139, 302 P.3d 664, ¶¶ 6–8 (Ct. App. 2013) (defendant filed timely notice of appeal, then filed request for trial *de novo,* which was procedural motion and thus suspended filing of appellant's memorandum; when court denied request for trial *de novo,* trial court erred in considering defendant's request for trial *de novo* as his appeal and then refusing to allow defendant to file appellate memorandum).

RULE 31. APPEAL FROM SUPERIOR COURT.

Rule 31.2(b) Notice of appeal; automatic appeal; joint appeals—Automatic appeal when defendant is sentenced to death.

31.2.b.010 The rule provides for the automatic notice of appeal from a sentence of death.

State v. Ovante, 231 Ariz. 180, 291 P.3d 974, ¶¶ 7–10 (2013) (because defendant pled guilty in capital case, he had right to appeal judgment and sentence).

Rule 31.3 Time for taking appeal.

31.3.020 The notice of appeal shall be filed with the clerk of the trial court within 20 days after the entry of judgment and sentence; "entry of judgment and sentence" occurs when the defendant is sentenced in open court and not when the clerk of the court files the minute entry documenting the judgment and sentence.

State v. Montgomery, 233 Ariz. 341, 312 P.3d 140, ¶¶ 7–12 (Ct. App. 2013) (defendant was sentenced on 8/16; clerk filed minute entry 8/19; defendant filed notice of appeal Monday, 9/09; court held notice of appeal was untimely, thus it did not have jurisdiction to consider appeal).

31.3.021 The notice of appeal shall be filed with the clerk of the trial court within 20 days after the entry of judgment and sentence; "entry of judgment and sentence" occurs when the clerk of the court files the minute entry documenting the judgment and sentence and not when the defendant is sentenced in open court.

State v. Cooney, 233 Ariz. 335, 312 P.3d 134, ¶ 4 (Ct. App. 2013) (Div. 2) (defendant was sentenced on 2/13; clerk filed minute entry 2/15; defendant filed notice of appeal Tuesday, 3/06; court held notice of appeal was timely).

State v. Whitman, 232 Ariz. 60, 301 P.3d 226, ¶¶ 2–6, 23 (Ct. App. 2013) (Div. 2) (defendant was sentenced on 12/07; clerk filed minute entry 12/09; defendant filed notice of appeal Wednesday, 12/28; court held notice of appeal was timely).

Rule 31.17(b) Disposition and ancillary orders—Disposition, in general.

31.17.b.050 When a convicted defendant dies before the appellate court has decided the direct appeal, the death abates the prosecution from the outset, and the conviction is set aside.

State v. Griffin, 121 Ariz. 538, 539, 592 P.d. 372, 373 (1979) (defendant died while appeal was pending; court held death abated appeal and conviction; had already paid fines and restitution; court said it would not resolve whether death should result in order for reimbursement of fines and restitution).

31.17.b.060 When the appellate court has affirmed the defendant's conviction on direct appeal and the defendant dies before the courts have resolved the defendant's petition for post-conviction relief, the death does not abate the prosecution or the conviction, thus the conviction is not set aside.

State v. Glassel, 233 Ariz. 353, 312 P.3d 1119, ¶¶ 5–13 (2013) (in 2005, Arizona Supreme Court affirmed defendant's judgment and sentence; in 2010, defendant filed petition for post-conviction relief, in January 2013, defendant died).

RULE 32. OTHER POST-CONVICTION RELIEF.

Rule 32.1(e) Scope of remedy—Newly-discovered evidence.

32.1.e.011 To warrant post-conviction relief based on newly-discovered evidence, the material must meet five requirements, the **first** of which is that the evidence appears on its face to have existed at the time of trial, but was not discovered until after trial and could not have been discovered until after trial.

State v. Medina, 232 Ariz. 391, 306 P.3d 48, ¶¶ 10–14 (2013) (because defendant could have discovered changes in witness's testimony before trial, and because witness now had Alzheimer's disease and thus was not credible witness, trial court did not abuse its discretion in denying petition for post-conviction relief).

32.1.e.015 To warrant post-conviction relief based on newly-discovered evidence, the material must meet five requirements, the **fifth** of which is that the evidence must be such that it probably would have altered the verdict, finding, or sentence if known at the time of the trial.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 76–80 (2013) (during juror deliberations, possible suspect reappeared and defendant's attorney deposed him, at which time he invoked his right to remain silent, and said he would refuse to testify; because jurors already knew that person had absconded despite having been subpoenaed, it was unlikely that evidence would have altered jurors' verdict).

Rule 32.1(g) Scope of remedy—Significant change in the law.

32.1.g.010 A "significant change in the law" will occur when an appellate court overrules previously binding case law or when a statutory or constitutional amendment makes a definite break from prior case law, but does not occur when a case merely interprets a statutory or constitutional provision already in effect.

State v. Escareno-Meraz, 232 Ariz. 586, 307 P.3d 1013, ¶¶ 3–7 (Ct. App. 2013) (court concluded *Martinez v. Ryan,* 132 S. Ct. 1309, L. Ed. d. (2012), did not alter established Arizona law, thus defendant was not entitled to relief in his second petition for post-conviction relief, which he filed 8½ years after court denied his first petition for post-conviction relief).

Rule 32.2(a) Preclusion of remedy—Preclusion.

32.2.a.010 A defendant may not obtain relief on any ground that was not raised, but could have been raised, at trial.

State v. Medina, 232 Ariz. 391, 306 P.3d 48, ¶ 15 (2013) (because defendant could have raised absence of signed warrant at original 1995 trial, he waived issue).

32.2.a.020 A defendant may not obtain relief on any ground that was not raised, but could have been raised, on appeal.

State v. Medina, 232 Ariz. 391, 306 P.3d 48, ¶ 15 (2013) (because defendant could have raised absence of signed warrant in 1999 appeal, he waived issue).

Rule 32.4(d) Commencement of proceedings—Transcript preparation.

32.4.d.010 This rule provides that, if the trial court proceedings have not been transcribed, the defendant may make a request that certified transcripts be prepared, and the trial court shall order those transcripts it deems necessary to resolve the issues; the use of the word "transcripts" means written transcripts, and not recordings.

Stout v. Taylor, 233 Ariz. 275, 311 P.3d 1088, ¶¶ 8–18 (Ct. App. 2013) (defendant pled guilty in justice court to misdemeanor; defendant requested transcripts of proceedings for his petition for post-conviction relief; court held trial court erred in ordering that audio recordings be provided to defendant).

ARTICLE IX. POWERS OF COURT.

RULE 39. VICTIMS' RIGHTS.

Rule 39(b)(11) Victims' rights—Victims' rights—Peace officer.

39.b.11.020 This rule gives the victim the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.

State ex rel. Montgomery v. Welty (Koontz), 233 Ariz. 8, 308 P.3d 1159, ¶¶ 1–20 (Ct. App. 2013) (victim's date of birth is personal identifying information that is protected from disclosure by constitution, statute, and rule), *vac'd,* ___ Ariz ___, ___ P.3d ___ (Mar. 26, 2014).

ARTICLE X. ADDITIONAL RULES.

SPECIAL ACTIONS.

Rule 1 Nature of the special action.

1.sa.100 Special action review **is available** when the party does not have an equally plain, speedy, and adequate remedy by appeal.

Sanchez v. Ainley, 233 Ariz. 14, 308 P.3d 1165, ¶ 1 (Ct. App. 2013) (question whether defendant was entitled to probable cause determination for aggravating circumstances under Rule 13.5(c)/*Chronis* after grand jurors had already returned True Bill on aggravating circumstances involved challenge to grand jury proceedings that would not be reviewable on appeal, thus special action review was appropriate).

Jordan v. McClennen, 232 Ariz. 572, 307 P.3d 999, ¶ 6 (Ct. App. 2013) (because defendant was convicted in justice court and appealed to superior court, defendant had no right to appeal to court of appeals, thus special action was only way of having court of appeals consider issue).

State v. Fields (Chase), 232 Ariz. 265, 304 P.3d 1088, ¶ 6 (Ct. App. 2013) (because state would not be able to appeal after trial question of whether grand jurors should choose which interpretation of AMMA to follow, special action review was appropriate).

1.sa.103 Once a party appeals from a municipal or justice court to superior court, because the party does not have the right to appeal further to the court of appeals, the only means of obtaining review by the court of appeals is by petition for special action.

State v. Harris (Shilgevorkyan), 232 Ariz. 76, 301 P.3d 580, ¶ 7 (Ct. App. 2013) (defendant was charged in justice court, which dismissed charges; state appealed to superior court, and thus had no right of appeal to court of appeals).

State ex rel. Montgomery v. Harris (Maxwell), 232 Ariz. 34, 301 P.3d 200, ¶ 3 (Ct. App. 2013) (defendant committed offense in January 2011; justice court denied defendant request to be sentenced under A.R.S. § 28–1382(I), which became effective December 31, 2011; defendant appealed to superior court, which reversed justice court; because state did not have right to appeal to court of appeals, petition for special action was only means of review).

1.sa.300 Special action is appropriate when the matter (1) involved only a legal question, (2) was of first impression, (3) was of statewide importance, (4) was likely to recur, or (5) had received inconsistent decisions by different trial courts.

State v. Bernini (Copeland), 233 Ariz. 170, 310 P.3d 46, ¶ 3 (Ct. App. 2013) (whether crime committed with deadly weapon or dangerous instrument to which defendant pleads and state agrees to dismiss allegation that defendant committed "dangerous offense" under § 13–704(A) was considered dangerous offense for purpose of § 13–907 (1) involved only a legal question and (4) was likely to recur, thus special action review was appropriate).

State ex rel. Montgomery v. Welty (Koontz), 233 Ariz. 8, 308 P.3d 1159, ¶ 5 (Ct. App. 2013) (whether victim's date of birth is personal identifying information that is protected from disclosure by constitution, statute, or rule (2) was of first impression, (3) was of statewide importance, and (4) was likely to recur, thus special action review was appropriate), *vac'd,* ___ Ariz ___, ___ P.3d ___ (Mar. 26, 2014).

Jordan v. McClennen, 232 Ariz. 572, 307 P.3d 999, ¶ 6 (Ct. App. 2013) (question of proper form for citation in appellate brief for lower court appeal (1) involved only a legal question, (2) was of first impression, and (4) was likely to recur, thus special action review was appropriate).

State v. Fields (Chase), 232 Ariz. 265, 304 P.3d 1088, ¶ 6 (Ct. App. 2013) (interpretation of AMMA (1) involved only a legal question, (2) was of first impression, and (4) was likely to recur, thus special action review was appropriate).

State v. Harris (Shilgevorkyan), 232 Ariz. 76, 301 P.3d 580, ¶ 7 (Ct. App. 2013) (interpretation of A.R.S. § 28–1381(A)(3) involved only a legal question, thus special action review was appropriate).

Arizona State Hospital v. Klein, 231 Ariz. 467, 296 P.3d 1003, ¶¶ 9–10 (Ct. App. 2013) (whether Rule 702 applied to discharge proceeding under A.R.S. § 36–3714 (1) involved only a legal question, and (4) was likely to recur, thus special action review was appropriate).

ARTICLE X. ADDITIONAL RULES.

RULES OF THE ARIZONA SUPREME COURT.

RULES OF PROFESSIONAL CONDUCT.

Rule 42, ER 1.1 Competence.

1.01.010 A lawyer shall provide competent representation, which requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 25–30 (2013) (evidence supported panel's finding that Alexander lacked legal knowledge to represent Thomas and Arpaio in RICO lawsuit, and further showed Alexander did not obtain the necessary competence through study and association with more experienced attorneys during course of lawsuit, thus panel correctly found Alexander violated this ER by accepting assignment beyond her capabilities).

Rule 42, ER 1.7(a)(1)Conflict of interest: Current Clients—Two or more clients.

1.07.a.1.020 A conflict of interest exists if the representation of one client will be directly adverse to another client.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 31–33 (2013) (because MCAO continued to represent Board of Supervisors while it maintained RICO lawsuit against certain members of the Board, Alexander violated this ER by perpetuating RICO lawsuit against Board).

Rule 42, ER 1.7(a)(2)Conflict of interest: Current Clients—Interests of others.

1.07.a.2.010 A lawyer shall not represent a client if representation of the client may be materially limited by the lawyer's own interest.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 50–51 (2013) (record does not contain clear and convincing evidence Aubuchon's personal interests materially limited her representation, thus evidence did not support this charge).

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 34–35 (2013) (because evidence did not show Alexander pursued RICO lawsuit for reasons of personal animus or self-interest, and because there was no showing that Thomas's animosity toward RICO defendants threatened either Alexander's loyalty to Thomas and Arpaio or confidential information, court rejected panel's finding that Alexander violated ER 1.7(a)(2)).

Rule 42, ER 3.1 Meritorious claims and contentions.

3.01.010 A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 12–21 (2013) (Alexander did not dispute panel's finding that RICO lawsuit was frivolous, but contends she was unaware lawsuit was frivolous and acted in good faith by relying on representations by more experienced MCAO lawyers; court held Alexander had duty to examine case to determine for herself whether lawsuit was frivolous, and because she did not do so, panel was justified in finding that Alexander knowingly maintained frivolous lawsuit).

Rule 42, ER 3.3(a) Candor toward the tribunal—False or misleading statements.

3.03.a.010 A lawyer shall not make a false or misleading statement of fact or law to a court, offer false evidence, or fail to disclose a material fact or controlling legal authority.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 50–51 (2013) (record does not contain clear and convincing evidence Aubuchon knowingly made false statements describing Judge Fields, thus evidence did not support this charge).

Rule 42, ER 3.4(c) Fairness to Opposing Party and Counsel—Obligation under rules of tribunal.

3.04.a.010 A lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 36–38 (2013) (panel found Alexander violated ER 3.4(c) by basing RICO lawsuit in part because some defendants had initiated bar complaints against Thomas and other MCAO lawyers, even though Rule 48(l) prohibits civil lawsuits against bar complainants; record does not show Alexander knew Rule 48(l) would have prohibited such a lawsuit, thus record shows at most Alexander

may have acted negligently by maintaining RICO, so court rejected panel's finding that Alexander knowingly violated ER 3.4(c)).

Rule 42, ER 3.8(d) Special responsibilities of a prosecutor.

3.08.020 The prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 23–31 (2013) (Aubuchon obtained indictments for 44 misdemeanor counts knowing statute of limitations had run).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 40–49 (2013) (Aubuchon filed criminal complaint without probable cause against assigned judge for purpose of avoiding scheduled hearing).

Rule 42, ER 4.4(a) Respect for Rights of Others—Rights of another person.

4.04.a.010 A lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the rights of such a person.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 22–24 (2013) (at most, evidence showed Alexander pursued RICO lawsuit in order to please Thomas, thereby furthering her career; whatever Thomas's and Aubuchon's motives may have been in pursuing RICO lawsuit, they may not be attributed to Alexander without evidence she shared those motives, and there was no showing Alexander shared those motives; thus court rejected panel's finding that Alexander violated ER 4.4(a)).

Rule 42, ER 8.4(b) Misconduct—Criminal act.

8.04.b.010 A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 50–51 (2013) (Aubuchon did not compel MCSO deputy to commit perjury, thus evidence did not support this charge).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 50–51 (2013) (although Aubuchon filed criminal complaint without probable cause against assigned judge for purpose of avoiding scheduled hearing, those acts did not constitute conspiracy to prevent judge from enjoying constitutional rights, thus evidence did not support this charge).

Rule 42, ER 8.4(c) Misconduct—Conduct involving dishonesty, fraud, deceit, or misrepresentation.

8.04.c.010 A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 50–51 (2013) (no clear and convincing evidence Aubuchon knowingly misrepresented status of grand jury inquiry to special prosecutor, thus evidence did not support this charge).

Rule 42, ER 8.4(d) Misconduct—Conduct prejudicial to the administration of justice.

8.04.d.010 A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 23–31 (2013) (Aubuchon prejudiced administration of justice by obtaining indictments for 44 misdemeanor counts knowing statute of limitations had run).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 32–36 (2013) (Aubuchon prejudiced administration of justice by attempting to interview judges, thereby seeking to ascertain their thought processes and intimidate them).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 37–39 (2013) (Aubuchon prejudiced administration of justice by filing RICO lawsuit against defendant judges who were absolutely immune from civil damage lawsuit based on their judicial acts).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 40–49 (2013) (Aubuchon prejudiced administration of justice by filing criminal complaint without probable cause against assigned judge for purpose of avoiding scheduled hearing).

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 39–43 (2013) (panel found Alexander violated ER 8.4(d) by maintaining RICO lawsuit against defendant judges; court rejected Alexander's claim that she did not violate this ER because no evidence suggested she intended to retaliate against judges; court noted this ER does not require mental state other than negligence; court held defendant judges were absolutely immune from claims alleged in RICO lawsuit; thus Alexander violated this ER by maintaining RICO lawsuit against defendant judges).

Rule 54(d)(2) Grounds for Discipline—Failure to furnish information.

54.d.2.010 Grounds for discipline include the failure to furnish information or to respond promptly.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ xx–xx (2013) (panel found Alexander failed to respond promptly to bar counsel's screening investigation letter and instead filed numerous "meritless, frivolous, and dilatory motions, replies, and special actions"; Alexander did not contest that her filings were "meritless, frivolous, and dilatory," but instead argued that her attorneys filed those filings, thus she should not be held responsible; court held lawyer may not insulate himself or herself from application of this rule, and because Alexander expressly permitted her attorney to file all these documents, she was responsible for her attorneys' efforts to burden the investigation).

Rule 60(a) Disciplinary sanctions—Types and forms of sanctions.

60.a.010 The court may impose the following sanctions on an attorney: (1) disbarment; (2) suspension; (3) censure; (4) informal reprimand; (5) probation; and (6) restitution.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶¶ 53–59 (2013) (Aubuchon did not challenge panel's determination that disbarment is presumptive sanction or its finding of six aggravating factors; instead she argues panel did not give appropriate weight to mitigation evidence; court rejects that argument and Aubuchon's remaining argument, and concludes disbarment is appropriate sanction).

60.a.020 In determining the appropriate sanction, the court should consider **four** factors, the **first** of which is the duty violated.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶ 51 (2013) (Alexander violated duty she owed to public and to legal system by maintaining RICO lawsuit she knew lacked legal and factual merit).

60.a.030 In determining the appropriate sanction, the court should consider **four** factors, the **second** of which is the attorney's mental state.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 52–53 (2013) (Alexander maintained RICO lawsuit knowing it lacked legal and factual merit).

60.a.040 In determining the appropriate sanction, the court should consider **four** factors, the **third** of which is the actual or potential injury caused by the misconduct.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 53–56 (2013) (panel determined Alexander's maintenance of RICO lawsuit caused serious injury to both RICO defendants and to legal process).

60.a.050 In determining the appropriate sanction, the court should consider **four** factors, the **fourth** of which is the existence of aggravating and mitigating circumstances.

In re Alexander, 232 Ariz. 1, 300 P.3d 536, ¶¶ 57–66 (2013) (because Alexander's knowing maintenance of RICO lawsuit caused serious injury to both RICO defendants and to legal process, suspension was presumptive sanction; panel found following aggravating factors: (1) pattern of misconduct; (2) multiple offenses; (3) bad faith obstruction of disciplinary process by intentionally failing to comply with rules or orders; and (4) refusal to acknowledge wrongful nature of conduct; and found one mitigating factor: absence

of prior disciplinary record; court agreed record showed aggravating factors (2), (3), and (4); court agreed with Alexander that evidence did not support aggravating factor (1); balancing aggravating and mitigating factors, court concluded suspension of 6 months was appropriate).

Rule 64(a) Reinstatement; eligibility—General standard—Proof of rehabilitation.

64.a.010 A suspended or disbarred lawyer must show by clear and convincing evidence that the lawyer has been rehabilitated or overcome his or her disability, or both.

In re Johnson, 231 Ariz. 556, 298 P.3d 904, ¶¶ 8–9 (2013) (court concluded attorney has overcome weakness that caused misconduct).

64.a.020 A lawyer, to prove rehabilitation, must (1) identify the weakness that caused the misconduct and (2) must demonstrate that he or she has overcome that weakness.

In re Johnson, 231 Ariz. 556, 298 P.3d 904, ¶¶ 10–21 (2013) (hearing panel found attorney, through introspection and reflection, identified weakness that produced misconduct and took necessary steps to overcome those weaknesses with self-regulated discipline).

64.a.030 Although a lawyer, to prove rehabilitation, must (1) identify the weakness that caused the misconduct and (2) must demonstrate that he or she has overcome that weakness, the lawyer does not have to establish what was or might have been the underlying cause of the identified weakness that led to the misconduct.

In re Johnson, 231 Ariz. 556, 298 P.3d 904, ¶ 22 (2013) (court concluded hearing panel seemingly imposed that requirement, and because court found no other basis for denying attorney's application for reinstatement to active practice of law, court granted application for reinstatement).

CODE OF JUDICIAL CONDUCT—RULE 81.

Rule 2.11(A)(1). Disqualification—Personal bias or personal knowledge.

r.2.11.A.1.010 A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might be questioned, including when the judge has a personal bias or prejudice concerning a party or a party's lawyer.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶ 16 (2013) (court state judge is not biased or prejudiced merely because judge has made rulings in same or related proceedings).

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶ 17 (2013) (Aubuchon contended presiding disciplinary judge exhibited personal bias against her by using "venomous" language in opinion and order; court noted: Judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. And although the panel's subsequent opinion sharply criticizes Aubuchon, it does not reflect a deep-seated favoritism or antagonism that would make fair judgment impossible. Expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even . . . judges, sometimes display" do not establish bias or partiality. But to argue that judges must desist from forming strong views about a case is to blink from the reality that judicial decisions inescapably require judgment. Dissatisfaction with a judge's views on the merits of a case may present ample grounds for appeal, but it rarely—if ever—presents a basis for recusal.).

Rule 2.11(A)(6)(d). Disqualification—Previously presided over matter in another court.

r.2.11.A.6.d.010 A judge should disqualify himself or herself if the judge previously presided as a judge over the matter in another court.

In re Aubuchon, 233 Ariz. 62, 309 P.3d 886, ¶ 15 (2013) (before being appointed presiding disciplinary judge, that judge was judge in various criminal matters for which Aubuchon was prosecutor; court held "matter" at issue was disciplinary complaint against Aubuchon and not the criminal cases against others).

Rule 31.13(c) Appellate briefs—Contents—Fundamental error.

31.13.c.fe.030 If the defendant **did not** object at trial, appellate court will review only for **fundamental error,** and **will grant** relief if the defendant proves fundamental, prejudicial error.

State v. James, 231 Ariz. 490, 297 P.3d 182, ¶¶ 8–18 (Ct. App. 2013) (defendant was charged with (aggravated) assault under A.R.S. § 13–1203(2), which required that defendant intentionally place another in reasonable apprehension of imminent physical injury; trial court instructed jurors defendant must intentionally, knowingly, or recklessly place victim in reasonable apprehension of imminent physical injury; court held giving that instruction was fundamental error).

31.13.c.fe.050 If the defendant **did not** object at trial to a **trial procedure,** the appellate court will review only for **fundamental error,** and **will not grant** relief if the defendant fails to prove fundamental, prejudicial error.

State v. Medina, 232 Ariz. 391, 306 P.3d 48, ¶¶ 65–67 (2013) (victim's daughter was in elevator with lawyer and juror when lawyer abruptly walked out of elevator; daughter commented about lawyer's compliance with admonition, but did not realize at time that person to whom she spoke was juror, and they did not discuss anything about case; trial court interviewed daughter but not juror; defendant's attorney did not object to trial court's decision to do nothing further; defendant himself objected and moved for new trial, which trial court denied; court held defendant was bound by his attorney's strategic decision not to object, and because defendant's attorney did not object, court reviewed for fundamental error; because of brevity of contact between daughter and juror and absence of any discussion about case or defendant, court held there was no error, much less fundamental error).

State v. Ovante, 231 Ariz. 180, 291 P.3d 974, ¶¶ 23–28 (2013) (because defendant did not object to prosecutor's remarks, court reviewed for fundamental error only and found none).

31.13.c.fe.070 If the defendant **did not** object at trial to the giving or the refusal to give a **jury instruction,** the appellate court will review only for **fundamental error,** and **will not grant** relief if the defendant fails to prove fundamental, prejudicial error.

State v. Reyes, 232 Ariz. 468, 307 P.3d 35, ¶¶ 3–7 (Ct. App. 2013) (trial court granted defendant's motion for judgment of acquittal for two counts, on appeal, defendant contended trial court was required to instruct jurors about the dismissal and that dismissals should not affect their deliberations; because defendant did not object below, court reviewed for fundamental error only; court noted various cases when such instruction was given did not require that it be given; fact that jurors found defendant guilty of lesser-included offense for one charge and hung on another charge showed defendant was not prejudiced).

State v. Delgado, 232 Ariz. 182, 303 P.3d 76, ¶¶ 25–26 (Ct. App. 2013) (because defendant requested lesser-included offense instruction he now claims was error, defendant invited any error and court would not reverse conviction).

State v. Boyston, 231 Ariz. 539, 298 P.3d 887, ¶¶ 65–66 (2013) (trial court instructed on first- and second-degree murder; defendant contended trial court erred in not instructing on manslaughter; because defendant never requested manslaughter instruction, court reviewed for fundamental error only; because jurors found defendant guilty of first-degree murder, any error in not giving manslaughter instruction was harmless).

State v. Ovante, 231 Ariz. 180, 291 P.3d 974, ¶¶ 33–36 (2013) (because defendant did not object to jury instruction, court reviewed for fundamental error only and found none).

31.13.c.fe.090 The imposition of an illegal sentence is fundamental error.

State v. McDonagh, 232 Ariz. 247, 304 P.3d 212, ¶ 7 (Ct. App. 2013) (defendant was convicted of four counts of aggravated DUI: (1) driving while impaired on suspended license; (2) driving with BAC of 0.08 or more on suspended license; (3) driving while impaired with two or more prior DUI violations; and (4) driving with BAC of 0.08 or more with two or more prior DUI violations; trial court imposed four fines, which were thus

essentially consecutive; court held trial court may impose only one fine, and said imposition of unauthorized fine renders criminal sentence illegal, and illegal sentence is fundamental error).

State v. Burns, 231 Ariz. 563, 298 P.3d 911, ¶¶ 7–9 (Ct. App. 2013) (for defendant on lifetime probation who was then convicted of subsequent felony, trial court must revoke probation and sentence defendant to prison on prior offense, and it was fundamental error not to do so).

State v. Lopez, 231 Ariz. 561, 298 P.3d 909, ¶ 3 (Ct. App. 2013) (entering criminal restitution order at time of sentencing is not permitted by statute and is fundamental error).

Rule 31.13(c) Appellate briefs—Contents—Harmless error.

31.13.c.he.010 When a defendant **did** object at trial and thereby preserved an issue for appeal, if the appellate court concludes there was error, the court **will reverse** unless the state proves beyond a reasonable doubt the error did not contribute to or affect the verdict or sentence.

State v. Vasquez, 233 Ariz. 302, 311 P.3d 1115, ¶¶ 19–21 (Ct. App. 2013) (defendant's brother (codefendant) granted interview to television station to "clear everything out," and therefore acknowledged testimonal intent and that he would reasonably expect statement to be used prosecutorially; because statement was testimonial, its admission violated defendant's right of confrontation, thus trial court should have granted defendant's motion to sever; court concludes admission of brother's statement was not harmless).

State v. Yazzie, 232 Ariz. 615, 307 P.3d 1042, ¶¶ 10–12 (Ct. App. 2013) (court held trial court erred in not instructing jurors defendant must either have known or should have known his privilege to drive had been suspended, revoked, canceled, or refused, and further held error was not harmless).

31.13.c.he.020 When a defendant **did** object at trial and thereby preserved an issue for appeal, if the appellate court concludes there was error, the court **will not reverse** if the state proves beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence.

State v. Perez, 233 Ariz. 38, 308 P.3d 1189, ¶¶ 4–7 (Ct. App. 2013) (trial court instructed with following language that Arizona Supreme Court had specifically disapproved: "It is enough if the felony and the killing were part of the same series of events"; because evidence showed defendant killed victims while he was in process of robbing victims and thus murder occurred "in the course of and in furtherance of the offense" or armed robbery, any error in giving instruction was harmless).

Rule 31.13(c) Appellate briefs—Contents—Structural error.

31.13.c.se.010 The Arizona Supreme Court has described **structural error** as error that (1) deprived the defendant of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and error that (2) affected the entire conduct of the trial from beginning to end, and thus tainted the framework within which the trial proceeded; the Arizona Supreme Court has stated this test in the conjunctive in some cases and in the disjunctive in others.

State v. Medina, 232 Ariz. 391, 306 P.3d 48, ¶¶ 65–67 (2013) (victim's daughter was in elevator with lawyer and juror when lawyer abruptly walked out of elevator; daughter commented about lawyer's compliance with admonition, but did not realize at time that person to whom she spoke was juror, and they did not discuss anything about case; trial court interviewed daughter but not juror; defendant's attorney did not object to trial court's decision to do nothing further; because defendant did not allege juror was actually biased and did not cite to anything in record that showed bias, court rejected defendant's contention this was structural error).

Rule 31.13(c) Appellate briefs—Contents—Appellate review.

31.13.c.ar.070 Because the appellant is required to brief and argue **on appeal** all issues in the opening brief, and because Rule 31.13(c)(3) limits the reply brief to matters raised in the answering brief, the appellate court will not consider an issue the appellant raises for the first time in a **reply brief** or **supplemental brief.**

State v. Cooperman, 232 Ariz. 347, 306 P.3d 4, ¶ 20 (2013) (because state did not raise argument until supplemental brief, court did not address it).

31.13.c.ar.090 Arguments raised for the first time **on appeal** or during oral argument are generally waived.

March 26, 2014

U.S. Const. amend. 4 Search and seizure—Investigative stop and reasonable suspicion.

us.a4.ss.is.030 An officer may stop and detain a person for investigatory purposes if the totality of the circumstances gives the officer a reasonable, articulable suspicion that a particular person has committed, was committing, or was about to commit a crime or a traffic violation.

State v. Whitman, 232 Ariz. 60, 301 P.3d 226, ¶¶ 32–34 (Ct. App. 2013) (officer testified roadway had room for vehicle to get by on each side, and because defendant was driving in middle of roadway, oncoming vehicle would not be able to get by defendant's vehicle; this showed defendant violated statute and thus gave officer sufficient grounds to stop defendant's vehicle).

us.a4.ss.is.040 The violation of a traffic law provides sufficient grounds to stop a vehicle.

State v. Moran, 232 Ariz. 528, 307 P.3d 95, ¶¶ 4–7 (Ct. App. 2013) (officer testified defendant was driving 50 miles per hour where posted speed limit was 35 miles per hour).

State v. Whitman, 232 Ariz. 60, 301 P.3d 226, ¶¶ 32–34 (Ct. App. 2013) (A.R.S. § 28–721(A) provides that, on all roadways of sufficient width, a person shall drive a vehicle on the right half of the roadway; officer testified roadway had room for vehicles to get by on each side, and because defendant was driving in middle of roadway, oncoming vehicle would not be able to get by defendant's vehicle; defendant thus violated statute, which gave officer sufficient grounds to stop defendant's vehicle).

us.a4.ss.is.110 If there exists an objectively permissible reason to detain a person, it does not matter what the officer's subjective reasons are:

State v. Whitman, 232 Ariz. 60, 301 P.3d 226, ¶¶ 32–37 (Ct. App. 2013) (officer testified to facts showing following violations: (1) defendant had malfunctioning taillight; (2) defendant failed to come to complete stop at stop sign; and (3) defendant was driving in middle of roadway; officer stopped defendant based only on (1) and (2); defendant offered no testimony to rebut (3); because violation of (3) gave officer legal authority to stop defendant's vehicle, it did not matter what officer's subjective basis for stop was).

U.S. Const. amend. 4 Search and seizure—Investigative stop and weapons search.

us.a4.ss.ws.010 If an officer has a consensual encounter with a person, the officer may conduct a pat-down search if the officer has an articulable and objectively reasonable belief that the person poses a danger to the officer or others.

State v. Serna, 232 Ariz. 515, 307 P.3d 82, ¶¶ 7–25 (Ct. App. 2013) (at 10:00 p.m., officers saw defendant and woman in area described as "high crime" and "gang neighborhood" where "violence takes place" and they receive "numerous drug complaints"; when defendant walked away, officer called to him, and he walked toward officers; as officer talked to defendant, he observed bulge in defendant's waistband and asked him if he had any firearms or illegal drugs; defendant said yes, so officer told defendant to put his hands on his head and removed gun from holster on defendant's waistband; court held, because officer approached defendant at night in gang-ridden, dangerous, and violent area, and noticed bulge in defendant's pants, officers were permitted to conduct pat-down search, even though contact was consensual).

us.a4.ss.ws.020 If an officer has the right to stop and detain a person for investigation and has an articulable and objectively reasonable belief that the person poses a danger to the officer or others, the officer may search for weapons, the scope of which is limited to that necessary to protect the officer and the others.

State v. Baggett, 232 Ariz. 424, 306 P.3d 81, ¶¶ 13–14 (Ct. App. 2013) (officers stopped defendant while he was riding his bicycle on sidewalk; stop was at 2:39 a.m. in area known for high crime activity; defendant appeared nervous and was evasive when asked how he acquired backpack; backpack was size that could

contain weapon; court held trial court did not abuse discretion in finding officers had reasonable grounds to perform weapons pat-down, which included separating defendant from backpack).

U.S. Const. amend. 4Search and seizure—Arrest—Probable cause.

us.a4.ss.a.pc.010 An officer has probable cause to arrest a person when reasonably trustworthy information and circumstance would lead a person of reasonable caution to believe that an offense was committed and that the person committed it.

State v. Moran, 232 Ariz. 528, 307 P.3d 95, ¶¶ 8–11 (Ct. App. 2013) (during traffic stop, officer saw defendant had watery and bloodshot eyes, slurred speech, and odor of alcohol; defendant could not produce driver's license, and social security number he gave actually belonged to his wife; when asked for wife's social security number, defendant produced number that actually belonged to him; HGN test showed four of six cues; officer could not check fifth and sixth cues because defendant's eyes ceased to follow stimulus; court held this provided probable cause to arrest for DUI).

U.S. Const. amend. 4Search and seizure—Plain view, smell, or feel.

us.a4.ss.pvsf.010 If an officer has the right to be in a certain place, the officer may seize any items in plain view or smell if the evidentiary value of which is immediately apparent.

State v. Baggett, 232 Ariz. 424, 306 P.3d 81, ¶¶ 13–20 (Ct. App. 2013) (court held officers had legal right to stop defendant while he was riding his bicycle on sidewalk at night without headlight; because of time of night and area known for high crime activity, and because defendant appeared nervous and was evasive when asked how he acquired backpack, and because backpack was size that could contain weapon, officers had legal right to separate defendant from backpack; when officer moved backpack, they smelled odor of marijuana; officers thus had right to search backpack for marijuana).

U.S. Const. amend. 4Search and seizure—Community caretaking or caretaker function.

us.a4.ss.ccf.010 The community caretaking or caretaker function justifies a warrantless stop or entry if (1) a prudent and reasonable officer would have perceived a need to act in the proper discharge of the community caretaking or caretaker function, and (2) the intrusion is suitably circumscribed to serve the exigency that prompted it.

State v. Becerra, 231 Ariz. 200, 291 P.3d 994, ¶¶ 4–11 (Ct. App. 2013) (one taillight was not working on defendant's vehicle, so officer stopped vehicle; although this would not be violation of statute for taillights, officer testified he stopped vehicle because he believed vehicle's condition was unsafe in that another driver behind that vehicle might not be able to perceived accurately vehicle's position and could collide with it; court held this justified stop).

U.S. Const. amend. 5Double jeopardy.

us.a5.dj.060 When the jurors are discharged without reaching a verdict, jeopardy terminates unless there is a showing of "manifest necessity," which will happen only if the record reflects the jurors were genuinely deadlocked.

State v. Espinoza, 233 Ariz. 176, 310 P.3d 52, ¶¶ 5–16 (Ct. App. 2013) (defendant was charged with aggravated robbery, and jurors were instructed on both aggravated robbery and theft of means of transportation as lesser-included offense; jurors sent note indicating they "may be hung" on aggravated robbery, so trial court instructed they could consider lesser offense; jurors found defendant guilty of theft of means of transportation; court reversed on appeal because theft of means of transportation is not lesser-included offense of aggravated robbery; state sought to retry defendant for aggravated robbery; court held there was no showing jurors were genuinely deadlocked on aggravated robbery charge in first trial, thus there was no showing of "manifest necessity," so retrial was barred by double jeopardy).

us.a5.dj.070 The guarantee against double jeopardy bars the government from prosecuting a defendant twice for the same offense.

State v. Braidick, 231 Ariz. 357, 295 P.3d 455, ¶¶ 6–12 (Ct. App. 2013) (defendant was charged with Count 1, kidnapping with intent to inflict death, physical injury, or sexual offense, and Count 2, kidnapping with intent to place victim in reasonable apprehension of imminent physical injury; jurors found defendant guilty of each count as lesser-included offense of kidnapping (unlawful imprisonment); court held these two counts were actually only one offense, and thus vacated one count as violation of double jeopardy).

us.a5.dj.210 Using a prior conviction to enhance a subsequent offense does not violate double jeopardy.

State v. Cooney, 233 Ariz. 335, 312 P.3d 134, ¶¶ 10–15 (Ct. App. 2013) (defendant was charged with DUI with 84 months of prior DUI convictions).

U.S. Const. amend. 5Self-incrimination—Right to refuse to make statements that incriminate.

us.a5.ri.070 A court may not aggravate a defendant's sentence because the defendant shows lack of contrition, but because suspension of sentence and placement on probation is not a matter of right, the trial court may consider the defendant's refusal to acknowledge guilt in determining whether to place defendant on probation.

State v. Hernandez, 231 Ariz. 353, 295 P.3d 451, ¶¶ 4–9 (Ct. App. 2013) (defendant was found guilty of luring minor for sexual exploitation; defendant declined to make any statements about offense during preparation of presentence report because statements may have incriminated her further; court held trial court was permitted to consider defendant's refusal to discuss offense in determining whether defendant would be successful in treatment program that she would have to attend while on probation).

U.S. Const. amend. 5Self-incrimination—Voluntariness.

us.a5.si.vol.030 Although a suspect's statement is presumptively involuntary and the state has the burden of proving that the statement is voluntary, the state meets its burden if it offers testimony that the confession was obtained without threat, coercion, or promise of immunity or a lesser penalty.

State v. Brown, 233 Ariz. 153, 310 P.3d 29, ¶¶ 4–xx (Ct. App. 2013) (defendant was taken to hospital after being shot in chest during home invasion; 6 hours after surgery, detective interviewed defendant, informed him he was being detained, and gave him *Miranda* warnings; at 2:00 following morning, detective returned, questioned him, and reminded him of rights given; 7 days later while still in hospital, defendant initiated conversation with detective; defendant contended he "was not in a mental condition to comprehend the nature and import of the [*Miranda*] warning" he received; no evidence to support contention that defendant was strongly medicated, in critical condition, or did not understand what was happening; detectives testified defendant was lucid and able to engage in active conversation, and that they made no promises or threats; court held trial court did not abuse discretion in finding defendant's statements were voluntary).

State v. Perez, 233 Ariz. 38, 308 P.3d 1189, ¶¶ 25–27 (Ct. App. 2013) (detective testified defense had initiated conversation, that he made no promises to defendant, he had read defendant *Miranda* warnings, he did not consider interview a "free talk" with normal "free talk" rules; defendant offered no other evidence of police promises or coercion; court held trial court did not err in denying defendant's motion to suppress statements for lack of voluntariness).

us.a5.si.vol.100 In order for a confession to be involuntary within the meaning of the Due Process Clause, the officers must have exercised **coercive pressure** that was not dispelled; thus if the officers made an expressed or implied **promise** of a benefit or leniency, and the defendant's reliance on the promise overcame the defendant's will not to confess, the confession **will be deemed involuntary.**

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 43–45 (2013) (although police did tell defendant he would be able to talk to codefendant, defendant did not show this was promise or *quid pro quo* for talking, or that he relied on that statement; trial court did not abuse its discretion in finding defendant's statement voluntary).

us.a5.si.vol.130 If the defendant has some emotional, mental, or physical defect or deficiency, that will not make a confession involuntary unless the officers know about the defect or deficiency and exploit that defect or deficiency. (*Colorado v. Connelly,* 479 U.S. 157 (1986).)

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 42–45 (2013) (defendant contended his statement was not voluntary because he was withdrawing from heroin; court noted defendant clearly understood and followed questioning, consistently denied police assertions, and presented facts in light most favorable to himself; trial court did not abuse its discretion in finding defendant's statement voluntary).

U.S. Const. amend. 5Self-incrimination—*Miranda.*

us.a5.si.mir.010 *Miranda* does not apply until a suspect is in custody, thus if a suspect asks for an attorney before being taken into custody, that request is not effective to invoke the protections of *Miranda.*

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 35–39 (2013) (police encountered defendant at motel, told him they were investigating crime, and asked him if he would accompany them to station to answer questions; defendant refused to go without his lawyer; police then arrested him on unrelated misdemeanor warrant; court held, because defendant was not in custody when he said he would not go to station without his lawyer, that was not effective to invoke *Miranda* rights).

us.a5.si.mir.220 If a suspect is subjected to custodial interrogation and indicates at any time prior to or during questioning that he or she wishes to remain silent, the interrogation must stop, and officers are not allowed to re-interrogate the suspect within 14 days unless the suspect re-initiates the communication.

State v. Yonkman, 231 Ariz. 496, 297 P.3d 902, ¶¶ 8–17 (2013) (when 15-year-old C. told her mother K. that defendant step-father had molested her, mother called police; on 3/27, police went to defendant's home to question him, and he invoked his right to counsel; several days later, K. called detective and said C. had recanted her allegations, and detective told K. they could close case if defendant took polygraph examination; later that day, defendant called detective and scheduled appointment for 4/01, and detective told him he would not be under arrest, could leave at any time, and prior *Miranda* warnings would remain in effect; defendant appeared at police station and detective reminded him he was not under arrest and could leave at any time; defendant asked what would happen if he asked for an attorney, and detective said they would wait until he obtained one; detective again read defendant *Miranda* warnings and defendant consented to questioning; after about 30 minutes, defendant admitted molesting his step-daughter; court assumed (without deciding) defendant invoked *Miranda* rights on 3/27 and that he was in custody on 4/01; court held detective did not re-initiate conversation, which was 1 or 2 days later, and merely answer call placed by K., and held detective's response was not coercive; and further held defendant's call to detective to schedule interview re-initiate conversation, thus trial court correctly denied defendant's motion to suppress confession).

State v. Yonkman, 233 Ariz. 369, 312 P.3d 1135, ¶¶ 7–9 (Ct. App. 2013) (court concluded K. was not acting as agent of state).

U.S. Const. amend. 5Self-incrimination—*Miranda*—Waiver.

us.a5.si.mir.wav.070 If a person is in custody, has received the *Miranda* warnings, and is subject to custodial interrogation, the person must clearly and unambiguously invoke **the right to remain silent,** which must be judged from the perspective of a reasonable police officer in the circumstances.

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 40–41 (2013) (defendant said, "[Y]ou know what man, I don't wanna talk anymore; can I call my father; can I get my phone call"; court held reasonable officer could find defendant's statement was ambiguous or equivocal, and thus was not required to cease questioning).

us.a5.si.mir.wav.120 If a person is in custody, has received the *Miranda* warnings, and is subject to custodial interrogation, the person must clearly and unambiguously request an attorney in order to invoke right to counsel; if the person makes an ambiguous request for the **presence of an attorney,** the police may continue interrogating the person; law enforcement officers may continue questioning unless and until the suspect clearly requests an attorney.

State v. Yonkman, 233 Ariz. 369, 312 P.3d 1135, ¶ 6 (Ct. App. 2013) (although defendant inquired about his right to attorney, he never unambiguously stated he wanted attorney present, therefore detectives lawfully continued interview).

U.S. Const. amend. 5Self-incrimination—Comment on right to remain silent.

us.a5.si.cms.030 Neither the state nor the trial court may raise an inference of the defendant's mind by commenting on the defendant's exercise of the right to remain silent, which occurs when the remark or testimony directs the jurors' attention to the defendant's exercise of the right to remain silent.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 66–68 (2013) (defendant ended interview by invoking his right to counsel; prosecutor argued jurors should "take into account who stopped that interview, who terminated it"; because defendant's attorney argued that officers had not thoroughly interviewed defendant, and because defendant's attorney stipulated to admission of videotape of interview that showed defendant invoking his right to counsel, court held prosecutor's argument did not constitute reversible error).

us.a5.si.cms.050 The state may introduce evidence that a person exercised the right to remain silent when that merely places the conversation in context and has some relevancy.

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 64–65 (2013) (because defendant gave evasive answers when asked about victims' credit cards, prosecutor's argument "why didn't the defendant answer [the detective's] questions about those credit cards" and "this defendant when he had the chance to deny it, didn't" were permissible).

U.S. Const. amend. 5Self-incrimination—Comment on right not to testify.

us.a5.si.cmt.010 As long as the prosecutor's statement, question, or argument does not call to the attention of the jurors the failure of the defendant to testify, the prosecutor may discuss the fact that the defendant has given, or has not given, certain information.

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 125–28 (2013) (court held that prosecutor's statement in opening that defendant "is going to tell you" what happened, when taken in context, was reference to defendant's statement to police).

us.a5.si.cmt.030 Court said it would not adopt a rule that a prosecutor's comment on a defendant's affect at trial is always improper, but cautions trial courts and prosecutors to proceed cautiously in this area, given its dubious relevance and potential to implicate a defendant's right not to testify.

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 129–33 (2013) (in closing argument, prosecutor referred to defendant's lack of emotion at trial).

U.S. Const. amend. 6Speedy trial.

us.a6.st.040 In determining whether a delay violated the defendant's right to a speedy trial, the trial court must consider four factors, the **first** of which is the length of the delay.

State v. Miller, 234 Ariz. 31, 316 P.3d 1219, ¶ 8 (2013) (trial began 5 years and 5 months after indictment, which court said was sufficient delay to require full *Barker* analysis).

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 8–9 (2013) (defendant trial began 3/15/10, which was 3 years 9 months after his 5/26/06 arrest and his 6/06/06 indictment; court held this was sufficient to trigger full *Barker* analysis).

us.a6.st.050 In determining whether a delay violated the defendant's right to a speedy trial, the trial court must consider four factors, the **second** of which is the reason for the delay.

State v. Miller, 234 Ariz. 31, 316 P.3d 1219, ¶¶ 9–10 (2013) (trial began 5 years and 5 months after indictment; 2 years and 9 months of that was caused by failure of defendant's attorney to prepare case; trial court eventually removed attorney and appointed new attorney 2½ months later; new attorney needed 11 months to prepare for trial; court held this delay was not attributable to state).

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 8–14 (2013) (defendant trial began 3 years 9 months after his arrest and indictment; during first year, defendant spent significant time pursuing motion to remand case to

grand jury; defendant was responsible for 11 month delay because lead attorney had another trial and needed more time to investigate; another 15 month delay was cause because lead attorney retired, which court held was attributed to defendant and not to state; court ultimately held no violation of right to speedy trial).

us.a6.st.060 In determining whether a delay violated the defendant's right to a speedy trial, the trial court must consider four factors, the **third** of which is the defendant's assertion of the right to a speedy trial.

State v. Miller, 234 Ariz. 31, 316 P.3d 1219, ¶ 11 (2013) (trial began 5 years and 5 months after indictment; court said defendant's failure to assert right to speedy trial did not weigh heavily against him because his attorney acquiesced in long delay without adequately informing defendant).

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶ 15 (2013) (defendant trial began 3 years 9 months after his arrest and indictment; defendant did not assert right to speedy trial until 2 years 9 months after arrest and indictment; once defendant asserted right to speedy trial, case went to trial within 1 year; court ultimately held no violation of right to speedy trial).

us.a6.st.070 In determining whether a delay violated the defendant's right to a speedy trial, the trial court must consider four factors, the **fourth** of which is the prejudice caused to the defendant.

State v. Miller, 234 Ariz. 31, 316 P.3d 1219, ¶ 11 (2013) (trial began 5 years and 5 months after indictment; court noted defendant expressed lack of concern about delay, he would have been in jail on other pending charges, and he did not argue that delay impaired his defense; court found no Sixth Amendment violation).

State v. Parker, 231 Ariz. 391, 296 P.3d 54, ¶¶ 16–18 (2013) (defendant trial began 3 years 9 months after his arrest and indictment; defendant did not allege any effect on ability to prepare adequately for trial, and alleged only lengthy delay and anxiety he suffered from pre-trial incarceration; court held no violation of right to speedy trial).

U.S. Const. amend. 6Counsel—Pre-charging.

us.a6.cs.pcg.010 The Sixth Amendment right to counsel attaches only at the initiation of adversary criminal proceedings, and before proceedings are initiated, a suspect in a criminal investigation had no constitutional right to the assistance of counsel.

State v. Brown, 233 Ariz. 153, 310 P.3d 29, ¶ 13 (Ct. App. 2013) (because state had not begun adversary proceedings at time defendant made statement, his Sixth Amendment right to counsel had not attached).

U.S. Const. amend. 6Counsel—Ineffective assistance of counsel; Standards.

us.a6.cs.iac.125 The determination of which witnesses to call is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.

State v. Denz, 232 Ariz. 441, 306 P.3d 98, ¶¶ 6–20 (Ct. App. 2013) (defendant's attorney stated he had considered consulting with independent medical expert, but decided that was not strategy he wanted to pursue, and instead wanted to use state's experts' testimony to bolster his own case; court held that decision would have been reasonable if he had first consulted with expert, but because he made that decision without any expert input, that choice was not reasonable and thus supported claim for ineffective assistance of counsel).

U.S. Const. amend. 14 Due process—Delay in the charging process.

us.a14.dp.cp.010 For pre-indictment delay to violate due process, a defendant must show (1) the delay was intended to gain a tactical advantage, and (2) it actually and substantially prejudiced the defendant.

State v. Glissenforf, 233 Ariz. 222, 311 P.3d 244, ¶¶ 5–9 (Ct. App. 2013) (in 2001, O. reported defendant had molested her, but state chose not to prosecute because it was single victim case with no corroboration; in 2010, T. alleged defendant had molested her, so state charged defendant with molesting both O. and T.; because defendant failed to show state caused delay in order to gain tactical advantage, defendant failed to show due process violation).

U.S. Const. amend. 14 Due process—Collection, retention, and disclosure of evidence.

us.a14.dp.ev.030 There is no general federal constitutional right to discovery in a criminal case; the Due Process Clause of the federal Constitution imposes on the state only the obligation to disclose exculpatory evidence that is material on the issue of guilt or punishment, and the obligation not to take any affirmative action that interferes with the defendant's right to gather exculpatory evidence.

State ex rel. Montgomery v. Welty (Koontz), 233 Ariz. 8, 308 P.3d 1159, ¶¶ 1–20 (Ct. App. 2013) (court noted criminal defendants have no constitutional right to pre-trial discovery, and are entitled to disclosure only of evidence favorable to defense and material to guilt or punishment, thus any other discovery is subject to statutory or court rule limitation; court held victim's date of birth is personal identifying information that is protected from disclosure by constitution, statute, and rule), *vac'd,* ___ Ariz ___, ___ P.3d ___ (Mar. 26, 2014).

U.S. Const. amend. 14 Due process—Restraints.

us.a14.dp.rs.030 When a trial court's decision to restrain a defendant is supported by the record, the appellate court will uphold that decision, even if the jurors view the defendant in restraints.

State v. Benson, 232 Ariz. 452, 307 P.3d 19, ¶¶ 26–32 (2013) (jail security supervisor testified security risk assessment for defendant showed he needed highest level of security (based in part on defendant's admission to police that he had strangled victim's with his hands after losing his temper), thus trial court did not abuse discretion in ordering defendant's restrained with stun belt and leg brace).

us.a14.dp.rs.040 A brief and inadvertent exposure of a handcuffed or shackled defendant to the jurors is not so inherently prejudicial that the defendant is entitled to a new trial, instead he must show actual prejudice in order to obtain a new trial.

State v. Payne, 233 Ariz. 484, 314 P.3d 1239, ¶¶ 61–66 (2013) (court stated jurors' brief and inadvertent exposure to defendant in restraints was not inherently prejudicial).

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Ariz. Const. art. 2, sec. 2.1(A). Victim's rights—Exercise of Rights.

az.2.2.1.a.1.010 The victim has the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.

State ex rel. Montgomery v. Welty (Koontz), 233 Ariz. 8, 308 P.3d 1159, ¶¶ 1–20 (Ct. App. 2013) (victim's date of birth is personal identifying information that is protected from disclosure by constitution, statute, and rule), *vac'd,* ___ Ariz ___, ___ P.3d ___ (Mar. 26, 2014).

Ariz. Const. art. 2, sec. 23. Trial by jury—Right to a unanimous verdict.

az.2.23.ruj.020 Although a defendant is entitled to a unanimous jury verdict on whether the criminal act charged was committed, the trial court is not entitled to a unanimous jury verdict on the precise manner in which the act was committed.

State v. Valentini, 231 Ariz. 579, 299 P.3d 751, ¶ 6 (Ct. App. 2013) (court held second-degree murder is only one crime regardless whether defendant commits it intentionally, knowingly, or recklessly, thus defendant is not entitled to have jurors decide unanimously which of those three mental states defendant had when causing victim's death).

Ariz. Const. art. 2, sec. 24. Rights of an accused—Appeal.

az.2.24.ap.050 The Arizona Constitution guarantees the absolute right to an appeal in criminal cases; when a defendant pleads guilty, the defendant does not waive the right to appellate review, and waives instead only the right to seek appellate review by way of an appeal to the appellate courts.

Hoffman v. Chandler, 231 Ariz. 362, 295 P.3d 939, ¶ 5 (2013) (defendant pled guilty pursuant to plea agreement that capped restitution at $53,643.45; 3 months after sentencing, trial court held restitution hearing and ordered § 40,933.45 in restitution; court held this order was part of defendant's sentence and not "order after judgment affecting the substantial rights of a party," and thus defendant could seek appellate review only by means of petition for post-conviction relief).

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