IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. JODI ANN ARIAS, Appellant.	No. 1 CA-CR 15-0302 Maricopa County Superior Court No. CR-2008-031021-001 DT

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE[1]

The state indicted appellant, Jodi Ann Arias, for the murder of her boyfriend, T.A. (Instrument 1, hereinafter I.). The state charged her with first degree premeditated murder or in the alternative, felony murder. (*Id.*). On October 31, 2008, the state noticed its intention to seek the death penalty. (I. 32-33). On August 7, 2009, the court held a *Chronis* Hearing and found that the state presented probable cause to support one aggravating factor: the crime was committed in an especially cruel manner. (ME 8-10-09). The parties could not settle after a settlement conference. (RT 7-5-11, pp. 2-58). They conducted a second settlement conference before the retrial, which was also unsuccessful. (ME 10-24-13).

Arias's trial began December 10, 2012, with jury selection. (RT 12-10-12, p. 12). The jury found Arias guilty of first degree murder on May 8, 2013. (RT 5-8-13, p. 11). The aggravation phase began May 15, 2013. (RT 5-15-13, p. 4). The state sought to prove one aggravator, the killing was done in an especially cruel manner. (*Id.*, p. 9). At the conclusion of the aggravation phase, the jury found that the state proved this aggravating factor. (*Id.*, pp. 113-115).

[1] Please note there may be a slight discrepancy in the cites to the record depending on whether one is referring to the electronic version of the transcripts or the hard copy of the transcripts.

The penalty phase began May 16, 2013. (RT 5-16-13, p. 53). It concluded on May 23, 2013, when the jury could not agree on life or death. (RT 5-23-13, p. 8). The court declared a mistrial. (I. 1154; RT 5-23-13, p. 10). The defense argued a Motion for Mistrial on May 20, 2013. (RT 5-20-13 #1, pp. 9-18). The court denied that motion. (*Id.*, p. 18). The defense filed a Motion to Vacate the Aggravation Phase verdict pursuant to Rule 24.2. (I. 1174). The court denied that motion. (ME 8-9-13).

Arias's retrial began September 29, 2014. Once again, the jury could not agree on a sentence. (I. 2058; RT 3-5-15, p. 6). The court declared a mistrial. (*Id.*). The court sentenced Arias to natural life. (RT 4-13-15, p. 56). The parties stipulated to the amount of restitution. (ME 6-22-15).

Arias filed a timely Notice of Appeal. (I. 2083). This Court has jurisdiction pursuant to Article 6, § 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21 (A)(1), 13-4031 and 13-4033 (A).

FACTS

This appeal is about Jodi Arias and T.A., whose lives were bound together by secrets. Arias grew up in northern California. (RT 2-4-13 #1, pp. 101-102; 116; 122). Arias's parents abused her physically. (*Id.*, pp. 101; 104-108). She moved out when she was seventeen years old. (*Id.*, pp. 122-125).

Arias left school and worked as a waitress. (*Id.*, pp. 122; 125). She supported herself. (*Id.*, pp. 125; RT 2-4-13 #2, p. 21). Arias found work waitressing at resorts in Crater Lake and Monterey. (RT 2-5-13, pp. 9; 20). She lived in Palm Desert, California for four years with her boyfriend, D.B., and was happy there. (*Id.*, pp. 30; 39-41).

Arias was a spiritual seeker, always interested in self-improvement. (*Id.*, pp. 7-8; 84). She became involved in "PPL," Pre-Paid Legal Services, a multi-level marketing organization. (*Id.*, pp. 56; 61). She enjoyed the inspiring, motivational PPL functions. (*Id.*, pp. 75; 84). She met T.A. at a PPL function in Las Vegas in September of 2006. (*Id.*, pp. 62; 67).

T.A. was an executive director of PPL. (*Id.*, p. 69). He approached Arias at a social function and introduced himself. (*Id.*, p. 68). They spent time together that

weekend. (*Id.*, pp. 70-74). She was his date at a formal banquet. (*Id.*, pp. 70-74). She considered T.A. to be a new friend. (*Id.*, pp. 97-100).

After leaving Vegas, they talked on the phone every night. (*Id.*, p. 106). By the week's end, Arias broke up with D.B. (*Id.*, pp. 98-99). She wanted to start a family. (*Id.*, p. 99). D.B. did not want to get married. (*Id.*, pp. 102-103).

Arias and T.A. met the following weekend at their friends' residence in California, for a PPL event. (*Id.*, pp. 103-104). Once everyone was asleep, T.A. arrived at Arias's bedroom for a night time rendezvous. (*Id.*, p. 106). T.A. initiated sexual contact. (*Id.*, p. 118).

Arias knew that T.A. was Mormon. (*Id.*, p. 90). He wore his temple garments during that sexual encounter. (*Id.*, p. 121). The next morning, they attended a Mormon church service together. (*Id.*, p. 126).

T.A. encouraged her to explore Mormonism. (*Id.*, pp. 129-130). T.A. was a priest of the order Melchizedek and a respected church member. (RT 2-13-13, pp. 133-134). Arias believed T.A. was superior to her in all matters concerning religion. (*Id.*, p. 134). He gave her a copy of the Book of Mormon and sent missionaries to visit her at her home. (RT 2-5-13, p. 129). Two months after they met, T.A. baptized

Arias into the Mormon religion. (RT 2-6-13, pp. 25-26). After the baptism ceremony, the couple returned to Arias's home where they had sex. (*Id.*, pp. 45-47).

The Law of Chastity forbids sexual contact between unmarried persons. (RT 1-30-13, p. 96). T.A. instructed Arias that the church permitted sexual contact but not vaginal intercourse. (RT 2-6-13, p. 17). Arias trusted T.A. when he assured her that oral and anal sex between unmarried persons were acceptable. (*Id.*, pp. 20; 16-17). Eventually, the unmarried couple engaged in vaginal intercourse as well as other types of sexual behavior. (*Id.*, p. 99).

Arias and T.A. became an exclusive couple in February of 2007. (*Id.*, p. 51). They met at PPL events and travelled together to visit Mormon historical sites. (*Id.*, pp. 100; 122). Travelling together as an unmarried couple was frowned upon by Mormons. (RT 1-30-13, p. 24). T.A. assured her that the church approved of their sexual relationship. (*Id.*, pp. 120-121). Arias felt that T.A. had authority to act for God. (RT 2-13-13, pp. 133-134).

Arias learned that T.A. was seeing other women. (RT 2-11-13, pp. 33-35). In fact, his relationship with Arias was a secret because T.A. treated her as "just a friend" in public. (RT 2-6-13, pp. 52; 67; 108; RT 2-13-13, pp. 158-159). Arias decided to break up with T.A. after they returned from a vacation. (RT 2-11-13, pp.

33; 38). They broke up over the phone on June 29, 2007, but the next day, T.A. called her to tell her he was "horny." (*Id.*, pp. 45-48). Arias found him hard to resist. (*Id.*, pp. 52-54). Encouraged by T.A., Arias moved to Mesa in August of 2007. (*Id.*, pp. 58-60).

Arias and T.A. behaved as a couple even though they were not exclusive. (*Id.*, pp. 60; 66). T.A. promised to change, and Arias still loved him. (*Id.*, p. 52).

T.A. criticized Arias's male friends and the few men she dated. (*Id.*, pp. 98-100). He told her which men she could date. (*Id.*, p. 99). Their sexual relationship continued. (*Id.*, p. 80).

T.A. enjoyed fantasizing and role playing. (*Id.*, pp. 82-86; 91). Arias had sex with T.A. even when it was unpleasant, because she enjoyed his attention. (RT 3-4-13, p. 66). But she did not consent to all of his fantasies. (RT 3-6-13, p. 91). She described herself as a "doormat." (RT 2-11-13, p. 41).

Arias aspired to work as a wedding photographer. (RT 2-5-13, p. 55). She did not earn a lot of money through PPL. (*Id.*, pp. 101-102). T.A. frequently took loans from Arias, who still waitressed. (RT 2-12-13, pp. 64-67).

Arias described herself as a willing participant in their sexual activities, but acknowledged that sometimes she felt like used toilet paper or a prostitute. (RT 2-

26-13, pp. 155-157). T.A. enjoyed acting out fantasies involving sex in public, anal sex, situations where he expected Arias to wear boys' underwear, and asking Arias to perform oral sex on him while he wore a business suit. (RT 2-11-13, pp. 84-85).

In January 2008, their relationship changed when Arias discovered T.A. masturbating while viewing a picture of a little boy wearing only underwear. (*Id.*, pp. 126-129). T.A. told Arias that he was sexually attracted to children. (*Id.*). After that, Arias admitted that one reason she had sex with T.A. was to keep him from molesting children. (*Id.*, pp. 142-143).

During an argument, T.A. threatened to reveal Arias's secrets, and she responded by threatening to reveal his sexual attraction to children. (RT 2-13-13, pp. 55-57). After a calmer discussion of their disagreement, Arias apologized to T.A. for threatening to reveal his shameful secret. (*Id.*).

Arias learned that having sex with T.A. relieved his stress and ended his anger. (RT 3-7-13, pp. 90-92). Afterwards he would be calm again. (*Id.*). However, there were times when T.A.'s rage resulted in physical abuse directed at Arias.

The first incident of physical abuse occurred in March of 2007. (RT 2-11-13, p. 92). T.A. grabbed Arias by the wrist when she asked him about his relationship

with another woman. (*Id.*). He went upstairs and banged his head against the wall. (RT 2-25-13, p. 174).

The second incident occurred in October, 2007 when T.A. pushed her down and would not let her leave his house. (RT 2-11-13, pp. 112-119). He called her family cruel names. (*Id.*, p. 115). She felt suicidal afterwards. (*Id.*, p. 117). T.A. apologized shortly afterward. (*Id.*, p. 118). He asked her to return so they could have sex. (*Id.*). She agreed because she did not want to hurt his feelings. (*Id.*, p. 119).

The third incident occurred on January 22, 2008, the day after Arias discovered that T.A. was a pedophile. (*Id.*, p. 145). T.A. asked to borrow money from Arias but she declined. (*Id.*, p. 146). Angry, T.A. shook her, then body-slammed her. (*Id.*, p. 147). He kicked her in the ribs and when she put her hand out to protect herself, he kicked her hand injuring her left ring finger. (*Id.*, pp. 147; 149). After he calmed down, he made a splint for Arias's injured finger. (*Id.*).

Another incident of abuse occurred on or about March 2, 2008, when Arias told T.A. that she was moving back to California. (RT 2-25-13, p. 126). T.A. was driving the car, Arias was next to him in the passenger seat. (*Id.*). T.A. backhanded her and hit her on her neck. (*Id.*).

T.A. choked her on April 8, 2008, when they discussed her dating other men. (RT 2-12-13, p. 26). He choked her so hard that she passed out. (*Id.*, p. 27).

Arias's relationship with T.A. was a roller coaster. (*Id.*, p. 72). T.A. was not only physically abusive but could be mentally and emotionally cruel too. (RT 2-13-13, pp. 101-150). (*See* Appendix 1). T.A. used his status to control and demean Arias. (RT 2-19-13, pp. 14-45; 53-57; 69-74). T.A. called Arias a skank, slut, a whore, a three hole wonder, and other derogatory names. (RT 2-13-13, pp. 113-114, RT 2-19-13, pp. 67-69). T.A. could also be very nice to Arias. (RT 2-19-13, p. 76). Arias liked it best when she and T.A. were alone and having sex, because he acted like he loved her and she enjoyed his attention. (RT 3-4-13, pp. 71-72).

Mormons considered someone T.A.'s age to be too old to be unmarried. (RT 1-30-13, p. 19). T.A. dated other Mormon women in his search for a wife. (RT 1-2-13, pp. 87-93; RT 1-30-13, p. 11). In his public life, he portrayed himself as 31 year old Mormon virgin. (RT 1-30-13, p. 38).

Arias decided to move back to California. (RT 2-12-13, p. 71). On the day she left for California, T.A. stood on the doorstep as she drove away, giving her the "double bird," followed by a mean text. (RT 2-13-13, p. 39).

Arias continued to communicate with T.A. after she returned to California. (*Id.*, p. 60). They had phone sex. (EX 428). The phone sex recording illustrates T.A.'s sexual interest in children. (*Id.*). Using a rude description, T.A. told Arias that when she achieved orgasm she sounded like a little girl having her first orgasm. (*Id.*).

A chronological summary shows that in September 2007, arguments marred their trip to Havasupai. (RT 1-31-13, pp. 26-34). In October 2007, T.A. pushed Arias down and wouldn't let her leave his house. (RT 2-11-13, pp. 112-118). Arias felt suicidal all fall. (*Id.*, p. 117). She learned that T.A. was a pedophile in January 2008. (*Id.*, pp. 126-129; 140). She moved back to California in April, 2008. (RT 2-12-13, p. 21). They recorded a sex tape over the phone in May, 2008. (RT 2-12-13, pp. 21-23; EX 428). They carried on an extended, heated argument via texts and IM May 25-26, 2008. (RT 2-13-13, pp. 110-115; RT 2-19-13, pp. 67-74). Her grandparents were burglarized on May 28, 2008. (RT 2-19-13, p. 78). Arias left on her road trip on June 2, 2008. (*Id.*, p. 77). She agreed to visit T.A. on June 3, 2008. (*Id.*, pp. 102-103).

Arias planned a trip to Utah to visit a man that she wanted to get to know better, R.B. (*Id.*, pp. 76-77). She wanted to take photographs at Utah's national

parks. (*Id.*, p. 82). T.A. knew about her trip. (*Id.*, p. 90). She rented a car in Redding. (*Id.*, p. 84). She asked for a white car instead of a red car because she did not want to stand out. (*Id.*, p. 85). She stopped along the way in Santa Cruz and Monterey. (*Id.*, pp. 90; 93).

She visited D.B. who lived near Monterey. (*Id.*, p. 96). She borrowed two gas cans from him. (*Id.*). She purchased another gas can at a Walmart but then decided to return it. (RT 2-27-13, pp. 92-93; 110). A Walmart employee testified that there was no record of anyone returning a gas can on the day in question. (RT 4-23-13, pp. 61-62).

When Arias was near Pasadena she talked to T.A. (*Id.*, pp. 96-97; 101). T.A. "guilted" her into visiting him in Mesa. (*Id.*, p. 103). She arrived on June 4, 2008, at about 4 a.m. (RT 2-19-13, pp. 106-107). T.A. was awake. (*Id.*, p. 109).

T.A. showed Arias his new punching bag and punched it a few times for her. (*Id.*, pp. 112-113). They slept until noon. (*Id.*, p. 115). They had sex. (*Id.*, p. 117). T.A. wanted to tie Arias up. (*Id.*, p. 120). He loosely tied her wrists to the bed. (*Id.*, p. 122). She was naked and he wore his Mormon garments. (*Id.*, p. 123). They took photos of themselves having sex. (*Id.*, pp. 129-130; 134). When they finished, she

took a shower and T.A. went downstairs. (*Id.*, p. 137). Arias started a load of laundry and prepared to leave. (*Id.*, pp. 137-138).

Arias tried to show T.A. some photos taken on one of their trips, but the CD would not work on his computer due to a virus. (*Id.*, pp. 139-140). T.A. angrily threw the CD against the wall, and then bent Arias over his desk for sex. (*Id.*, pp. 141; 144-151). Afterwards, he told her to go clean up. (*Id.*, p. 151). Then they went upstairs to photograph T.A. in the shower. (*Id.*, p. 160).

Arias accidentally dropped T.A.'s camera. (RT 2-20-13, p. 8). T.A. became enraged. (*Id.*). He left the shower, picked Arias up and slammed her to the ground, calling her a "stupid idiot." (*Id.*, p. 9). Arias thought he would kill her. (*Id.*, p. 15). Arias ran and grabbed a handgun from the closet shelf. (*Id.*). She pointed the gun at T.A., hoping that he would stop. (*Id.*). The gun discharged. (*Id.*, p. 17). Arias did not realize that she shot T.A. (*Id.*, p. 18). He continued after her and said, "fucking kill you bitch." (*Id.*). She feared for her life. (*Id.*, pp. 19; 22).

The next thing Arias remembered was driving in the middle of nowhere. (*Id.*, p. 25). She stopped to drink water and clean the blood from her hands. (*Id.*). She was barefoot. (RT 3-13-13, p. 97). She threw the gun into the desert. (RT 2-20-13,

pp. 24-25). She threw the rope into a dumpster. (*Id.*, p. 25). She testified that she put the knife into the dishwasher. (*Id.*, p. 21).

She believed T.A. was probably dead and she was in deep trouble. (*Id.*, pp. 26; 29). She visited R.B. as planned. (*Id.*, p. 36). She did not stay long, but returned home and waited to be arrested. (*Id.*, pp. 44-45). R.B. remembered the police stopped her in her rental car because her license plate was on upside down. (RT 1-9-13, p. 21).

T.A.'s friends found his body in his home on June 9, 2008. (RT 1-2-13, p. 113). The crime scene evidence included:

- T.A.'s decomposing body in the shower. (RT 1-8-13, p. 52).
- A. 25 caliber shell casing on the bathroom floor. (RT 1-3-13, pp. 121-122).
- Arias's palm print on the wall. (RT 1-8-13, p. 42; RT 1-9-13, p. 140).
- Blood on the bathroom sink. (RT 1-10-13, pp. 72-74).
- Three separate areas of blood. (*Id.*, p. 65).
- A shoeprint on the bathroom floor. (RT 1-8-13, p. 30; RT 1-10-13, pp. 97-98).

- A camera was in the washing machine downstairs, along with garments and bedding. (RT 1-3-13, pp. 72-73; 75).
- It appeared as if the items were bleached. (*Id.*, p. 80).
- The police did not recover a knife or a gun. (RT 1-15-13, p. 70).
- The bedroom was unremarkable. (RT 1-10-13, p. 94).

Arias's friend told her that T.A. was dead. (RT 2-20-13, p. 47). Arias talked to Mesa Detective Flores on the phone regarding the murder investigation, but did not tell him what she knew about T.A.'s death. (*Id.*, pp. 47; 59-60).

Arias considered suicide. (*Id.*, p. 45). She was going to go to Monterey to be away from her family when she killed herself. (*Id.*, p. 46). Instead, the Yreka police arrested her. (*Id.*, pp. 76-78). Arias initially told the police that she was not in Mesa and knew nothing about T.A.'s death. (*Id.*, p. 78; EXS 343-346; 348-351; 355-359; 367-368; 381). Flores confronted her about the photos that were found in the camera at the scene, showing that she was present minutes before T.A.'s death. (*Id.*, p. 79). Arias then told the police that home invaders killed T.A. while Arias ran away. (*Id.*, p. 79). The media approached Arias and she gave two interviews shortly after her arrest.

Arias eventually admitted to killing T.A. in self-defense. (RT 2-20-13, pp. 105-106).

The medical examiner, Dr. Horn, performed an autopsy and noticed:

- T.A.'s body was in an intermediate stage of decomposition. (RT 1-8-13, p. 51).
- Wounds on T.A.'s hands. (*Id.*, pp. 55-58).
- T.A. was five feet nine inches tall and weighed about 189 pounds at the time of the autopsy. (*Id.*, p. 59).
- T.A. suffered stab wounds to the chest, heart, belly, back, and back of head such that there was a divot in his skull. (*Id.*, pp. 61-82).
- His throat was cut through to the windpipe. (*Id.*, pp. 86-87).
- T.A. had a gunshot wound to the head. (*Id.*, p. 91).
- He removed a bullet from his left cheek. (*Id.*, p. 92).
- T.A. died from blood loss. (*Id.*, p. 93).

The cut throat was the most significant injury. (*Id.*, p. 94). Both the slit throat and gunshot to the head would cause immediate unconsciousness. (*Id.*, p. 95). Horn believed that T.A. was first stabbed, then his throat cut, and then shot. (*Id.*, p. 97).

Decomposition prevented Horn from being certain about his observations. (*Id.*, pp. 121; 125). Horn could not explain why Flores testified that the gunshot wound occurred first in time. (*Id.*, p. 129). He did not remember talking to Flores about the case at all. (*Id.*, pp. 130; 133). He admitted his sequence of events was speculative. (*Id.*, p. 137).

Defense witness, psychologist Dr. Samuels, opined that Arias suffered from PTSD. (RT 3-14-13, p. 106). Defense witness, therapist Alyce LaViolette, opined that Arias and T.A. were involved in an abusive relationship. (RT 4-4-13 #2, p. 87). She believed Arias suffered from Battered Woman's Syndrome. (*Id.*).

The state called psychologist Dr. DeMarte. (RT 4-16-13, p. 7). She testified that:

- There was no abusive relationship. (*Id.*, p. 194).
- Arias was not a battered woman. (*Id.*, p. 199).
- Arias suffered from borderline personality disorder. (*Id.*, p. 106).

The defense called psychologist Dr. Geffner in surrebuttal. (RT 5-1-13 #1, pp. 6-7). Geffner testified that:

- Young Dr. DeMarte used flawed methods. (*Id.*, pp. 90, 99-101, 121, 130, 135-136, 185-186).

- She misrepresented her experience and qualifications. (*Id.*, pp. 9; 22).
- A person who showed numerous symptoms, such as Arias, presented a cry for help from someone who was in severe distress. (RT 5-1-13 #2, p. 91).
- It was possible that the gunshot to T.A.'s head did not incapacitate him. (*Id.*, pp. 103-107).

The jury found Arias guilty of first degree murder. (RT 5-8-13, p. 11).

ISSUES PRESENTED FOR REVIEW

1. Due process requires that the accused receive a fair trial by an impartial jury, free from outside influences. The trial court allowed the media to broadcast Arias's trial by livestream and imposed very few limitations on the media's access to court. Did structural error occur?

2. Hearsay testimony is generally inadmissible at trial. The trial court denied Arias's motion to preclude hearsay testimony regarding a .25 caliber handgun stolen from her grandparents in California. Was the admission of statements from Arias's grandparents, who did not testify, a violation of the Arizona Rules of Evidence and of Arias's federal and state constitutional right to confront all witnesses against her?

3. The Arizona Rules of Evidence provide that an expert may not state an opinion about whether the defendant did or did not have a mental state that constitutes an element of the crime. Dr. DeMarte testified for the state about Arias's ability to plan and organize. Did the trial court abuse its discretion when it allowed Dr. DeMarte to testify regarding Arias's mental state at the time of the crime?

4. A criminal defendant has the constitutional right to be free from shackles and handcuffs in the jury's presence absent an essential state interest that justifies the physical restraints. Arias wore a stun belt and leg brace throughout trial. Did structural error occur?

5. The state violated the Equal Protection clause when it exercised peremptory strikes in a discriminatory manner. The prosecutor used six of his eight strikes to remove women from the jury. Did the trial court commit clear error when it denied Arias's *Batson* challenge?

6. Did pervasive and persistent prosecutorial misconduct deny Arias her rights to due process and a fair trial?

ARGUMENT 1

The trial judge's failure to protect Arias sufficiently from the massive, pervasive and prejudicial publicity during her trial violated her right to a fair trial.

Standard of Review:

Structural error occurs when certain basic constitutional guarantees that should define the framework of any criminal trial are violated. *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907(2017). Structural error defies analysis for harmless error. *Id.*

The presumption of prejudice…attends only the extreme case. *Skilling v. United States*, 561 U.S. 358, 381(2010).

Additional Facts:

2011: In July, the court granted CBS 5 News' request to film courtroom proceedings. (ME 7-12-11). The court allowed the press to photograph the defendant but not the victims. (*Id.*). The defense moved to reconsider. (I. 348). InSession moved to film the trial, including a request to broadcast the trial via live stream. (I. 358; 359). The court denied the defense motion to preclude live coverage of Arias's trial. (ME 8-8-11). The court allowed the media to place three cameras

in the courtroom, but ordered that the cameras could not film voir dire, motions, or oral arguments. (ME 8-10-11; RT 8-10-11, pp. 16-19).

2011–November: The defense filed a Motion for Protective Order against MCSO and the County Attorney's Office because InSession contacted jail personnel to get information about Arias. (I. 414). The defense included the county attorney's office in the motion because it often released information from the investigative file to the press. (*Id.*). The prosecutor objected to the protective order, telling the court if he had "…control over In Sessions, I'd make myself on their show every day." (RT 11-21-11, p. 24).

The court issued a temporary Protective Order, but eventually denied the motion. (ME 12-6-11). The defense promptly filed a motion to reconsider after learning that an InSession affiliate broadcast a police interview involving T.A.'s friend who was a potential witness. (I. 429). The state decided not to call this person as a witness, and the court denied the motion to reconsider. (ME 12-15-11).

2012: The defense filed a Motion to Invoke the Rule, specifically asking that witnesses be ordered to refrain from watching trial testimony on the live feed. (I. 420). The state opposed the motion. (I. 445). The court granted the defense motion. (ME 2-9-12; RT 2-9-12, p. 10).

On November 13, the court reminded the media to refrain from filming oral argument on motions. (RT 11-13-12, p. 4).

Jury selection began December 10, 2012. (ME 12-10-12). On December 19, the defense moved for mistrial because the media ignored the court's order and was present for voir dire. (RT 12-19-12, pp. 14-17). The court clarified that the press could be present for voir dire but could not film it. (*Id.*). Later that day, the court conducted oral argument after ordering the media to leave the courtroom. (*Id.*, p. 16).

2013–January: The court learned that the media filmed juror 3 and other jurors. (RT 1-8-13, p. 4). Juror 3 informed other jurors that she was filmed. (*Id.*, p. 5). The court questioned the jurors about the camera's presence. (*Id.*, pp. 7-22). They claimed they did not know about the filming, even though juror 3 told the other jurors about being filmed. (*Id.*, pp. 7-22).

The media interviewed witness R.B. after he testified. (RT 1-14-13, p. 147). The court maintained that she could not order the media or the witnesses to refrain from interacting with each other. (*Id.*, p. 148). The defense alleged that the jurors interacted with T.A.'s family. (RT 1-15-13, p. 41). The jurors denied behaving improperly. (*Id.*, pp. 41-58).

The media tried to contact juror 11. (RT 1-30-13, p. 70). They approached him with a camera crew. (*Id.*, p. 72). Juror 11 kept walking. (*Id.*, p. 71). The court questioned the jurors. (*Id.*, pp. 73-89). Nine jurors knew about the incident. (*Id.*, pp. 73-89). Juror 11 described the experience to the other jurors. (*Id.*, p. 71). The court denied the defense motion to sequester the jurors, explaining that she would "speak to security." (*Id.*, pp. 89-90).

On the same day, court security issued a memo describing how they would protect the jurors from the media. (I. 1332). The jurors would be escorted at lunch, to their bus after court finished for the day, and court security would maintain a roving patrol outdoors, to monitor media behavior and to protect the jurors from contact with the media. (*Id.*).

February: The media filmed Arias's leg brace. (RT 2-5-13, p. 4). Defense counsel told the court that the news coverage showed Arias wearing the leg brace. (*Id.*). Defense counsel asked the court to order the media to film Arias above the waist only. (*Id.*). The court said she would "take care of it right now." (*Id.*, p. 5). The court noted that three full time security people monitored the media in the courtroom during the last two weeks. (*Id.*, pp. 110-116).

The next day, the court determined that the parties would avoid the media by using a room for informal discussions. (RT 2-6-13, p. 109). It became apparent that InSession possessed the phone sex tape that would ultimately be admitted as an exhibit. (EX 428; *Id.*, p. 111). The prosecutor insisted six times that his office had nothing to do with leaking anything to the media. (*Id.*, p. 111). Defense attorney Willmott noted that she recently received two calls regarding the case from a stranger. (*Id.*, p. 112). Defense attorney Nurmi suggested that perhaps the courtroom was bugged with recording devices. (*Id.*, p. 114).

The jurors complained that the noise made by the camera shutters distracted them. (RT 2-20-13, pp. 134-135). The court ordered the media to refrain from taking still photos in the courtroom. (*Id.*).

One week later, the court sealed all bench conferences until after trial due to the media intrusion. (RT 2-27-13, p. 4). The media requested the closed proceedings' transcript. (*Id.*, pp. 226-235). The judge closed the court room to address an issue regarding Arias's stun belt and leg brace. (*Id.*, p. 129). The media objected to being excluded from the proceedings. (*Id.*, p. 130). She explained there was a "legitimate purpose" to briefly exclude the media. (*Id.*, p. 131).

March: The prosecutor noted that the media strained to overhear bench conferences. (RT 3-5-13, p. 152).

The media filmed jurors for the second time. (RT 3-13-13, pp. 53-85). The judge told the parties that court security told her she could not control media activity that did not occur in the courthouse. (*Id.*, p. 53). The court decided to offer escorts to the jurors. (*Id.*). The court questioned the jurors about being filmed. (*Id.*, pp. 55-85). The jurors told her that being filmed by the media did not concern them. (*Id.*).

The media filmed the defense team that morning. (*Id.*, p. 85). HLN[2], including Nancy Grace, produced its show a block away from the courthouse. (*Id.*). Spectators photographed the defense team and directed unfriendly hand gestures toward them. (*Id.*). Someone drove by them and yelled "death penalty." (*Id.*). Defense counsel expressed his concern that a juror could be negatively influenced by these activities. (*Id.*). The court told the jurors they could have an escort if they wanted one. (*Id.*).

Court security arranged a security detail and secured parking for the defense team after expert witnesses for the defense received threats from a spectator. (I.

[2] Headline News.

1333). Three days later, the defense team referred to the fact that they now parked underneath the courthouse and were accompanied by an escort. (RT 3-18-13, p. 5).

Defense expert Dr. Samuels received threats from a spectator and brought the threats to the court's attention. (I. 1334; RT 3-21-13, p. 136). By this time the defense team, defense witnesses and the court staff had escorts. (RT 3-21-13, pp. 58; 138).

The court allowed trial spectators to wear ribbons supporting the victims. (*Id.*, p. 7). A media figure wearing a ribbon posted a photo showing herself posing with the prosecutor near the courthouse. (*Id.*, p. 134).

On the same day, the court ordered a disruptor removed from the courtroom. (*Id.*, p. 138). The disruptor said, "Jodi, I wish you were dead." (*Id.*).

Court security continued to provide security to Dr. Samuels. (RT 3-25-13, p. 95). The media requested FTR disks showing the trial and the bench conferences. (*Id.*, p. 100). The court noted that bench conferences were not sealed and ordered that they be redacted from the FTR disks before their release. (*Id.*, pp. 100-103). The court then ordered that all bench conferences be sealed until trial ended. (*Id.*).

Judge Welty issued an order regarding media access to a hearing held in his courtroom regarding a trial related matter. (ME 3-26-13). In an ex parte proceeding,

defense counsel expressed his concern about his experts' safety. (RT 3-27-13 #1, p. 3). Samuels received two death threats. (*Id.*). Defense counsel pointed out that LaViolette was getting the same treatment. (*Id.*). Defense counsel told the court that every day they arrived at court, went through security, their car was inspected for bombs, they were patted down and then escorted to and from the courtroom. (*Id.*).

Defense counsel both received threatening emails. (*Id.*, p. 4). Nurmi complained about the hostile atmosphere in the areas surrounding the courthouse. (*Id.*). Defense counsel described how media personality Nancy Grace used her show to criticize Arias's defense costs. (*Id.*).

Defense counsel felt that the court did not take their safety concerns seriously. (RT 3-27-13 #2, p. 6). Defense counsel expressed his concern for LaViolette's safety after Nancy Grace disparaged her on national TV. (*Id.*, p. 7). He asked that security measures remain in place. (*Id.*). The court expressed her belief that there was a credible concern about threats. (*Id.*, p. 8).

Willmott informed the court that she frequently received hate mail and people left threats on her voicemail. (*Id.*, p. 8). She received threats to disclose personal information to media outlets. (*Id.*, p. 9). She received threatening emails and mean

emails. (*Id.*). Nurmi described being called "You fat bastard" and told "You die in court." (*Id.*). The court indicated that she would alert security. (*Id.*, p. 10).

The court addressed the way the prosecutor behaved when he was not in the courtroom. (RT 3-28-13, pp. 8-10). Defense counsel noted with concern that jurors could see and be influenced by the prosecutor's unprofessional behavior. (*Id.*). Specifically, the prosecutor posed with someone from the Dr. Drew Show. (*Id.*, p. 10). The media filmed the prosecutor on the courthouse steps as he interacted with spectators. (*Id.*). The prosecutor maintained that his behavior did not amount to misconduct because he was not inside the courtroom when he did it. (*Id.*, p. 10).

The defense filed a Motion for Mistrial due to juror 5's conduct. (I. 915).

April: The court addressed whether the courthouse atmosphere had an effect on juror 5. (RT 4-2-13, p. 111). Juror 5 arrived for trial in tears. (*Id.*, p. 8). She stopped attending therapy due to her involvement in the trial. (*Id.*). Her friends and family told her they saw her on the news and that she was going to be removed from the jury. (*Id.*).

The parties questioned #5. (*Id.*, p. 16). She made a comment to other jurors about LaViolette's $300 per hour fee. (*Id.*). #5 said that the court should spend $300

on new chairs for them to sit in during trial. (*Id.*, p. 17). The bailiff told her to stop it. (*Id.*, p. 18).

#5 was crying and emotional. (*Id.*, p. 22). The media photographed her. (*Id.*, p. 23). The court denied defense counsel's motion to strike #5. (*Id.*, pp. 40-44).

Defense counsel explained that HLN radio was derisive toward Arias. (*Id.*, p. 56). #5's husband listened to the programs on HLN describing daily trial events. (*Id.*, pp. 56-57). HLN favored the prosecution, and defense counsel described HLN's broadcasts as "propaganda." (*Id.*, p. 57). Juror 5 told the parties that she neglected to mention that she took Klonopin for anxiety. (*Id.*, p. 64). The court excused #5 from further jury duty. (*Id.*, p. 69).

The threats to Willmott and LaViolette continued. (RT 4-3-13 #1, pp. 3-5). The defense described a caller who said he hoped LaViolette would "run into a N-word in a dark alley who chokes her." (*Id.*, p. 4). A caller told LaViolette that he enjoyed splitting his wife's head open with an ax. (*Id.*). Court security suggested that there was a difference between inappropriate communications and threats. (*Id.*, p. 6).

The next day, the defense moved to sequester the jury because the prosecution released information to the media, including Arias's entire journal and the statements

her parents made to the police. (RT 4-4-13 #1, p. 4). The prosecutor noted that his office released the information pursuant to a public records request. (*Id.*, p. 5). Defense counsel expressed concern over the jurors' ability to avoid outside influences. (*Id.*, p. 6). The court denied the motion to sequester. (*Id.*, p. 8).

Juror 5 returned to court to watch the trial. (RT 4-4-13 #2, pp. 72-73). During a break, the media approached the former juror "Like vultures to roadkill." (*Id.*, p. 73). The court advised that escorts would remove the former juror from the building at day's end. (*Id.*).

Defense expert LaViolette presented a letter from her doctor highlighting health problems caused by trial stress. (I. 1324). The defense filed a Motion for Mistrial addressing the prosecutor's behavior on the courthouse plaza as he interacted with spectators and the media. (I. 921). The next day, the defense moved ex parte for mistrial due to threats directed at LaViolette. (RT 4-8-13, p. 4). The court noted that "false information is replete in this case." (*Id.*, p. 11). She stopped watching media accounts of the trial because there was so much misinformation out there. (*Id.*, p. 29). The court offered to close the proceedings. (*Id.*, p. 14).

LaViolette told the court that turning off the cameras would not solve the problem. (*Id.*, p. 16). Willmott cautioned the judge that if the prosecutor knew that

his behavior was bothering LaViolette, his aggressive behavior would only get worse. (*Id.*, p. 21). The mitigation specialist for the defense informed the court that court spectators were affecting her as well. (*Id.*, pp. 23-24). The court told her to notify the court and local law enforcement. (*Id.*, p. 25).

Defense counsel moved to withdraw based on his opinion that the pressure and circus-like atmosphere created by the media prohibited his team from effectively representing Arias. (*Id.*, p. 26). The court denied the motion and ordered security escorts. (*Id.*, pp. 27; 30).

On the same day, the court ordered the county attorney's office to stop disclosing information to the media. (RT 4-8-13, p. 208). The court refused to order the county attorney's office to disclose which items they released via the public records requests. (*Id.*). The next day, LaViolette notified the court that her health issues continued due to stress caused by trial publicity. (RT 4-9-13, p. 4).

The defense informed the court that someone followed them to dinner the previous night. (RT 4-10-13, pp. 94-98). A photo depicting the team having dinner appeared on T.A.'s Facebook support page, along with negative comments about them. (*Id.*). There were 800 comments posted accompanying the photo, an example

comment being, "These women should be punched." (*Id.*, p. 94). Defense counsel blamed the livestream coverage for the media backlash. (*Id.*).

The court addressed a matter which arose involving a spectator who contacted LaViolette by telephone. (RT 4-11-13, pp. 4-12). LaViolette returned the call and spoke to the spectator. (*Id.*). The spectator alerted the county attorney's office and the prosecutor referred the matter to the county attorney's office detective unit. (*Id.*). The court admonished LaViolette to refrain from interacting with the spectators. (*Id.*).

The local media published an article describing LaViolette and her testimony. (I. 1323). Defense counsel informed the court that another photo posted online showing the defense team having dinner the night before. (RT 4-12-13 #1, pp. 4-10). They informed the court that spectators harassed LaViolette, and the mitigation specialist. (*Id.*, pp. 6-8). HLN taunted the defense on its program. (*Id.*, p. 9). The court denied another defense motion to withdraw. (*Id.*, p. 10). The defense asked the court to pull the cameras because the media was "stoking the fire." (*Id.*). The court indicated that two days ago the defense declined her offer to shut down the cameras. (*Id.*, p. 11). The court ordered the defense to file a motion. (*Id.*).

The defense notified the court that social media spread rumors that defense attorney Willmott had a conviction on her record for possessing marijuana. (RT 4-15-13, p. 97). Fake social media accounts existed for a regular court reporter and the judge. (*Id.*, pp. 130-131).

The court told the defense to file a motion after the defense informed her that Willmott received another death threat. (RT 4-18-13, pp. 3-6). They asked the court to remove the cameras. (*Id.*, p. 6). The court refused. (RT 4-19-13, pp. 10-17). Instead, the court offered to order the cameras to refrain from showing Willmott's face. (*Id.*, p. 15).

The court released juror 8 because he lied on his jury questionnaire. (RT 4-25-13, p. 3). The Gilbert Police Department provided information to the media that they arrested juror 8 for DUI while he was still on the jury. (RT 4-30-13 #1, pp. 3-5). The media then contacted juror 8 and his wife. (*Id.*, pp. 3-4). Juror 8 appeared on television because the Gilbert Police Department released his information to the media. (*Id.*, p. 5).

The parties discussed ongoing threats. (RT 4-30-13 #2, pp. 12-15). Nurmi received a death threat. (*Id.*, pp. 11-12). Defense expert Geffner received multiple death threats. (*Id.*, pp. 13-14). Someone created a Facebook page dedicated to

disparaging and intimidating Willmott. (*Id.*, p. 14). Willmott received threats every day. (*Id.*). The defense told the court that T.A.'s sister harassed the defense expert via social media. (*Id.*, p. 13). The court suggested that the defense talk to the prosecutor about these problems. (*Id.*, p. 15).

May: Unknown sources leaked to the media correspondence between T.A. and his friends, the Hughes. (RT 5-2-13, pp. 8-9). All parties denied releasing the information. (*Id.*). The jury escorts continued because the media waited for the jurors in the jury parking garage. (*Id.*, pp. 9-10).

Arias signed a media waiver on the same day the jury returned their guilty verdict. (I. 1344). After the guilty verdict, MCSO quickly removed Arias from the courtroom. (RT 5-9-13 #1, pp. 5-7). Her defense team lost contact with her and could not find her within the courthouse. (*Id.*). They did not know that there was a plan between MCSO and a local news channel for Arias to submit to an interview without telling her defense team. (*Id.*). MCSO told the defense team where to find Arias when her interview with the media ended. (*Id.*).

The defense addressed the "spectacle" taking place on the courthouse steps. (RT 5-8-13, p. 6). The jury left the courthouse via the loading dock area, by escort, in order to avoid the media and the spectators. (*Id.*, p. 7).

Defense counsel addressed problems created by media activity in the courthouse area. (RT 5-9-13 #1, pp. 8-9). Nurmi's home phone rang constantly. (*Id.*). LaViolette did not want to testify for Arias at the penalty phase due to continuing threats against her. (*Id.*, p. 9). When the jury announced its guilty verdict, hundreds of spectators stood on the courthouse plaza, cheering. (*Id.*, p. 12). The court talked to each juror to determine if they could still be fair and impartial. (RT 5-9-13 #2, pp. 7-43). The jurors knew about the crowds outside, security guards and the media presence but indicated they could be fair and impartial. (*Id.*). The court did not list Arias's trial on the trial court daily calendar in order to avoid the media. (RT 5-9-13 #2, p. 5). A SWAT team escorted the jury to its bus. (*Id.*, p. 39).

The court addressed a media request to interview Arias. (RT 5-14-13, p. 5). The MCSO media representative wanted to avoid an "irate media group." (*Id.*, p. 5). She stated that the sheriff supported Arias's first amendment rights. (*Id.*). Defense counsel noted that contrary to the media's representation, the defense did not facilitate an interview. (*Id.*, pp. 7-8). Defense counsel said that he received many media requests but did not respond to them. (*Id.*, pp. 9-10). He advised Arias not to do interviews with the media but she wanted to participate in an interview.

(*Id.*, p. 10). He moved to withdraw due to an irreparable relationship breakdown between him and Arias. (*Id.*, pp. 10-11). The court denied his motion. (*Id.*, p. 17).

The court ordered that there would be no media interviews until the case concluded and the jury was deliberating. (*Id.*, p. 18). The court ordered MCSO not to approach Arias with requests by the media. (*Id.*, p. 19).

InSession filmed a juror and Channel 5 filmed some jurors leaving court. (RT 5-16-13, pp. 7-13). The defense asked to shut down the InSession camera, noting that the juror's photo was most likely already on YouTube. (*Id.*). The court denied the motion. (*Id.*).

Defense counsel moved for mistrial based on the negative impact the live video feed had on the trial. (RT 5-20-13, p. 9). The defense argued that the court failed to protect Arias's right to a fair trial and that she endorsed the prosecutor's misconduct. (*Id.*, pp. 10; 16-17). The court denied the motion. (*Id.*, p. 17).

The defense again argued that the trial was not fair due to uncontrolled media coverage. (RT 5-21-13, p. 17). The court maintained that the media coverage did not affect the trial's outcome. (*Id.*).

A spectator threatened to "take out" the prosecutor. (*Id.*, pp. 100-101). The court immediately stationed two armed deputies at the courtroom door. (*Id.*).

The court addressed the media's trial coverage. (*Id.*, p. 17). She noted that the defense declined any protections that she offered. (*Id.*). She offered defense witnesses the option to not be filmed by the cameras. (*Id.*). She also offered to close or seal proceedings in order to avoid media coverage. (*Id.*). She conducted legal arguments at the bench, sealed them and made them unavailable to the press. (*Id.*). The court maintained that she offered solutions to address witness intimidation. (*Id.*).

Arias requested permission to talk to the media. (*Id.*, pp. 112-113). The court declared a mistrial in the penalty phase on May 23, 2013. (*Id.*, p. 10).

The court ordered that ex parte hearings, hearings in chambers and the oral argument that took place on May 21, 2013 all be sealed. (ME 5-30-13).

June: The court ordered that all bench conferences and in chambers hearings be sealed. (ME 6-12-13).

In a Motion to Continue, the defense noted that defense counsel received a threat when the verdict was returned, that 5-8 books on the trial were to be released in the fall, and a Lifetime movie would be released soon. (I. 1163; RT 6-20-13, pp. 35-38). The court noted that the county contemplated a change in policy regarding camera placement due to the problems that arose in this case. (*Id.*, pp. 40-43). The

prosecutor supported the media's trial coverage. (*Id.*, p. 41). The court and the defense discussed ways to protect witnesses from negative media attention during the retrial. (*Id.*, p. 42).

The defense filed motions addressing the problems caused by the media during the first trial. The defense filed a Motion to Preclude or Limit Live Media Coverage, a Motion for Change of Venue and a Motion to Sequester the Jury. (I. 1210, 1211, 1216). CNN responded to the defense motions, arguing among other things, that the inflammatory media coverage was Arias's fault for "courting" the media. (I. 1219, 1220). The prosecutor echoed CNN's argument. (I. 1222). The defense pointed out that between 2008 and 2013, Arias participated in three media interviews. (I. 1248). The court denied the motion for Change of Venue and the Motion to Sequester, noting that the media coverage was not "so outrageous" and that Arias was at fault for bringing the attention upon herself. (ME 11-13-13).

In October, the court began to limit the media's access to court proceedings, citing "intense media coverage" resulting in a "clear and present danger." (ME 10-18-13). The court closed the settlement conference to the media. (*Id.*).

On November 14, 2013, in a sealed minute entry, the court granted the defense motion to limit media access for retrial. (ME 11-14-13). The court significantly

limited the media's access during the retrial. The court found that live coverage of the sentencing phase retrial would likely affect the right of the parties to a fair trial, the privacy rights of witnesses, the safety and well-being of the witnesses, attorneys and jurors, and detract from the dignity of the proceedings. (*Id.*). The court concluded that there was a likelihood of harm arising from one or more of the above factors that outweighed the benefit to the public of live camera coverage. (*Id.*). In spite of the prosecutor's pleas that the cameras remain in place, the court found that CNN's interest in broadcasting the proceedings live did not outweigh the potential likelihood of an unfair trial. (*Id.*). The court found that there was a correlation between the threats received by attorneys and witnesses and the live coverage of the trial. (*Id.*). The court repeated that there was a real potential harm to permitting live camera coverage. (*Id.*).

The court noted the intense competition between media outlets. (*Id.*). The court admitted that this desire to feed the unusual public interest in the trial caused the media to hound and harass the attorneys, witnesses, jurors and court staff. (*Id.*). After acknowledging these many reasons to bar live case coverage, the court maintained that the first trial's live coverage did not impact the jury's verdict. (*Id.*).

The court allowed still photography, but banned electronic devices from the courtroom. (*Id.*). The court ordered that court coverage must comply with Rule 122 and the Maricopa County Superior Court policies, and FTR would not be available to the public until after the jury reached a verdict. (*Id.*). The court sealed the minute entry, noting that "there is no less restrictive means to achieve these compelling interests." (*Id.*).

Rooms were "swept" for listening devices before doing court business. (RT 7-30-14, p. 9). The court closed the courtroom for Arias's testimony; (RT 10-30-14, pp. 38-54), sealed the potential defense mitigation witness's names; (RT 5-8-14, p. 7), and allowed a witness to testify using an assumed name. (RT 1-7-15, p. 15).

Argument:

The trial court's failure to properly restrain the media violated Arias's right to a fair trial and requires a reversal of the verdict of guilt. Due process requires that the accused receive a fair trial by an impartial jury free from outside influences. U.S. CONST., amend. 6 and 14; ARIZ. CONST., art. 2, section 24; *Sheppard v. Maxwell*, 384 U.S. 333, 362(1966). The presence of the press must be limited when the accused might be prejudiced or disadvantaged. *Sheppard v. Maxwell*, 384 U.S. at

358. Trial courts must take strong measures to ensure that the balance is never weighed against the accused. *Id.*, at 362.

A defendant has the right on review to show that the media's coverage of her case…compromised the ability of the jury to judge her fairly. *Chandler v. Florida*, 449 U.S. 560, 581(1981). Alternatively, a defendant might show that broadcast coverage of her case had an adverse impact on trial participants sufficient to constitute a denial of due process. *Id.* In this case, the court found, after trial, that the trial's camera coverage resulted in threats against the trial participants. These threats constituted such an adverse impact as to constitute a denial of due process.

The public has the right to be informed. *Estes v. Texas*, 381 U.S. 532, 541-542(1965). Reporters are free to report what happens in the courtroom. *Id.* The rights of the press are not unlimited. *Estes v. Texas*, 381 U.S. at 539-540. The primary concern must be the proper administration of justice. *Id.*, at 540. The law favors publicity in legal proceedings so far as that object can be attained without injustice to the defendant. *Estes v. Texas*, 381 U.S. at 542. In this case, the media coverage compromised Arias's right to a fair trial.

In Arizona, electronic and still photographic coverage of public judicial proceedings conducted by a judicial officer during sessions of court may be

permitted in accordance with Rule 122 of the Supreme Court Rules. (*See* Appendix 2).

The court allowed three cameras in the courtroom with a few restrictions. The court also allowed the trial to be live-streamed. Coverage by the media caused problems soon after the trial began.

Filming jurors: The use of television in the courtroom has a conscious or unconscious effect on the jurors' judgment. *Estes v. Texas*, 381 U.S. at 545. It is "highly probable" that it has a direct effect on the jurors' vote as to guilt or innocence. *Id.* The use of television does not contribute materially to ascertaining the truth. *Id.*, at 544. It injects an irrelevant factor into the court proceedings. *Id.* A televised case becomes a "cause celebre" and sends a signal to the public that this trial is special. *Id.*, at 545. Filming the jurors violated Arias's right to a fair trial.

The obvious media presence inside the courtroom suggested to the jurors that this trial and this defendant were different. The jurors went to court each day and made their way through the spectators into the courthouse. They soon required security escorts and later a SWAT team for protection.

The media set up every day inside the courtroom. Some jurors were "mistakenly" photographed by the media. At day's end, they returned to the juror parking garage to find the media waiting there for them.

The court questioned them individually about possible contacts with the media—not once but five times throughout trial. The media presence in the courtroom was so intrusive that the jurors complained that the noise made by the camera shutters was distracting.

The judge allowed her jurors to be marched around the courthouse under security escort, hustled from the courthouse via the loading dock, and by trial's end, escorted by a SWAT team. The court imposed these measures to protect the jurors from the nasty atmosphere generated by the media's livestream trial coverage. These extraordinary measures telegraphed to the jurors that their safety was at issue. This negative environment did not promote a fair trial for Arias.

Broadcasting Arias in restraints: The media filmed Arias's leg brace. Broadcasting a defendant in shackles is prejudicial. *See* Issue 4. Showing Arias in shackles sent a clear and negative message to the public that she was so dangerous that she even had to be shackled in the courtroom. This message misled the viewing public because Arias always observed proper courtroom decorum.

The media was reckless in filming the trial, the trial was on a livestream with no delay for editing out matters that violated the court's order, and the coverage served to inflame the public's passions. As the public became more enamored with Arias's trial, the chance that the jurors would be negatively impacted by outside influences increased.

Threats to trial participants:

The trial court held: ***"…there was a correlation between the threats received by attorneys and witnesses and the live coverage of the trial."***

The trial court has a duty to preserve the safety of counsel, jury, witnesses, spectators, in short, everyone inside the courtroom. *United States v. Clardy*, 540 F.2d 439, 443(9th Cir.1976), *citing Leyvas v. United States*, 264 F.2d 272, at 277(9th Cir.1958), *cert. denied* 359 U.S. 936(1959). As trial proceeded, the spectators became emboldened by what they saw on the livestream and the nightly trial reviews by TV personalities Dr. Drew and Nancy Grace. Spectators inserted themselves into the court proceedings by harassing and threatening trial participants in person, online, by phone and by email.

Defense counsel, experts and the mitigation specialist were targeted. Defense counsel received explicit death threats left on her law office voicemail on at least

five different occasions. (Order supplementing to record dated 4-3-18). Court security's response was lukewarm. The trial's toxic atmosphere seriously compromised LaViolette's health.

The court had a duty to control her courtroom. The judge must meet situations as they arise and be able to cope with…the contingencies inherent in the adversary process. *United States v. Young*, 470 U.S. 1, 10(1985), *quoting Geders v. United States*, 425 U.S. 80, 86(1976). *State v. Goodyear*, 98 Ariz. 301, 304(1965) (It is the judge's duty to maintain order in the courtroom and to prevent and suppress any acts which might prejudice the defendant's rights.) "The trial judge must do whatever is necessary to control the courthouse and protect the jury from emotional reactions by spectators or witnesses. The judge should strictly forbid tactics that may influence the jury and, in the strongest manner possible, deal with those who attempt to do so." *State v. Bible*, 175 Ariz. 549, 569(1993).

The court knew the media spread inaccurate information about the trial, yet took no steps to limit media access to the trial. Rule 122 allows the court to modify its order. She could have shut down or limited the live feed. She could have prohibited the use of electronic devices in the courtroom. The court's order issued

in November, 2013 illustrates the steps the court eventually took for the retrial and steps that should have been taken during the guilt phase.

When the court allowed the prosecutor to treat the defense experts unprofessionally, the spectators followed suit. The court sustained objections to the prosecutor's argumentative questions at least 20 times. (*See* Appendix 3). The court sustained objections to the prosecutor's yelling at the experts at least three times. (*See* Appendix 4). The court sustained objections when the prosecutor belittled Dr. Samuels at least twice; and he called Dr. Geffner a "hired gun." (*See* Appendix 5).

When the court allowed the prosecutor to treat Arias unprofessionally, the spectators followed suit. The court sustained objections to the prosecutor's argumentative questions of Arias at least 39 times, belittling three times, yelling twice, badgering once, and asked and answered six times. (*See* Appendix 6). The court allowed the prosecutor to behave badly on a world-wide stage, sending the message that if this state's representative had such disdain and spite for the defense, then Arias deserved such treatment.

The press is welcome to view a public proceeding, but the court has a duty to make sure that their presence does not violate the defendant's right to a fair trial. It

was the court's duty to use Rule 122 to modify her original order in an effort to protect Arias's right to a fair trial.

The defense explained to the court that due to the media "stoking the fire," spectators continued harassing their experts and also their mitigation specialist. HLN taunted the defense regularly on its program.

"Trial judges are to take measures to ensure that those who come to see the trial are spectators, not advocates…" *State v. Bible*, 175 Ariz. at 569(1993). "In our justice system, the public has the right to watch the trial—not participate in it or indicate a desired outcome." *Id.* The judge's original error recurred each day that the trial was livestreamed over the internet. She deferred to the media at Arias's expense.

The trial court took passive measures to avoid the media by conducting matters in chambers or in a conference room, addressing objections at the bench and sealing bench conferences. Additional steps were necessary to establish the calm and serenity expected in a court proceeding.

The court failed in its duty to reprimand T.A.'s sister, who harassed LaViolette via social media. See Arizona Rules of Evidence, Rule 611. The public directed its hostility at the defense team. The court offered to shut down the cameras

but the defense did not agree fast enough. A few days later, when the defense agreed to the court's offered solution, the court told them to file a motion. The court spun its wheels when she addressed threats against the defense, but she acted immediately and decisively when the prosecutor was threatened, by posting armed guards in the courtroom. The court acted quickly to protect the prosecutor, and dragged her feet when the defense alerted her about the threats they received.

Circus-like atmosphere: Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation but is highly censurable and worthy of disciplinary measures. *KPNX Broadcasting Co. V. Arizona Superior Court*, 459 U.S. 1302, 1306(1982). A trial judge may insist that the only performance which goes on in the courtroom is the trial of the case at hand. *Id.* The prosecutor released information from his files to the media until the court ordered him to stop. He stood outside on the courthouse steps, courted the media and spectators, signed autographs and posed for photographs. That counsel may "play" to the public audience was a concern expressed by the United States Supreme Court in 1965. *Estes v. Texas*, 381 U.S. at 549. This prosecutor unapologetically "played" to the audience outside as well as to those watching the livestream. (*See* Appendix 7). His behavior deprived Arias of a fair trial.

Even a year later, the defense attorneys reminisced about the atmosphere outside of the courthouse during their trial. (RT 11-13-14, p. 6). They talked about how people dressed in costume gathered near the courthouse. (*Id.*). Nothing is more circus-like than folks showing up on the courthouse plaza dressed in costumes in their efforts to influence the jury.

"Murder and mystery, society, sex and suspense were combined in this case in such a manner so as to intrigue and captivate the public fancy." *Sheppard v. Maxwell*, 384 U.S. at 356(1966). The way the media portrayed this trial inflamed the public's passions and prejudices to the extent that the victims' representatives and random spectators felt they had a right to influence the trial's outcome. The spectators reacted emotionally to this tabloid-style trial coverage. As a result, Arias's right to a fair trial gave way to the media's desire for ratings and advertising dollars.

As in *Sheppard*, television programs devoted to the trial "…catered to the insatiable interest of the American public in the bizarre." *Id.* Unfair and prejudicial news comment on pending trials was becoming prevalent back in 1966 when the *Sheppard* opinion was published. It is even more so now in the era of tabloid and reality TV shows and easy internet access. *See, Sheppard v. Maxwell*, 384 U.S. at

362. The nightly commentary on Dr. Drew, HLN or Nancy Grace gave the trial a reality-TV flavor, encouraging spectators to believe that their opinions could influence the verdict.

The spectators believed that their opinions mattered. Perhaps they believed they could call or text in a vote at trial's end. Maybe they wanted to vote Arias "off of the island." The court had a duty to protect Arias's trial from negative news exposure.

A carnival atmosphere could be avoided since the courtroom and courthouse are subject to the control of the court. *Estes v. Texas*, 381 U.S. at 358. The court did not need anyone's permission to shut down the live feed. The prosecutor gleefully manipulated the coverage to inflame the public sentiment against Arias, and the public directed their displeasure at the defense. The public followed the prosecutor's lead; heaping venom, disdain and vitriol against anyone associated with the defense.

After his second expert witness endured threats and harassment by spectators, the victim's representative and unprofessional treatment by the prosecutor, defense counsel moved to withdraw. He complained that the pressure and nasty atmosphere created by the media prohibited his team from representing Arias. Defense counsel

believed the prosecutor behaved outrageously for the cameras in the courtroom because he enjoyed the world-wide attention provided by the livestream. The prosecutor played to the cameras, yelling at and berating witnesses, flailing his arms, making personal attacks on defense counsel and defense experts and throwing evidence. (RT 2-21-13, pp. 106; RT 2-25-13, p. 89; RT 2-26-13, pp. 60-64) (*See* Appendix 8).

As the prosecutor fanned the flames against Arias on the courthouse steps, the defense team tried to avoid the spectator's wrath. The defense team parked below the courthouse in a secured parking area where their vehicle was searched for bombs.

After trial, the defense filed a motion for mistrial based on the uncontrolled media coverage and its effect on the entire trial. The court denied the motion, claiming that the media coverage did not affect the trial's outcome. The court threatened to report defense counsel to the state bar for suggesting that she failed to ensure that Arias received a fair trial. (RT 5-21-13, pp. 18-28). The court refused to acknowledge what everyone else could see, i.e., the media influenced the daily trial proceedings to the point where Arias did not receive a fair trial.

Post-trial remedies: The court's rulings after trial indicate that she knew that the media coverage negatively influenced Arias's trial. The court held that the media

coverage did not affect the trial's outcome, but she sealed certain matters from public view. In fact, Arias's trial caused the county to reconsider its policy regarding camera placement in the courtroom.

The court instituted steps to secure court proceedings for the retrial. She ordered rooms be swept for listening devices before conducting court business, closed the courtroom for Arias's testimony, sealed potential defense mitigation witnesses' names and allowed a defense witness to testify under an assumed name. The court significantly limited the media's access to the retrial. The court found that sentencing phase retrial live coverage would likely affect the parties' right to a fair trial, the witnesses' privacy rights, the safety and well-being of witnesses, attorneys and jurors, and detract from the proceedings' dignity. The court concluded that there was a likelihood of harm arising from these factors, that outweighed the benefit of the public's access to live camera coverage.

The prosecutor wanted the cameras to remain in place, but the court found that CNN's interest in broadcasting the proceedings live did not outweigh the potential likelihood of an unfair trial. The court repeated that there was a real potential harm to permitting live camera coverage, and noted that the intense competition between media outlets affected the trial. The media hounded and

harassed attorneys, witnesses, jurors and court staff. This rationale supports the conclusion that live coverage of Arias's trial violated her right to due process and a fair trial.

The court permitted still photography at the retrial, but did not allow electronic devices in the courtroom. FTR would not be available to the public until after the jury reached a verdict. These are steps the court should have taken during the guilt phase.

Prejudice: The purpose of the structural error doctrine is to insure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907(2017). There are three rationales that support a finding of structural error. *Id.*, at 1908. 1) If the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest; 2) if the effects of the error are simply too hard to measure; 3) if the error always results in fundamental unfairness. *Id.* An error can be structural error even if it does not lead to fundamental unfairness in every case. *Id.* The presumption of prejudice…attends only the extreme case. *Skilling v. United States*, 561 U.S. 358, 381(2010). This trial demonstrates the extreme case as referred to in *Skilling*.

The media's improper influence on this trial resulted in structural error. It matters not that the jury told the court numerous times that the media coverage and heated atmosphere did not affect their ability to be fair and impartial. *See, Holbrook v. Flynn*, 475 U.S. 560, 570(1986). The live coverage impacted the trial in real but immeasurable ways.

The cameras photographed the jurors repeatedly. The impact of the constant threat of improper conduct by the media cannot be measured. Based on the extraordinary measures taken to shield them from the media and spectators, the jurors had to realize this trial was not an ordinary trial and their safety was at risk.

The court polled the jury and asked them if they could be fair and impartial on five different occasions. (*See* Appendix 9). This sent the jurors a not so subtle message that this trial and this defendant, were different; and not in a good way. The cameras distracted the jurors until they complained to the court. The cameras broadcast Arias wearing restraints. The camera crew was negligent and sloppy in the way it filmed the trial. The mistakes the camera crew made were never beneficial to Arias.

Structural error occurred because the livestream encouraged and influenced spectators to disrespect our legal system. This disrespect, as demonstrated by the

prosecutor, was apparent as the spectators inserted themselves into the process by threatening defense attorneys and witnesses. They disrespected the legal process because they watched the prosecutor treat Arias, the defense witnesses, and the defense attorneys disrespectfully. *See* Issue 6. The spectators watched as the court allowed the prosecutor to behave unprofessionally. By allowing the prosecutor to play to the cameras at Arias's expense, the court condoned the prosecutor's behavior. The court and the prosecutor taught the spectators that Arias and her defense deserved their disdain.

The spectators took up the sword on the state's behalf. Vicious comments and very real death threats rained upon the defense team. Later, the court confirmed the connection between the livestream and the negative treatment of the defense. The spectators received their information from the media. Arias's right to a calm, solemn and fair trial took second place to the public's preference for sensationalism.

The court abdicated its duty to preserve the defense team's safety. These constant threats prevented witnesses like Samuels and LaViolette from presenting their best testimony. The ongoing threats impacted Arias's experts and her defense team beyond measure.

The toxic atmosphere, illustrated by the prosecutor's theatrics inside and outside of the courtroom, spectators showing up in costume, spectators cheering the guilty verdict, and approaching jurors after they left the courtroom, negatively influenced the trial. Structural error applies in instances like this where the prejudice is obvious but immeasurable.

Should this Court determine that the matter is properly reviewed for harmless error, reviewing courts consider alleged trial error under the harmless error standard when a defendant objects at trial and thereby preserves an issue for appeal. *State v. Henderson*, 210 Ariz. 561, 567(2005). Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence. *Id.* The defense continuously objected to the court's decisions to allow media involvement on this trial. The burden is on the state to prove beyond a reasonable doubt that this error did not contribute to or affect the verdict.

The court's decision to allow unrestrained media involvement in this case set off a string of events that resulted in an unfair trial. The media photographed jurors. The media photographed Arias in restraints. The noisy cameras distracted the jurors.

The prosecutor's boorish behavior in the courtroom translated to boorish behavior by spectators outside of the courtroom.

When the court allowed his poor behavior to continue, it signaled to the public that Arias and her defense deserved their disdain. The media's coverage only emboldened spectators to act out with threats and other uncivilized behavior, always directed at the defense.

The media abused its right to be present during Arias's trial and as a result, contributed to her guilty verdict. The trial court acknowledged the connection between the threats and the livestream coverage. The court failed to act to protect Arias's right to a fair trial. The error was not harmless, requiring reversal.

ARGUMENT 2

> The trial court violated Arias's right to confront witnesses and the Rules of Evidence when it allowed Officer Friedman to repeat statements made to him by Arias's grandparents regarding a .25 caliber handgun that was allegedly stolen from their home during a burglary.

Standard of Review:

"Although this court ordinarily applies an abuse of discretion standard when reviewing a trial court's rulings on the admissibility of evidence under exceptions to the hearsay rule, we conduct a *de novo* review of challenges to admissibility under the Confrontation Clause." *State v. King*, 212 Ariz. 372, 375, ¶16(2006). A trial court's ruling on the admissibility of evidence will not be overturned without a showing that the court abused its discretion. *State v. Oliver*, 158 Ariz. 22, 30(1988).

Additional Facts:

The defense filed a motion to preclude the state from introducing hearsay evidence regarding the theft of Arias's grandfather's .25 caliber handgun from his home in California. (I. 562). The state did not list Arias's grandfather as a witness. (*Id.*).

The prosecutor did not address the defense argument. (I. 568). Instead, the prosecutor argued that Arias's own statements were admissible as admissions, and

that Arias's statements to Detective Flores confirmed that the .25 caliber handgun was stolen from her grandparent's home. (*Id.*).

In reply, the defense addressed the state's intention to introduce evidence of the stolen gun through Arias's statements to Flores. (I. 571-572). The defense argued that Arias never provided information regarding the stolen gun but was fed the information by Flores. (*Id.*).

After oral argument, the court found that the defense sought to preclude "any evidence related to the theft of a gun that occurred at her grandparents' home on May 28, 2008." (ME 12-19-12). The court found that the defense sought to preclude Arias's statements to Flores about the gun. (*Id.*). The court ruled that statements that Arias made to the police about the stolen gun were admissible and denied the defense motion. (*Id.*). The court did not address the defense motion to preclude Officer Friedman from testifying about statements that Arias's grandparents made to him.

At trial, Officer Friedman testified that Arias's grandparents told him about the stolen .25. (RT 1-14-13, p. 16). The defense interposed a hearsay objection. (*Id.*, pp. 16-17). The court overruled the objection on the basis that the statement was not introduced for the truth of the matter asserted. (*Id.*, pp. 18-19). The state

avowed that the reason for introducing the hearsay was to show that Friedman "wrote it in his report," and that it would be tied up later with snippets from Flores' interview with Arias. (*Id.*, pp. 17-18).

The snippets from the interview include:

1) FLORES: Jodi, you can continue to do this, okay? A records check shows you, you, um has reported a gun stolen, .25 auto, just happens to be the same caliber of the weapon used to kill him.

   JODI: A .25 auto was used to kill Travis? (Interview transcript attached to Reply, p. 44).

2) JODI: Did you find the, the gun? Maybe that would….

   FLORES: Jodi, we're just playing games here. That gun was in your possession. When did you report it stolen?

   JODI: Um? I didn't even know that there were guns until my grand-, my grandparents reported it stolen the day the house, their house was broken into.

   FLORES: When was that?

   JODI: I don't remember. It was a few months ago maybe?

   FLORES: What did you do with the gun?

JODI: I don't have a gun. (*Id.*, p. 47).

3) FLORES: No, my job is to speak for Travis right now and everything Travis is telling me is that Jodi did this to me. Have you ever shot that .25 auto?

JODI: Un-un

FLORES: Have you ever touched it?

JODI: The one that was stolen?

FLORES: Un-hum

JODI: No, I've never seen it. (Pause) My grandpa said it looks like a toy gun.

FLORES: Un-hum

JODI: I don't know what a .25 looks like. I know what a .22 looks like and I know…

FLORES: It looks just like a .22 actually. (*Id.*, p. 50).

When she testified, Arias maintained that she did not steal the .25 caliber handgun, nor did she bring a gun with her from Yreka to Mesa. (RT 2-19-13, pp. 80; 89; 105; 108; RT 2-27-13, p. 121; RT 2-28-13, p. 114).

The jurors asked whether the police recovered Arias's grandfather's gun. (RT 3-6-13, p. 68).

In closing argument, the prosecutor relied heavily on his theory that Arias stole the .25 from her grandfather, staged the burglary and used the same gun when she killed T.A. (RT 5-2-13, pp. 87-90; 97; 113; 119; 144; 145; 172; 173; 176; 177; RT 5-3-13, pp. 122; 129; 131; 144). The same arguments supported his theory that Arias committed premeditated first degree murder. (*Id.*). The jury found premeditation in a 12-0 vote. (I. 1125).

Legal Argument:

Hearsay is a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. 17 A.R.S. Rules of Evid., Rule 801. Hearsay is not admissible except as provided by applicable constitutional provisions, statutes, or rules. U.S. CONST., amend. 5 and 6; ARIZ. CONST., art. 2, section 24; 17 A.R.S. Rules of Evid., Rule 802.

The court erred when it allowed Officer Friedman to testify that Arias's grandparents told him that a .25 was stolen. The defense addressed this anticipated testimony in its written pre-trial motion but the court ignored it. The defense

interposed an appropriate objection when, as anticipated, the prosecutor asked Friedman to tell the jury what Arias's grandparents told him about the gun.

This is classic hearsay. The state did not call Arias's grandparents as witnesses. The prosecutor argued that he didn't offer the statement for the truth of the matter asserted, yet he relied on this testimony throughout the case to prove premeditation. The state maintained he offered the statement to show that the officer "wrote it in his report." With that kind of reasoning, *any* information contained in a police report would be admissible through the officer's report and not that of an independent witness. The Rules of Evidence do not support that type of reasoning.

The defense anticipated this problem and tried to address it with a written, pre-trial motion. The state's response did not address the motion. The court's ruling did not address the defense motion.

The officer testified as anticipated and the defense objected appropriately. The trial court erred when it found that the state did not offer the grandparent's statement for the truth of the matter asserted. Instead, the court bought into the pretext offered by the state. The state then abandoned its own theory by arguing the substantive content of the out of court statement: that Arias staged a burglary, stole the .25 from her grandfather, and then used the .25 when she killed T.A.

The state introduced this information precisely for the proof of the matter asserted: that the .25 was taken in the burglary that Arias supposedly staged. The state relied on this information to argue that Arias committed premeditated murder. The prosecutor argued, "So if he didn't have a gun, she brought it. And you know that she did bring it. You know about the burglary, supposed burglary, of her grandparent's house." (RT 5-2-13, p. 173).

The trial court abused its discretion when she allowed this hearsay testimony into evidence. Reviewing courts consider alleged trial error under the harmless error standard when a defendant objects at trial and thereby preserves an issue for appeal. *State v. Henderson,* 210 Ariz. 561, 567, ¶18(2005). Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence. *Id.* Because the prosecutor relied on this hearsay to prove premeditation, the error was not harmless, requiring reversal.

Confrontation Clause: The Sixth Amendment of the United States Constitution states in part, "in all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him." U.S. CONST., amend. 6; ARIZ. CONST., art. 2, section 24.

The United States Supreme Court interpreted the Confrontation Clause to allow the admission at trial of a prior testimonial statement only when the witness is unavailable and the defendant has had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 68(2004). There was no finding that Arias's grandparents were unavailable or that the defense had a prior opportunity to cross-examine them. *See Bullcoming v. New Mexico*, 564 U.S. 647, 658(2011) (stating that before testimonial statements of an absent witness may be admitted into evidence, the Confrontation Clause requires a showing that the witness is unavailable and that the defendant had a prior opportunity for cross-examination.)

The defense filed a pre-trial motion raising Friedman's anticipated testimony and specifically cited to the Sixth Amendment of the United States Constitution as well as the Arizona counterpart. The prosecutor chose to ignore the basis of the motion and instead focused its response on its intention to introduce statements about the gun that Arias made to Detective Flores. The court did not address the defense motion but instead ruled based on the state's unrelated argument.

In doing so, the court implicitly denied the defense motion in limine. The defense concerns about Friedman's testimony came to fruition. The trial court erred

when it found that the grandparents' statements were not offered to prove the truth of the matter asserted.

Courts must exercise caution to ensure that out of court testimonial statements, ostensibly offered to explain the course of a police investigation, are not used as an end-run around *Crawford* and hearsay rules, particularly when those statements directly inculpate the defendant. *United States v. Johnson*, 875 F.3d 1265, 1279(9th Cir.2017). Statements that are not relevant to prove anything *other* than their truth are inadmissible. *Id.*

In *Johnson*, the court allowed the statement into evidence but instructed the jury that it was only to be considered for nonhearsay purposes. *Id.* Further, the prosecution made no reference to the statements during closing arguments. *Id.* In the present case, the prosecutor used the grandparents' statements to Friedman about the missing handgun to argue premeditation. T.A. was shot with a .25. The grandparents' statement about the missing .25 formed the basis of the state's argument that Arias premeditated T.A.'s murder. Twelve jurors found that Arias committed premeditated murder.

Statements made by a witness during police questioning are testimonial "when the circumstances objectively indicate that there is no…ongoing emergency,

and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822(2006). "The product of such interrogation, whether reduced to a writing signed by the declarant or embedded in the memory (and perhaps notes) of the interrogating officer, is testimonial." *Id.*, at 826. The *Crawford* Court noted that "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused." *Crawford v. Washington*, 541 U.S. at 50. The grandparents' statement was testimonial because it was made to the police during the course of a burglary investigation.

This Court must determine whether the court's error in admitting the grandparents' statement was harmless. *State v. Smith*, 242 Ariz. 98, 102, ¶14(App.2017). The court must be satisfied beyond a reasonable doubt that the erroneously admitted evidence had no influence on the jury's judgment. *Id.* The burden is on the state. *Id.* The proper inquiry is whether the guilty verdict actually rendered in this trial was surely unattributable to the error. *Id., quoting State v. Valverde*, 220 Ariz. 582, 585, ¶11(2009). Prejudice for violation of the confrontation clause parallels the prejudice caused by allowing the hearsay statement

into evidence. The prosecutor relied on the improperly admitted information to argue that Arias premeditated T.A.'s murder by acquiring the gun before she left California.

The Confrontation Clause of the United States Constitution commands that the reliability of evidence be assessed in the "crucible of cross-examination." *Crawford v. Washington*, 541 U.S. at 61(2004). The Arizona Constitution provides the same right. ARIZ. CONST., art. 2, section 24; *State v. Moody*, 208 Ariz. 424, 458, ¶136(2004). The court denied Arias the opportunity to test the reliability of her grandparents' statement and the prosecutor exploited the statements to prove premeditated murder.

The trial court erred when it ruled that Friedman could testify that Arias's grandparents told him about the .25, thus violating Arias's right to confrontation. Reversal is required.

ARGUMENT 3

The trial court abused its discretion when she allowed the state's expert to testify regarding Arias's mental state at the time of the crime.

Standard of Review:

The admission or exclusion of evidence is reviewed for an abuse of discretion. *State v. Robinson*, 165 Ariz. 51, 56(1990).

Additional Facts:

Prior to trial, the state filed a Motion in Limine to Preclude Certain Testimony from Defense Experts and to Preclude Hearsay Statements Of Victim. (I. 332). The state asked to preclude defense experts from testifying that Arias lacked premeditation, acted in self-defense and was fearful when she killed the victim. (*Id.*). The court granted the motion. (RT 8-15-11, p. 60).

The state called Dr. DeMarte as a rebuttal witness. DeMarte addressed Arias's memory loss. (RT 4-16-13, p. 165). The prosecutor asked DeMarte if she saw any "higher order behaviors" in relation to the fight or flight memory loss issue. (*Id.*, p. 167). The defense objected because the question asked DeMarte to comment on Arias's mental state at the time of the offense. (*Id.*). The prosecutor argued that the

testimony he intended to elicit was relevant to Arias's memory and said he would focus on what happened after the killing. (*Id.*, p. 168).

The defense predicted that the state would still argue that Arias's actions after the killing supported premeditation. (*Id.*, p. 169). The court overruled the objection, stating that the defense could address the matter on cross-examination and would possibly be allowed surrebuttal. (*Id.*).

DeMarte testified about Arias's capacity for organization and planning after the killing. (*Id.*, p. 171). DeMarte testified that deleting photos and "clean up" were examples of organization and planning. (*Id.*, pp. 171-172). The defense objected again. (*Id.*, p. 172).

The state argued that DeMarte properly addressed Arias's mental state after the killing. (*Id.*). The defense argued that the testimony was only relevant to an argument for premeditation. (*Id.*). The prosecutor agreed to lead his witness to avoid improper testimony. (*Id.*, p. 173). The defense moved for a mistrial, arguing that DeMarte's testimony about Arias's ability to plan and organize was improper testimony of her mental state near the time of the crime. (*Id.*).

The state argued that the testimony rebutted Dr. Samuels' testimony about how "fight or flight" affected Arias. (*Id.*, p. 174). The state argued that Samuels'

testimony implied that "fight or flight" made it impossible for Arias to organize or plan. (*Id.*). The defense argued that the testimony violated "the court's order." (*Id.*, p. 175). The court denied the motion for mistrial. (*Id.*).

The prosecutor asked DeMarte "…Would the individual have the organizational wherewithal based on memory to conduct very complex activities?" (*Id.*, p. 177). The court overruled the defense objection as to foundation and vagueness. (*Id.*). DeMarte testified that deleting photos was an organizational process. (*Id.*, pp. 177-178).

In closing argument, the state argued that Arias's actions after she killed T.A. proved premeditation. He argued that these things were "important to show that she was thinking" (RT 5-2-13, p. 134); her behavior was "directed" (*Id.*, p. 136); her behavior was "demonstrative of how well she was thinking" (*Id.*, p. 139); and it showed her "clarity of thought." (*Id.*, p. 141).

He listed actions claiming that they illustrated that Arias's thought processes after the incident were clear, directed, and supported premeditation: she washed her feet before moving around other areas of the house (*Id.*, p. 134); she deleted certain photos from the camera (*Id.*, p. 133); she put the camera in the washing machine (*Id.*, p. 135); she washed off T.A.'s body in order to make sure her DNA would not

be found on him (*Id.*, pp. 135-136); she cleaned off the knife (*Id.*, pp. 136-137); she took the gun with her when she left (*Id.*, p. 137); she "staged" the scene (*Id.*, p. 143); she washed certain items using Clorox (*Id.*, p. 138); she put the license plate back on her car (*Id.*, p. 139); and she left a message on T.A.'s voicemail. (*Id.*, p. 141).

The state argued that the scene did not support sudden quarrel or heat of passion and that the scene indicated "something else." (*Id.*, p. 145). The state argued, "She actually took some time to delete some photographs from the camera. She actually took time to make sure she didn't get the bloody footprints on to the carpet. She took time to put the camera in the washing machine. And she took some extra time to kind of wipe up the scene, drag him back, stick him in the shower." (*Id.*, pp. 145-146).

Legal Argument:

The government must prove every element of a charged offense beyond a reasonable doubt. U.S. CONST., amend. 5, 6 and 14; ARIZ. CONST., art. 2, sections 4, 23 and 24; *In Re Winship*, 397 U.S. 358, 361(1970). The state has the burden to prove intent but it is not proper for the state to present expert testimony regarding the defendant's state of mind at the time of the offense.

An expert may not state an opinion about whether the defendant did or did not have a mental state that constitutes an element of the crime charged. 17 A.R.S. Rules of Evid., Rule 704(b). It is up to the jury to determine whether the state has met its burden of proof of each and every element of a crime. Expert psychological testimony is not appropriate to show the actual mental state of the defendant at a given time. *State v. Hyde*, 186 Ariz. 252, 276(1996); *State v. Ortiz*, 158 Ariz. 528, 533(1988); *State v. Rivera*, 152 Ariz. 507, 514(1987); *State v. Christensen*, 129 Ariz. 32, 35-36(1981); *State v. Dickey*, 125 Ariz. 163, 169(1980).

The court erred when it allowed the state to introduce evidence of Arias's mental state at the time of the crime. The prosecutor told the court he was eliciting this testimony to address Arias's mental status immediately *after* the crime; not at the time of the crime. Defense counsel accurately predicted that the prosecutor would use the information elicited from DeMarte to bolster the argument that Arias acted with premeditation.

DeMarte testified that Arias was able to "organize and plan" after the killing. She testified that deleting photos from the camera and putting the camera in the washing machine showed her ability to organize and plan. This is the type of

evidence Rule 704(b) precludes and case law addresses as the "actual mental state of the defendant at a given time."

The rule and supporting case law address the scope of time as "at a given time." The rule itself does not suggest a specific framework of time where mental state may or may not be addressed. The state drew an artificial line in its desperation to introduce evidence of Arias's mental state, illustrated by her behavior immediately after the incident. The rule explicitly provides that the expert may not comment on the defendant's mental state *that constitutes an element of the crime*. In this case, premeditation was the element of the crime at issue.

The trial court erred by allowing DeMarte to discuss Arias's ability to organize and plan immediately after the killing. The state exploited the error by directing the jurors' attention to this evidence in both closing arguments. Ironically, the state filed a pretrial motion to preclude the *defense* from eliciting this information from its experts, but then proceeded to do the very same thing he claimed was improper in his motion in limine.

The trial court abused its discretion when she allowed DeMarte to testify about Arias's mental state immediately after the crime. Reviewing courts consider alleged trial error under the harmless error standard when a defendant objects at trial and

thereby preserves an issue for appeal. *State v. Henderson*, 210 Ariz. 561, 567(2005). Harmless error review places the burden on the state to prove beyond a reasonable doubt that the error did not contribute to or affect the verdict or sentence. *Id.* This error was not harmless because it addressed premeditation, a mental state that each and every juror found when they found Arias guilty of first degree murder.

Once the words "organization and planning" left DeMarte's lips, the prosecutor was unleashed, linking this testimony to Arias's acts such as:

- washing her feet before moving around the home;
- washing off the knife;
- taking the gun with her;
- putting the camera in the washer;
- deleting certain photos from the camera;
- washing DNA from the body, and;
- "staging the scene."

The prosecutor urged the jury to find that this organizing and planning was "important to show that she was thinking," that she exhibited "directed behavior," the actions were "demonstrative of how well she was thinking" after the incident, and evidenced her "clarity of thought."

The prosecutor linked the organizing and planning that took place after the killing to premeditation when he argued, "…there is this premeditation aspect. So she staged the scene at that point." Without DeMarte's improper opinion that Arias could organize and plan after the incident, the prosecutor would not be able to make these arguments supporting premeditation.

Premeditation was essential to the first degree murder charge in this case. All twelve jurors found premeditation. The prosecutor tied Arias's actions to premeditation because the court erred when it allowed DeMarte to testify about Arias's mental state at the time of the crime. The error was not harmless, and reversal is required.

ARGUMENT 4

Arias was forced to wear a stun belt throughout trial, thus violating her right to a fair trial.

Standard of Review:

Structural error occurs when certain basic constitutional guarantees that should define the framework of any criminal trial are violated. *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907(2017). Structural error defies analysis for harmless error. *Id.*

Additional Facts:

Arias wore a stun belt at trial. During the trial's third week, Arias's stun belt was too large and did not fit properly. (RT 1-10-13, pp. 62-63). A jail supervisor looked for a smaller size belt for Arias to wear. (*Id.*, p. 63). Arias wore the ill-fitting stun belt for 2-3 days. (*Id.*). Arias's clothes did not hide the bulky stun belt. (*Id.*).

The court said that she would contact MCSO about the matter. (*Id.*). The prosecutor argued that the jury could not see the belt. (*Id.*). Defense counsel instructed Arias to sit so that the jury could not see the belt. (*Id.*).

When Arias testified, the prosecutor invited her to step down from the witness stand in order to demonstrate for the jury the victim's posture as he attacked her. (RT 2-28-13, p. 126). Defense counsel promptly objected because any

demonstration would disclose to the jury that Arias wore a stun belt and leg brace. (*Id.*, p. 127). The prosecutor claimed that *he* could not see any shackles. (*Id.*). Defense counsel repeated that Arias wore a stun belt and leg brace. (*Id.*, p. 128). The stun belt would be clearly visible if Arias performed a demonstration for the jury. (*Id.*, p. 133).

The court asked MCSO's permission to allow Arias to perform the demonstration without the restraints. (*Id.*, p. 137). MCSO consented and Arias performed the demonstration without restraints but with an armed deputy in the courtroom. (*Id.*, pp. 139-140). MCSO replaced the restraints after the demonstration. (*Id.*, p. 137).

Legal Argument:

A criminal defendant has the constitutional right to be free of shackles and handcuffs in the presence of the jury absent an essential state interest that justifies the physical restraints. *United States v. Sanchez-Gomez*, 859 F.3d 649, 660(9th Cir.2017), *cert. granted* in part, *U.S. v. Sanchez-Gomez*, 138 S.Ct. 543, U.S. Dec. 8, 2017. The Supreme Court identified three constitutional anchors for the right to be free from shackling during trial. *United States v. Sanchez-Gomez*, 859 F.3d at 660, *quoting Deck v. Missouri*, 544 U.S. 622, 630-631(2005). The three anchors are: 1)

the presumption of innocence; 2) the Sixth Amendment right to counsel and participate in one's own defense; and 3) the dignity and decorum of the judicial process, including the respectful treatment of defendants. *Id.* U.S. CONST., amend. 5, 6 and 14; ARIZ. CONST., art. 2, section 24.

Before a defendant may proceed to trial in shackles, the court must make an individualized decision that a compelling government purpose would be served and that shackles are the least restrictive means for maintaining security and order in the courtroom. *United States v. Sanchez-Gomez,* 859 F.3d at 661. Courts may not presume that shackles are necessary in every case. *Id.* Nor can this decision be deferred to security providers. *Id.*; *State v. Cruz,* 218 Ariz. 149, 168(2008).

When the court does not follow these procedures and allows a defendant to participate in trial while wearing shackles, remand is required to determine whether use of the stun belt was necessary and whether a defendant was prejudiced. *Gonzalez v. Pliler*, 341 F.3d 897, 904(9th Cir.2003).

The court should inquire about the need for a security device and hold a hearing if necessary. *State v. Henry,* 189 Ariz. 540, 550(1997). The court did not conduct an inquiry in this case. The parties did not address the use of restraints prior to trial. When defense counsel brought the ill-fitting stun belt to the court's attention,

the court never bothered to ask why Arias wore the restraint in the first place. The court improperly deferred to MCSO, just as she did when the prosecutor asked Arias to conduct a demonstration for the jury.

In *Stephenson v. Neal*, 865 F.3d 956(7th Cir.2017), the stun belt box caused a visible bulge under the defendant's shirt. *Id.*, at 958. Stephenson, like Arias, never acted up in the courtroom. *Id.*, at 958-959. While four jurors in *Stephenson* could see the stun belt, there is no evidence that the jurors saw Arias's stun belt. *Id.*, at 959.

The Seventh Circuit noted that it is possible that the stun belt affected the defendant's demeanor and appearance, i.e., the defendant may appear nervous and fearful of being shocked by the belt. *Id.* The jurors could incorrectly interpret this behavior as evidence of guilt. *Id.* The Seventh Circuit reversed and remanded for a new penalty phase. *Id.*

Using a stun belt relies on the "continuous fear" of being hit with an electric shock. *Wrinkles v. State*, 749 NE.2d 1179, 1194(Ind.2001). The stun belt can create anxiety by forcing the defendant to worry more about the stun belt and preventing it from being activated than to fully participate in her defense at trial. *United States v. Durham*, 287 F.3d 1297, 1306(11th Cir.2002) (stun belt shock could cause physical

pain to the defendant as well as the possibility of defecating on himself). A stun belt is a modernized version of shackles. The knowledge that the belt could send an electrical shock through a defendant's body, either intentionally or accidentally, posed an even more insidious threat than handcuffs and belly chain.

The courtroom's dignity and decorum is another reason why stun belts are not used unless necessary. A presumptively innocent defendant has the right to be treated with respect and dignity in a public courtroom, "not like a bear on a chain." *United States v. Sanchez-Gomez*, 859 F.3d at 661. Courtroom security is controlled by the court. *State v. Dixon*, 226 Ariz. 545, 551(2011). The court may not merely defer to the sheriff's policy. *Id.* In the present case, the court made no pre-trial determination that shackles were necessary. Requiring Arias to wear a stun belt at trial contaminated the guilt phase.

Recently, a Texas Court of Appeals held it was improper for a judge to use a stun belt on a defendant to enforce courtroom decorum. *Morris v. State*, 2018 WL 1082345(2-28-18) (This opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal). "The court cannot sit idly by and say nothing when a judge turns a court of law into a

Skinner Box, electrocuting a defendant until he provides the judge with behavior he likes." *Id.*

The veteran prosecutor in the present case exploited the fact that Arias wore the stun belt by inviting her to step down from the stand to conduct a demonstration. He invited Arias to step down, knowing full well that by doing so the jury would realize she wore the stun belt and leg brace.

The defense objected to the state's ploy. The prosecutor redirected his responsibility to seek justice by blaming Arias for "offering" to demonstrate. The court abdicated its duty to control courtroom security by asking for MCSO's permission to remove the brace and belt, thereby allowing Arias to accept the prosecutor's invitation to perform the demonstration for the jury. The fact that MCSO consented to the demonstration does not vitiate the fact that the court abdicated her duty to maintain courtroom security.

Wearing a stun belt chills a defendant's right to defend herself, but also, negatively impacts courtroom decorum and dignity. The courtroom's formal dignity includes the "respectful treatment of defendants." *United States v. Sanchez-Gomez*, 859 F.3d at 662. "Both the defendant and the public have the right to a dignified, inspiring and open court process." *Id.* The circus-like atmosphere of Arias's entire

trial negatively impacted the dignity and decorum of this courtroom. The use of the stun belt only added to that loss of decorum.

Our courts are endowed with the duty to seek justice for each defendant. The court failed in its duty to determine, before trial began, whether Arias needed to be shackled during trial. The court, not the sheriff, is responsible for courtroom security. The court cannot use the sheriff's office policy as an excuse to justify using the stun belt.

It may be argued that defense counsel had the duty to raise the issue before trial began, or to interpose an objection after trial began. *See*, *State v. Bassett*, 215 Ariz. 600, 602, ¶10(App.2007). Case law suggests that the court also has a duty to establish what security measures are taking place in her own courtroom and to protect the right of a defendant to experience a fair trial in that courtroom. *State v. Dixon*, 226 Ariz. at 551, ¶25.

The court's failure to make an individualized determination of the necessity for the stun belt, the court's willingness to allow MCSO to call the shots in her courtroom, and the court's failure to maintain dignity and decorum in her courtroom rise to the level of structural error. The purpose of the structural error doctrine is to insure insistence on certain basic, constitutional guarantees that should define the

framework of any criminal trial. *Weaver v. Massachusetts*, 137 S.Ct. 1899, 1907(2017). There are three rationales that support a finding of structural error. *Id.*, at 1908. 1) If the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest; 2) if the effects of the error are simply too hard to measure; 3) if the error always results in fundamental unfairness. *Id.* An error can be structural error even if it does not lead to fundamental unfairness in every case. *Id.*

Requiring Arias to wear a stun belt throughout trial constituted structural error because it implicated her right to be present at trial. Although she was physically in the courtroom, the constant threat of electrocution extracted an undecipherable toll on her ability to focus on the proceedings. Additionally implicated were her rights to fully participate in her defense, and to assist counsel in her defense.

The stun belt's impact on these rights is not readily measured. The stun belt's effect on the dignity and decorum of the judicial process also defies measurement. Structural error occurred requiring reversal.

If this court determines that the appropriate standard of review is fundamental error, fundamental error occurred for many of the same reasons already discussed. Fundamental error review applies when a defendant fails to object to alleged trial

error. *State v. Henderson*, 210 Ariz. 561, 567, ¶19(2005). A defendant who fails to object at trial forfeits the right to obtain appellate relief except in those rare cases that involve error going to the foundation of the case, error that takes from the defendant a right essential to his defense and error of such magnitude that the defendant could not possibly have received a fair trial. *Id.* To prevail under this standard of review, a defendant must establish both that fundamental error exists and that the error in his case caused him prejudice. *Id.*, at ¶20.

For the reasons discussed above, requiring Arias to wear the stun belt during trial, including the 18 days that she testified is an error of such magnitude that she did not receive a fair trial. The prosecutor constantly mocked and taunted Arias while she testified illustrating the prejudice that occurred in this case because she was forced to wear a stun belt. He attributed her "smirking" and "memory problems" to a lack of credibility, when in reality her mannerisms on the stand are just as easily attributed to the ever-present threat of the stun belt encircling her waist and the controls in the hands of jail personnel. (*See* Appendix 10).

Structural error occurred when the court violated Arias's constitutional rights by requiring her to wear a stun belt every day of the five month trial. Reversal is required.

ARGUMENT 5

> The trial court committed clear error when she refused to reinstate panelists after the defense brought the prosecutor's improper peremptory strikes to her attention.

Standard of Review:

A court's denial of defense challenges to the state's peremptory strikes during jury selection is reviewed for clear error. *State v. Roque*, 213 Ariz. 193, 203, ¶12(2006). A trial court's findings are clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Merryweather v. Pendleton*, 91 Ariz. 334, 338(1962).

Additional Facts:

The defense raised two separate *Batson* challenges before the jury was sworn. (RT 12-20-12 #1, pp. 14-19). The first challenge addressed the prosecutor's peremptory challenges striking two African Americans from the jury. (*Id.*). The court denied that motion. (*Id.*, p. 18).

The defense next raised a *Batson* motion based on gender, because the prosecutor used peremptory challenges to strike six women from the jury. (*Id.*, pp.

18-19). The court required the prosecutor to explain his reasons for striking so many women. (*Id.*, p. 19).

154: The prosecutor struck 154 because she was against the death penalty, would not be good at deliberating, and he did not like her body language. (*Id.*, p. 15). #154 was also named in the *Batson* challenge based on race. (*Id.*, p. 14).

60: The prosecutor struck #60 due to her past involvement in a domestic violence situation. (*Id.*, p. 19). He pointed out that in his opinion #60 had religious beliefs against the death penalty. (*Id.*).

112: The prosecutor struck #112 due to her past involvement in a domestic violence incident. (*Id.*, pp. 19-20). On voir dire, 112 described her history of domestic violence experiences, how she obtained a restraining order against her boyfriend, she had another boyfriend that was murdered, and a third boyfriend who was a convicted murderer. (RT 12-17-12, pp. 99-104). She would consider both sides. (*Id.*). She would feel comfortable if she were the only one to vote a certain way. (*Id.*). She would respect the other jurors. (*Id.*, p. 127).

9: The prosecutor struck #9 due to her past involvement in domestic violence where her husband struck her and she did not report it. (RT 12-20-12 #1, p. 20). Her husband was convicted of domestic violence. (*Id.*). Additionally, she was

sexually abused as a child. (*Id.*, p. 20). The prosecutor stated that #9 did not believe in the death penalty unless there was no other way to protect society, and referred to her as a "disbeliever" or "tepid believer." (*Id.*, p. 21).

On voir dire, the prosecutor questioned #9 about her belief in the death penalty, where #9 affirmed that although she did not believe in the death penalty that she would respect the law and if the facts were proven that the case met the criteria for a death penalty she could vote for it. (RT 12-17-12, p. 18). The prosecutor described her beliefs as her "predisposition against the death penalty" and that in #9's opinion it would be harder for the state to carry its burden. (*Id.*). #9 responded that she was not sure. (*Id.*). She understood aggravating factors needed to be proven. (*Id.*). She affirmed that if aggravating factors were met then that would indicate to her that the death penalty was appropriate. (*Id.*).

The prosecutor noted that #9 understood the law, but then repeated that #9 did not "believe in the death penalty." (*Id.*, p. 19). He repeated to #9 "…you don't believe in the death penalty," and "will this belief that you have against the death penalty" influence the way she viewed the facts. (*Id.*). In response, she disagreed saying, "No, I don't think that will happen." (*Id.*).

She testified as a character witness for a man who shot and killed his wife. (*Id.*, p. 20). She babysat for the family. (*Id.*). She did not know the man well. (*Id.*, p. 21). That experience did not affect her view of the death penalty. (*Id.*).

#9 could give meaningful consideration to all factors. (*Id.*, p. 44). She did not believe in the expression "an eye for an eye." (*Id.*).

23: The prosecutor struck #23 because she wanted "one hundred percent, beyond any doubt, proof of guilt." (RT 12-20-12 #1, p. 21). On voir dire, the prosecutor asked #23 about her opinion about the burden of proof. (RT 12-17-12, p. 21). When the prosecutor asked if she required one hundred percent certainty with regard to the case she disagreed. (*Id.*). The prosecutor repeated, "So you don't want a hundred percent certainty?" (*Id.*, p. 22) and #23 repeated, "No." (*Id.*). She wanted to see the evidence that proved the person "did it." (*Id.*). The prosecutor insisted that she set the standard "so high at 100 percent," and again, #23 disagreed with his statement. (*Id.*).

79: The prosecutor struck #79 because she was married to a "store-front preacher." (*Id.*). The prosecutor said that "…is just very suspect to me, the beliefs of somebody like that." (*Id.*). The prosecutor questioned her about her husband's vocation. (*Id.*, p. 105). She described her husband's career as a minister. (*Id.*). She

indicated that she did not preach herself but supported him, was active in the choir and was a Sunday school teacher. (*Id.*).

#79 could consider the death penalty as an appropriate penalty. (*Id.*, p. 111). She would consider the reason for the crime, "that a person had been pushed over the edge" or would also consider life imprisonment. (*Id.*). She would be able to allow other jurors to come to their own decisions, and noted that she believed in "live and let live." (*Id.*, p. 112).

The court denied the *Batson* challenge, stating, "The court finds that the state has provided race-neutral, gender-neutral reasons for the strikes. Juror 154, 112, 60, 9, 23 and 79, court finds that the defense has failed to carry its burden of proving purposeful discrimination so the State's strikes will be upheld. All right." (RT 12-20-12 #1, p. 23). The defense renewed its motion before the jury was sworn, and again, the court denied the motion. (RT 12-20-12 #2, pp. 2-4).

Argument:

Reversible error occurred because the trial court failed to reinstate panelists after a properly raised *Batson* challenge. The error violated Arias's rights to equal protection and the right to a fair trial. U.S. CONST., amend. 5, 6 and 14; ARIZ. CONST., art. 2, sections 4, 13, 15, 23 and 24.

Intentional discrimination on the basis of gender by state actors in the use of peremptory strikes in jury selection violates the equal protection clause. *J.E.B. v. Alabama*, 511 U.S. 127, 130-131(1994); *Batson v. Kentucky*, 476 U.S. 79, 85-86(1986). The equal protection clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an individual will be biased in a particular case for no reason other than the fact that the person happens to be a woman or happens to be a man. *J.E.B. v. Alabama*, 511 U.S. at 146.

To evaluate whether a prosecutor struck a juror for discriminatory reasons, courts must engage in a three-step process. First, the challenging party must make a prima facie showing of discrimination based on race, gender, or another protected characteristic. *Miller-El v. Cockrell*, 537 U.S. 322, 328-329(2003); *State v. Gallardo*, 225 Ariz. 560, 565, ¶11(2010).

Second, the striking party must provide a neutral reason for the strike. *Id.* Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed neutral. *Hernandez v. New York*, 500 U.S. 352, 360(1991).

Third, the trial court must determine the credibility of the proponent's explanation and whether the opponent met its burden of proving discrimination. *Miller-El v. Cockrell*, 537 U.S. at 328-329; *State v. Martinez*, 196 Ariz. 451,

456(2000). The third step is when the trial court actually evaluates the proffered reasons. *Snyder v. Louisiana*, 552 U.S. 472, 477(2008). The proffer of a pre-textual reason for striking a juror naturally gives rise to an inference of discriminatory intent. *Id.*, at 485. "This third step is fact intensive and will turn on issues of credibility, which the trial court is in a better position to assess than is this Court." *State v. Newell*, 212 Ariz. 389, 401(2006). Therefore, the trial court's finding is entitled to deference. *Id.*

The trial court violated Arias's rights under the Equal Protection Clause when she accepted the prosecutor's discriminatory explanations for striking the six female panelists. The prosecutor's discriminatory exclusion of jurors harms those excluded as jurors and the community at large. *See, Powers v. Ohio*, 499 U.S. 400, 406(1991). "Equal opportunity to participate in the fair administration of justice…not only furthers the goal of the jury system, it reaffirms the promise of equality under the law that all citizens, regardless of race, ethnicity, or gender, have the chance to take part directly in our democracy." *J.E.B. v. Alabama*, 511 U.S. 127, 145-146(1994). Such errors are never harmless. *See, Gomez v. United States*, 490 U.S. 858, 876(1989) ("Among those basic fair trial rights that can never be treated as harmless is a defendant's right to an impartial adjudicator, be it judge or jury."). The

prosecutor's explanations for striking the six women illustrate his discriminatory intent. The judgment of guilt and sentence should be set aside and Arias should receive a new trial.

23: Juror 23 and the prosecutor had an extended conversation about the burden of proof. #23 told the prosecutor that she wanted to be sure that the evidence supported a guilty verdict. The prosecutor injected *his* opinion that #23 wanted one hundred percent proof of guilt. #23 never claimed that she held the state to that standard. #23 never agreed with the prosecutor, yet he persisted in characterizing her response as wanting one hundred percent proof of guilt.

The prosecutor relied on that reason to explain why he struck #23. He relied on words that *he* inserted into the discussion. He did not refer to words actually uttered by #23.

In this way, the prosecutor *created* a fake reason to strike #23. #23 never said that she needed one hundred percent proof. The prosecutor used this fake reason as a guise to justify striking #23. He deliberately inserted false descriptions of the juror's answers on voir dire into the record.

The prosecutor's discriminatory intent is evident. He struck #23 because he did not want women on his jury. Juror 23 told the attorneys that in her opinion the

death penalty was not the only option, but that she could be fair, impartial, and could follow the court's instructions. (RT 12-17-12, p. 45). The reason for striking #23 given by this experienced prosecutor was a sham that he created himself during voir dire, knowing he would strike as many women from the panel as possible.

79: Juror 79 was a Sunday school teacher, a nurse, and married to a retired Protestant minister. The prosecutor explained that he struck her because her circumstances, in his opinion, translated to being married to a "street front preacher" which he considered to be "very suspect." #79's status as a minister's wife was a gender-based reason for striking her.

Striking a woman due to her marital status is the gender-based discrimination that the equal protection clause guards against. The court shall not accept as a defense to gender-based peremptory challenges the very stereotype the law condemns. *Powers v. Ohio*, 499 U.S. 400, 410(1991). When state actors exercise peremptory challenges in reliance on gender stereotypes, they ratify and reinforce prejudicial views of the relative abilities of men and women. *J.E.B. v. Alabama*, 511 U.S. at 140. The potential for cynicism is particularly acute in cases where gender-related issues are prominent. *Id.* This prosecutor did not want women on his jury and deliberately made sure he struck as many women as he could.

154: Juror 154 was involved in both the *Batson* challenges based on race and on gender. The prosecutor claimed he struck her because she would not deliberate, that her body language was bad, and she was "against the death penalty" even though on voir dire she told him that she was neither for nor against the death penalty. (RT 12-18-12, p. 36).

When the prosecutor asked her questions on voir dire, he tried in vain to get her to say that she was against the death penalty. (*Id.*, pp. 35-41). #154 carefully explained that she believed that killing another person was murder, that she could impose the death penalty in a case if she felt the facts and circumstances called for the death penalty. (*Id.*). She was not "for" or "against" the death penalty. (*Id.*, p. 36). She wanted to hear the evidence elicited at trial before deciding to impose a death sentence. (*Id.*, pp. 40-41). She told the prosecutor that she could impose the death penalty if the defendant was guilty of murder beyond a reasonable doubt. (*Id.*, p. 41).

When questioned by defense counsel, #154 added that she believed that each juror had a right to their own opinion and that she could stand by her own conclusions as well. (*Id.*, pp. 59-60). #154 demonstrated that she could deliberate. #154 expressed her willingness to allow other jurors to have their own opinions and

to develop and stand by her own decision. To "deliberate" means to think about or discuss issues and decisions carefully. Merriam-Webster Dictionary, https://www.meriam-webster.com/dictionary last visited 3-27-18. She clearly was able to engage with the prosecutor in a considered discussion regarding the death penalty.

The prosecutor's statement to the court that he thought she would not deliberate was a fabrication. #154 clearly "believed" in the death penalty when she told the prosecutor that she *could* vote for the death penalty for a person who was found guilty of murder beyond a reasonable doubt. As for her "body language," the prosecutor did not describe what it was that bothered him. It was a vague reason not supported by the record, and thus may not be considered.

9: The prosecutor struck #9 because she was a "disbeliever." To the contrary, #9 told him that she could respect the law and impose the death penalty if the facts supported it. She disagreed with him when he told her he felt she would hold the state to an unrealistic burden of proof. She indicated that if the state proved aggravating factors she could vote for the death penalty.

The prosecutor insisted that #9 did not "believe in the death penalty," "…you don't believe in the death penalty," and "will this belief that you have against the

death penalty" influence the way she viewed the facts. At every turn #9 disagreed with the prosecutor's suggestion that she was against the death penalty, yet that was the excuse for striking her that he gave to the court. This reason was a pure fabrication and not supported by the record.

The prosecutor indicated that he also struck her due to her past experience with domestic violence. A prosecutor's neutral reason for a strike can be found to be unpersuasive when the record does not support the prosecutor's subjective feelings about the juror. *See*, *State v. Cruz*, 175 Ariz. 395, 399-400(1993). The record does not support the reasons that the prosecutor gave for striking #9.

A prosecutor's failure to voir dire prospective jurors on the issues later relied upon to support strikes indicates a discriminatory intent. *Miller-El v. Dretke*, 545 U.S. 231, 244-245(2005). The prosecutor's third reason for striking #9 was because she was sexually abused as a child. He did not ask her about this experience, nor is there anything in the record to elaborate upon her experience.

The prosecutor's reasons for striking #9 are not credible and are merely a guise for his deliberate strategy to keep women off the jury.

60: The prosecutor struck #60 due to her involvement in a domestic violence incident and he felt she had a religious opposition to the death penalty. The

prosecutor did not question #60 on voir dire. Her questionnaire indicated that the domestic violence incident occurred thirty years ago. (I. 1603). She wrote that she could impose the death penalty, that some people deserve death, and that each case should be decided on its own merits. (*Id.*). There are no facts in the record to support the prosecutor's reasons for striking this woman from the panel.

112: The prosecutor struck #112 due to a previous experience with domestic violence. She explained that she was in a physical altercation with her boyfriend and that she went to jail. She then got a restraining order against him and that resolved the issue. The restraining order expired and there were no further issues with the man. In response to further questioning on voir dire, #112 expressed a willingness to consider both sides, to impose the death penalty, and to respect other jurors during deliberation.

It may be argued that the prosecutor feared that #112 might sympathize with Arias's experiences as a battered woman, but it is just as probable that #112 might criticize Arias's failure to report T.A.'s abuse or to get a restraining order. Posing #112's experience with domestic violence as the reason for using his peremptory strike to remove her from the panel fails as a gender-neutral reason for the removal,

given the fact that six of his eight strikes were women. His explanation must be considered within this context.

Finally, the court failed to sufficiently apply the third step of the *Batson* analysis. In evaluating the justification for strikes, the trial court must do more than label the government's gender-neutral explanations plausible but, instead, it must make a deliberate decision whether purposeful discrimination occurred, which at a minimum must include a clear record that the trial court made a deliberate decision on the ultimate question of purposeful discrimination. *United States v. You*, 382 F.3d 958, 968(9th Cir.2004), *cert. denied*, 125 S.Ct. 930(2005).

The third step requires the court to determine the proponent's credibility and whether the opponent met its burden of proving discrimination. "This third step is fact intensive and will turn on issues of credibility, which the trial court is in a better position to assess than is this Court." *State v. Newell*, 212 Ariz. 389, 401(2006). The court failed to execute its duty to determine the prosecutor's credibility. The court merely found that the defense did not meet its burden.

The trial court's reason for denying the *Batson* challenge was the conclusion that the state provided race and gender neutral reasons for his strikes. The court

found that the defense failed to prove purposeful discrimination, "…so the state's strikes will be upheld."

The court did not assess the evidence or provide any reasoning for her conclusion that the state's reasons were race and gender neutral. She merely concluded that the defense failed to prove purposeful discrimination. Since the court failed to conduct the proper analysis, and the record supports the fact that the prosecutor's reasons for striking six women were not gender neutral, reversal is required.

The prosecutor struck jurors 23, 154 and 9 based on fictions he created during voir dire. The prosecutor deliberately inserted false information during voir dire—strong evidence that he planned from the outset to strike as many women as possible. He used voir dire to plant false information. He planned to rely on this false information when he made his strikes.

Juror 79 was struck because she was married to a retired Protestant minister which is on its face an improper, gender-based reason for striking her.

Juror 60 was not questioned on voir dire, but was struck due to a 30 year old experience with domestic violence. This reason given by the prosecutor is not supported by the record.

Juror 112 was struck due to her personal experience with domestic violence. The prosecutor based the strike on his unreasonable assumption that she would sympathize with Arias's status of a victim at the hands of T.A. It is equally possible that #112 would be skeptical due to Arias's failure to report the violence or get a restraining order against T.A. In light of the fact that the prosecutor struck far more women than men, this purportedly gender-neutral reason is thin indeed.

Reversible error occurred because the trial court failed to reinstate panelists after a properly raised *Batson* challenge.

ARGUMENT 6

Pervasive and persistent prosecutorial misconduct denied Arias her rights to due process and a fair trial.

Standard of Review:

Reviewing courts consider alleged trial error under the harmless error standard when a defendant objects at trial, preserving an issue for appeal. *State v. Henderson*, 210 Ariz. 561; 567, ¶18(2005). Prosecutorial misconduct is harmless if it is clear, beyond a reasonable doubt, that it did not contribute to or affect the verdict. *State v. Blackman*, 201 Ariz. 527, ¶59(App.2002). Such misconduct may constitute reversible error even if all individual incidents are determined to be harmless. *State v. Roque*, 213 Ariz. 193, 228, ¶152(2006). The appellate court must determine whether the acts contribute to a persistent and pervasive misconduct finding. *State v. Bocharski*, 218 Ariz. 476, 491-92, ¶74(2008). If the cumulative effect of the alleged acts of misconduct shows that the prosecutor intentionally engaged in improper conduct and did so with indifference, if not specific intent, to prejudice the defendant, the appellate court will reverse the conviction. *Id.* If the court finds cumulative prejudice, it is harmless only if it did not contribute to or affect the verdict beyond a reasonable doubt. *State v. Hughes*, 193 Ariz. 72, 80, ¶32(1998).

Introduction:

Prosecutorial misconduct does not exist in a vacuum. It is committed by an attorney engaged in an attempt to win a trial. It is not improper simply because it violates decorum or politeness, but because of the way the misconduct affects the jury's weighing of evidence, witnesses and arguments. Each instance of misconduct cannot be evaluated without a recognition of how it was used by the prosecutor in the total strategic goal of convincing the jury of his key points. As the United States Supreme Court noted, when examining a record that involves pervasive misconduct, "[i]t is impossible, [ ] without reading the testimony at some length, and thereby obtaining a knowledge of the setting in which the objectionable matter occurred, to appreciate fully the extent of the misconduct." *Berger v. United States*, 295 U.S. 78, 85(1935).

In practice, several different kinds of improper conduct build on each other, creating a synergistic effect that is greater than the individual parts being identified. As an analogy, consider some of the most striking medieval storytelling which we may still experience today in surviving tapestries like the Bayeaux Tapestry. From a microscopic few millimeters away, a viewer would only see various colors of thread, none all that special or significant. At a further remove, the viewer might

see a man astride a horse. Standing far enough away to see the entire context and body of work, the viewer would finally drink in a nearly 900 foot long woven masterpiece that brings to vivid life pivotal moments of the Norman conquest of England. The total effect of such work is much more than the individual threads used in its creation; the viewer understands they are experiencing an entire event in story form, not just a brightly colored cloth.

Similarly, pervasive misconduct must be understood in its total strategic use, not merely considered and disregarded for its individual types of misconduct, which might seem innocuous when not connected to the other misconduct and the context in which it arose. The threads of individual misconduct prosecutor Juan Martinez committed were woven throughout the trial and ended with a tapestry of an unfair trial.

Arias challenges and seeks a remedy for the guilt phase verdict which the jury rendered on May 8, 2013. The misconduct before this date matters when determining cumulative error, as it has reasonable likelihood of affecting the jury verdict. However, part of the persistent and pervasive misconduct analysis is whether the prosecutor intentionally engaged in improper conduct and did so with indifference, if not a specific intent, to prejudice the defendant. *Roque*, 213 Ariz. at

228, ¶155. That Martinez continued with improper conduct through each phase of the trial demonstrates intent on his part to engage in that conduct, belying the idea that it was isolated, inadvertent or mistaken. Therefore, this Court must consider misconduct occurring during all phases of the trial.

Discussion:

The main trial issue was whether the state proved premeditation. The defense rested on Arias having been previously abused, that she reacted as a battered person, and she was in fear for her life during the fatal incident. The critical witnesses who supplied facts supporting this defense were Arias, expert witnesses Dr. Richard Samuels, who provided evidence on PTSD and memory, and Alyce LaViolette, who explained domestic violence and abuse patterns.

Martinez used his misconduct in the trial to weave his story in closing argument, which included an intense focus on the defendant as a bad person, categorically, rather than simply as a person who was guilty of murder. Martinez argued Arias:

- was a liar (RT 5-2-13, p. 55);
- manipulated everyone (*id*., pp. 57; 65; 155-156);
- manipulated evidence (*id*., p. 79);

- took no responsibility for anything (*id*., pp. 58; 61; 63);
- was a gold digger (*id*., p. 61);
- was a stalker (*id*., pp. 64; 70; 80; 82-85; 113);
- was evil (*id*., p. 85);
- had a violent character (*id*., p. 66);
- invaded people's privacy (*id*., pp. 67-68);
- was a sociopath (*id*., p. 86);
- resorted to fake tears in court (*id*., pp. 86; 156); and
- was cold (*id*., p. 123).

Martinez personalized Arias's bad character for the jury, telling them that she lied to them, personally, and tried to manipulate them, specifically. (*Id*., pp. 65; 87; 156; 179). Martinez also argued that T.A. did not abuse Arias. (*Id*., pp. 56; 75; 77-78; 159; 166). He argued LaViolette was also a liar, not to be believed. (*Id*., pp. 72; 76; 82; 148-150; 159). He argued the other experts were discredited and the defense relied on lies. (*Id*., pp. 147; 153; 158).

Martinez emphasized in closing that Arias planned the killing. He argued that she staged a burglary at her grandparents' house to steal the gun she used to kill T.A.

(*Id*., pp. 87-89). These themes were the overall picture Martinez wove with the individual threads of misconduct during the trial. Starting with the picture created by Martinez in his closing argument illustrates why his individual acts of misconduct through the trial matter; in other words, why the misconduct was not harmless.

1. The prosecutor's closing argument was improper.

The prosecutor used improper arguments many times during his closing argument. Although advocates are ordinarily given latitude in closing, their comments must still be based on facts the jury is entitled to find from the evidence and not on extraneous matters that were not or could not be received in evidence. *State v. Leon*, 190 Ariz. 159, 162(1997). Counsel may draw reasonable inferences from the evidence, which may, in some circumstances, include characterizing the defendant as a "liar." *State v. Miniefield*, 110 Ariz. 599, 602(1974). But credibility is a matter to be decided by the jury. *United States v. Sanchez-Lima*, 161 F.3d 545, 548(9th Cir.1998). There is a point where being descriptive crosses over into employing characterization like "liar" merely to incite prejudice, *United States v. Rude*, 88 F.3d 1538, 1548(9th Cir.1996), or to interject his personal opinions. The prosecutor should carefully walk the jury through the evidence and point out inconsistencies. *United States v. Moreland*, 622 F.3d 1147, 1162(9th Cir.2010).

The prosecutor improperly argued that Arias was a liar to incite the jury's prejudice. He did not merely walk through the evidence to explain where Arias lacked credibility. He encouraged the jury to personalize the fact that Arias lied to them and to take action against it. (RT 5-2-13, p. 87 ["Are you going to allow her to scam you?"]). He highlighted that she lied to the jury ("you") specifically. (*Id*., p. 143 ["And the lies she told were to a number of people from various groups of people, first of all, this starts with you."]; *id*., p. 163 ["…she will look each and every one of you in the eye and lie."]). He argued she manipulated the jury, personally. (*Id*., pp. 65; 79; 141; 147; 156; 158; 179). He hammered this theme that Arias was a manipulator, an ornate liar, and the epitome of a liar throughout his closing. (*Id*., pp. 73; 77-78; 84-86; 90; 96; 110; 141; 148-149; 155; 158, lines 10 and 18; 159-160; 163; 165).

Martinez continued to denigrate the defense with his liar theme when discussing the defense experts and he impugned their integrity in other ways. He repeatedly called LaViolette a liar, (*id*., pp. 72; 148-150; 159-160; 165); an "apologist" for Arias, (*id*., pp. 76; 83); and "nothing more than an advocate," "lying on behalf of the person [she] evaluated," (*id*., p. 150). In so doing, Martinez improperly argued that the expert was nothing more than a mouthpiece. *Hughes*,

193 Ariz. at 84. He implied improper conduct by LaViolette that crossed a line. (RT 5-2-13, p. 150). Martinez told the jury that LaViolette's testimony was "foul" and "contaminated." (*Id*.). This insult is improper. *State v. Comer*, 165 Ariz. 413, 426-427(1990)(name-calling, like "monster," "filth," and "reincarnation of the devil on earth" appeals to a jury's passion or prejudice and is misconduct).

Martinez then moved directly from impugning LaViolette to the next defense expert, connecting the foul-crossing-the-line argument about her to his accusations against Samuels. He talked about lying and then rhetorically asked about Samuels's possible motivations. (RT 5-2-13, p. 150). This tactic recalled the jury to his earlier accusations that the witness had inappropriate feelings for Arias, without having to actually repeat the objectionable. He asked the innuendo laden question and left the jury to supply the salacious answer he introduced earlier.

Additionally, Martinez's improper arguments disparaged defense counsel. He argued that the defense condemned T.A. for being a bad Mormon. (*Id.*, p. 116). He argued that Arias staged her defense in court and sustained it with lies. (*Id*., p. 143). Case law indicates that the state "must not make prejudicial insinuations without being prepared to prove them." *State v. Cornell*, 179 Ariz. 314, 331(1994). It is improper for counsel to insinuate or imply that defense counsel fabricated a defense

or coached a defendant, without evidence to prove it. *Hughes*, 193 Ariz. at 86, ¶¶59-61. Martinez argued that Arias and her experts staged lies in court, which impugned them all as fabricators.

Martinez also improperly appealed to the jury's prejudice or fear in his closings. Prosecutors may not appeal to jury passions, fears, sympathy or prejudices. *Comer*, 165 Ariz. at 426. Here, the prosecutor repeatedly pointed out to the jury that Arias had a craven wish for fame. He repeatedly argued about Arias seeking out publicity or the limelight. (RT 5-2-13, pp. 55; 157). He did not connect this to any fact question in evidence, like trying to somehow show motive or premeditation. He merely argued to the jury that Arias was an unsavory person. Similarly, he appealed to the jury's prejudice, to persuade them to decide the case based on whether Arias was a sufficiently nice person rather than the evidence, when he pointed out Arias was cold and unfeeling. (*Id*., pp. 122-123; 162-163).

The prosecutor also committed misconduct in his closing when he used evidence which he successfully lobbied the court to admit for a limited purpose, but then used that evidence for a different, impermissible reason. Martinez repeatedly brought up the theft of Arias's grandfather's handgun, making it a pillar of his argument. (*Id*., pp. 87-90; 97; 132; 144-145; 173; 176). He argued that Arias

committed the burglary, stole a handgun during the crime, and planned the theft to obtain the gun to kill T.A. He argued that she premeditated the murder. He made this argument despite telling the court at the time he introduced the hearsay testimony about the gun that he would not use the burglary police report for the truth of the matters asserted in it. (RT 1-14-13, p. 17). *See* Issue 2.

Martinez also used evidence for an improper purpose as noted in Issue 3. The court precluded the defense experts from testifying about Arias's mental state, fear and lack of premeditation. Then, over defense objection, the court allowed testimony from Dr. DeMarte describing Arias's "higher order behaviors" in relation to the fight or flight memory loss issue. Martinez told the court the evidence related to Arias's memory and said he would focus on what happened ***after*** the killing. However, in closing, Martinez used DeMarte's testimony, not to argue about Arias's memory, but to argue that it proved premeditation. (RT 5-2-13, pp. 133-139; 141; 145-146).

A third way that Martinez used evidence for an improper purpose occurred when he argued that Arias stole T.A.'s ring. (*Id.*, p. 80). When the court admitted evidence about the ring, it prohibited the use of the word "theft" to describe what happened. (RT 4-18-13, p. 157). In addition to being misconduct as a violation of

the court's order admitting the evidence, Martinez committed misconduct by improperly relying on propensity. It is improper to rely on propensity arguments in closing. *United States v. Brown*, 327 F.3d 867(9th Cir.2003). Martinez used this other act evidence in a misleading fashion and against the court order when he argued that Arias stole the ring, when the testimony showed that the ring became stuck on her hand. She eventually returned it to T.A. The prosecutor argued that the incident proved that Arias was a dangerous stalker.

Along with the ring evidence, Martinez asked the jury to make their decision on the improper propensity basis, when he used a February 14, 2007 email to prove she had "violent tendencies." (RT 5-2-13, pp. 65-66). Martinez used these bits of information to argue that Arias was a violent stalker who would not let her obsession go and so she killed T.A.; he used the other act evidence to argue Arias acted in conformity with the violent character he had assigned to her.

Martinez also committed misconduct during closing when he implored the jury to convict Arias or they would be complicit in her crimes. Martinez goaded the jury, "[Arias] wants you to carry those cans for her. She wants you to help her fill them with gas. That's what she wants you to do, symbolically speaking. What the state is asking you to do is not leave this courtroom filled with the stench of gasoline

on your hands." (*Id.*, p. 180). He went on, "But she is asking you to help her. She (*sic*) asking you symbolically to help her (*sic*) carrying them out and taking those cans with you. But what the state is asking you to do is your duty." (*Id*.). This is an improper appeal to the jury's fear and is a request that they use their fear to decide the case, rather than solely using facts. It is also an improper argument that the jury has a duty to convict. *United States v. Polizzi*, 801 F.2d 1543, 1558(9th Cir.1986)(improper for prosecutor to tell jury it had any obligation other than weighing evidence). A prosecutor arguing to a jury that they will help a defendant commit her crime if they find her not guilty is telling the jury they must convict if they do not want to be complicit in the killing.

Martinez made other improper arguments during this closing and subsequent trials. (*See* Appendix 11).

2. The prosecutor improperly questioned witnesses.

The picture Martinez created for the jury in his closing argument was made possible, not by proving his case through evidence, but by weaving misconduct throughout the trial, especially in how the prosecutor treated witnesses. It is as much a prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just one.

Berger, 295 U.S. at 88. Federal and State Constitutional Due Process Clauses reflect this duty in an accused's rights to fundamental fairness and a fair and impartial trial. U.S. CONST., amend. 5 and 14; ARIZ. CONST., art. 2, section 4. The Arizona Supreme Court has routinely noted that a prosecutor has an obligation not only to prosecute with diligence, but to seek justice and so must refrain from all use of improper methods designed solely to obtain a conviction. *State v. Minnitt*, 203 Ariz. 431, 440, ¶41(2002). No experienced trial attorney would deny the cross-examination's value in exposing falsehood and bringing out the truth. *Pointer v. Texas*, 380 U.S. 400, 404(1965)(citation omitted). However, in the hands of prosecutors more concerned with winning a trial than whether justice is done, a tool for uncovering the truth can be twisted to instead obscure justice and thwart fair trials. As a result, a prosecutor using several improper techniques during cross-examination may warrant, if not require, a trial court to declare a mistrial based solely on that misconduct. *Pool v. Superior Court In and For Pima County*, 139 Ariz. 98, 103(1984).

Arias's experts were critical to her case, helping her prove she suffered domestic violence and PTSD. Undermining these experts was critical to the prosecutor. Faced with expert testimony for the defendant, a prosecutor has several

options to rebut their evidence. This does not include attacking the expert with non-evidence, or using irrelevant, insulting cross-examination and baseless argument designed to mislead a jury. *In Re Zawada*, 208 Ariz. 232, 237, ¶14(2004). A prosecutor cannot insinuate that an expert is incompetent or unethical without properly admitted evidentiary support. *State v. Bailey*, 132 Ariz. 472, 479(1982). Unfair attacks on witness veracity are of particular concern when the target is a key witness. *Id.* Such attacks, when combined with other misconduct, warrant reversing a defendant's conviction. *Id.* Yet, Martinez relied on these very tactics.

The prosecutor attacked Samuels with spurious, unfounded ethical accusations. He inferred that Samuels hid and changed evidence because he had feelings for, and an inappropriate relationship with, Arias. Martinez began by twice accusing Samuels of concealing information. (RT 3-19-13, p. 23). He accused Samuels of not disclosing an amendment to his report. (*Id.*, p. 116).

The defense objected and requested a mistrial as Martinez attempted to put discovery issues, about which Samuels had no knowledge, before the jury to

insinuate evidence was being hidden.[3] (*Id*., p. 117). After Martinez accused Samuels of being unethical because his report had typos, he asked an argumentative question: whether being paid $250 an hour was not enough money for Samuels to pay attention. (*Id.*, p. 127). Martinez accused Samuels of changing Arias's scores on a test and not disclosing the changes. (RT 3-21-13, pp. 162; 184). He did so even after the court ordered him not to question about the supposed lack of disclosure. (*Id*., pp. 158; 162). He accused Samuels of failing to disclose other testing information. (*Id*., pp. 185-188). But raw data is not allowed to be given to attorneys. (*Id*., pp. 193-194; RT 3-20-13, pp. 35-36).

Most seriously, Martinez accused Samuels of having an inappropriate relationship with Arias and having feelings for her. (RT 3-19-13, p. 24). Martinez's insinuations resulted in a jury question about this fabricated, inappropriate relationship. (I. 831). He reinforced this inference by asking about Samuels's feelings for Arias and weaving into it his possible bias toward Arias. (RT 3-21-13, pp. 172; 183).

[3] This accusation of the defense hiding information found fertile ground with the jury, as evidenced by how they asked another expert how she knew that the defense did not hide evidence from her so her evaluation would come out in favor of Arias. (I. 1031).

Martinez repeated this theme, changing his language slightly to accuse Samuels of losing his objectivity, which colored his results. (RT 3-25-13, pp. 148; 153). When Samuels disagreed with Martinez about conclusions regarding Arias's statements, Martinez retorted, "Right. You wouldn't see it that way because you have feelings for the defendant, right?" (*Id*., p. 111). Martinez connected his questions about whether Samuels's records were accurate to whether he had lost his objectivity about Arias. In doing so, he connected his accusations about hidden, changed, and inaccurate evidence, to the spurious accusations that Samuels had a relationship with Arias. (*Id*., p. 153, lines 18-21).

Not only are Martinez's unfounded accusations against Samuels's part of the cumulative error analysis, but the misconduct is also reversible on its own. The defense objected and requested a mistrial. (RT 3-19-13, pp. 24; 29-31; RT 3-25-13, p. 111). Therefore, unless the misconduct can be said, beyond a reasonable doubt, to have had no effect on the jury's consideration, it is reversible error. Samuels's testimony was critical to explain Arias's memory loss and PTSD. Given this and given the jury question about the fabricated relationship, it is impossible to say the jury was not affected by Martinez's misconduct. Reversal is warranted.

Martinez also designed his questions to insinuate that LaViolette was incompetent or unethical. He did so without properly admitted evidentiary support. He implied she had done something nefarious during a break in the trial. (RT 4-9-13, p. 120). He accused her of telling Arias what answers to give. (*Id*., p. 150, lines 2-3 ["…you also prompted her with leading questions, didn't you?"]; *id*., p. 150, line 5 ["You suggested some answers, didn't you?"]). He used badgering and argumentative questions. When his tactics goaded an exasperated response from LaViolette, he used her response to imply she would be untruthful. (RT 4-4-13 #2, pp. 107-108; 112 ["…do you want to spar with me? Will that affect the way you view the testimony?"]). Martinez implied that there was something suspicious about LaViolette being paid for her time spent preparing her opinion. (*Id.*, p. 119).[4] Martinez accused LaViolette of acting as an advocate for Arias by only presenting the evidence that benefited her. (RT 4-9-13, p. 143). Martinez's questions influenced the jury enough to prompt them to ask whether LaViolette had feelings for Arias. (I. 969).

[4] Martinez asking a question this laden with innuendo was especially problematic given that the parties had recently litigated a mistrial request after a juror made a derogatory comment about much the defense was spending on expert witnesses. (RT 3-28-13, p. 116; RT 4-2-13, pp. 36-37).

Martinez committed misconduct when he attacked defense expert Dr. Geffner as having been called nothing more than a hired gun. (RT 5-1-13 #1, p. 194). Martinez made unfounded accusations against Geffner that he had previously lied in court and would again. (*Id.*, p. 200 [accusation that a court had found that Geffner made things up]; *id*., p. 203 ["…you're still the same individual who will go to court if you believe in something and make things up, right?"]) (*See* Appendix 12).

Where Martinez accused LaViolette and Geffner of merely being conduits for Arias or being her hired guns, his tactic improperly denigrated the experts. He argued facts outside the record and appealed to the jury's passion or prejudice. Other jurisdictions have also found it misconduct to call an expert a "hired gun." *People v. McBride*, 228 P.3d 216, 223(Colo. App.2009); *Sipsas v. State*, 102 Nev. 119, 124-125(Nev.1986).

Beyond attacking experts with unfounded ethical accusations, Martinez used non-evidence, irrelevant, insulting cross-examinations and baseless argument designed to mislead the jury, in contravention of *Zawada*. The prosecutor used misleading cross-examination to impeach LaViolette. He implied that she changed her testimony when she testified to new information on cross-examination. (RT 4-8-13, pp. 79-81).

LaViolette formed opinions based on T.A.'s patterns of communicating with women. Martinez impeached her as "now telling us" other specific new facts about a certain woman. (*Id*., p. 79). However, Martinez previously objected and stopped the defense when they attempted to introduce testimony on specific facts related to the women's vulnerabilities. The court ruled that LaViolette may testify to only her conclusion, not the underlying facts. (RT 4-4-13 #1, pp. 20; 22; *cf*. RT 4-4-13 #2, pp. 62-63 [the particular woman in question was vulnerable]) (*See also*, Appendix 13).

Martinez also used misleading cross-examination with Samuels. When Martinez questioned him about scores on individual portions of a test Samuels used to form a diagnosis, Samuels testified that the scores from the individual parts could not be used as the basis for any conclusion on their own. (RT 3-14-13, pp. 65-67). Martinez continued asking questions about the individual parts and asked argumentative questions to show his contempt for Samuels's explanations, thereby directly offering his personal disagreement with the answers. (*Id.*, p. 66 ["Samuels: The 75 doesn't mean anything. Martinez: Right. It doesn't mean anything. That's why they threw it in there, right? Samuels: You're misinterpreting. Martinez: No.

No."]; *id*., p. 67 ["…They put that number 75 because it doesn't mean a thing, right?"]).

Martinez also used misleading cross-examination with Geffner, who critiqued some testing done by Dr. DeMarte. Martinez impeached Geffner for not having asked DeMarte about the flaws in her testing, even though Martinez knew the rule of exclusion had been invoked. (RT 5-1-13 #2, pp. 20-21). Where the prosecutor is aware of facts that make his argument false but argues his position anyhow, the prosecutor's actions are misleading and highly improper. *Minnitt*, 203 Ariz. at 439, ¶38, & 440, fn.2. *See also Hughes*, 193 Ariz. at 75, ¶4 & 88, ¶74(reversible misconduct for prosecutor to tell the jury that the defendant was "a mean drunk" and that mental illness was not a part of the case when experts found him to be mentally ill and the state had no expert testimony otherwise). Martinez's cross of these witnesses was improper because it was misleading, but also because Martinez improperly used court rulings. He twisted the court's standard exclusion ruling, and the witness's adherence to the ruling, to impeach the witness for not being thorough. The witness, the attorneys and the court knew about the ruling, but not the jury.

Martinez's aforementioned improper trial techniques were not limited in deployment against experts. His use of non-evidence, irrelevant evidence, insulting

questions, and baseless, misleading argument to impeach experts was followed by Martinez directing similar tactics against lay witnesses, too. In this category are argumentative questions, which are a form of prosecutorial misconduct. *Pool*, 139 Ariz. 98. The California Supreme Court summed up argumentative questions' definition and dangers:

> An argumentative question is a speech to the jury masquerading as a question. The questioner is not seeking to elicit relevant testimony. Often it is apparent that the questioner does not even expect an answer. The question may, indeed, be unanswerable….An argumentative question that essentially talks past the witness, and makes an argument to the jury, is improper because it does not seek to elicit relevant, competent testimony, or often any testimony at all.

People v. Chatman, 133 P.3d 534, 563(2006). *See also*, Morris K. Udall et al., *Law of Evidence* § 33 at 52(1991)(hereafter "*Arizona Evidence*")(Noting that argumentative questions do not ask for factual testimony and can be a form of improper premature argument). Additionally, such questions may ask the witness to acquiesce in the inferences drawn by counsel from the prior testimony. *Arizona Evidence*, § 33, at 52. Other jurisdictions have reached the same conclusion as to argumentative questions and questions which are additionally badgering, impertinent, or insulting. *See Boyle v. Million*, 201 F.3d 711, 717(6th

Cir.2000)(Badgering and interrupting a witness, name-calling, predicting that the defendant will lie on the stand, throwing a deposition onto the defendant's lap, and stating before the jury that the defendant needs psychiatric help are prosecutorial misconduct).

Whether they fall under the rubric of argumentative questioning or were otherwise generally misconduct, the Arizona Supreme Court noted a sequence of improper questioning by Martinez in *State v. Lynch*, 238 Ariz. 84(2015), *rev'd on other grounds*, 136 S.Ct. 1818(2016). The *Lynch* Court was disturbed by a number of Martinez's inappropriate comments which warranted sustained objections, or would have warranted such rulings, 238 Ariz. at 100, ¶52, 93, ¶12. The combative questioning included asking questions that had already been answered, interrupting the defense witnesses, and commenting to the witness that she should "just answer my question for once," as well as other argumentative questions. *Id*., at 93, ¶11.

A prosecutor's use of inflammatory statements may constitute part of pervasive prosecutorial misconduct. *Berger,* 295 U.S. at 84. So does misleading the jury by changing the meaning of the defendant's answers when rephrasing them in questions. *Id.* Purposeless questions designed simply to denigrate the witness or treat them with contempt are also improper.

An example from *Pool* included an exchange where, when the prosecutor's opening salvo (about why defendant faced the jury as he testified) failed to disturb the witness and produced a fairly reasonable answer (so that they would hear the testimony), the prosecutor followed with the question, "You're pretty much a cool talker, aren't you?" *Pool*, 139 Ariz. at 104, fn.7. As the *Pool* court noted, there is no possible basis upon which such a question could be justified and it is not only argumentative, but contains innuendo designed to prejudice the witness. *Id.* It is improper to ask irrelevant and prejudicial questions. *Id*., at 102. Additionally, this question is also disrespectful and lawyers, including prosecutors, must treat witnesses and parties with respect. *Id*., at 104, fn.7, citation omitted. During his questioning of witnesses, Martinez routinely employed each of the aforementioned types of misconduct.

Martinez asked the experts inflammatory, argumentative, innuendo-laden questions. (RT 5-1-13 #1, pp. 202-203, 209 [asking whether Geffner just took the case out of the goodness of his heart]; RT 3-21-13, p. 172 [asking if Samuels was Arias's "support group"]). Martinez made inflammatory, irrelevant asides to opposing counsel. In one exchange, Martinez made a speaking objection during Arias's direct testimony that counsel's question assumed a fact not in evidence,

specifically that she was escaping T.A. (RT 2-20-13, p. 66). When Nurmi responded that Arias had already testified to that fact, Martinez responded before the court could, saying, "Judge, I make the objections. The way it works, I make the objections, you decide." (*Id*; RT 4-8-13, p. 118).

He asked other witnesses inflammatory, argumentative questions. When he questioned Arias about her memory loss from PTSD, he asked, "If it benefits you, you have a memory issue?" (RT 2-21-13, p. 106).

Martinez asked a witness to agree he was part of a pyramid scheme:

> MARTINEZ: By being at the top of the pyramid, those are the people really making the money, right?
>
> SEARCY: It's not a pyramid.
>
> MARTINEZ: I didn't say it was a pyramid?
>
> SEARCY: You just did.
>
> MARTINEZ: I said at the top of the pyramid.
>
> SEARCY: That implies a pyramid in my logic.
>
> MARTINEZ: So is that a yes or a no or do you not want to answer? (RT 1-29-13, p. 37) (*See* Appendix 14).

Another argumentative question type, where the prosecutor uses something akin to, "No, let me ask you the question[,]" is improper. *Lynch*, 238 Ariz. at 100.

Martinez asked this question, (RT 1-28-13, p. 15, ["….You don't get to ask me questions."]), and related argumentative questions. Martinez asked many witnesses purposeless, denigrating and argumentative variations of "I am not asking you [that], am I?" and "Did I ask you that?" (RT 4-12-13, pp. 119-120; RT 3-25-13, p. 193) (*See* Appendix 15).

Martinez used argumentative, belittling, and misleading questions to badger witnesses who did not give the answers he wanted or the way wanted. He failed to properly impeach the witnesses with facts instead of his own assertions and contempt. He badgered Arias in an exchange about what she actually knew, what she surmised, or what she was told about whether T.A. kept a gun stored with ammunition in it.

The first exchange between Arias and Martinez on this subject set up a later cross-examination where he badgered the witness. In the first exchange, Arias testified about her supposition that the gun was loaded the day she killed T.A. (RT 2-27-13, p. 134). When asked if she ***knew*** for certain, she explained that, when she first found the gun, T.A. told her he did not keep it loaded when stored. (*Id.*, p. 135). Martinez then suggested that Arias was never told otherwise and interrupted her

when she tried to disagree with his assertion that no one told her that the gun might be loaded. (*Id.*).

Despite interrupting her when she tried to answer his question, Martinez repeated the question asserting that she had never been told that the gun might be loaded. (*Id.*). Arias again disagreed because T.A. told her something contrary to the gun always being stored empty. (*Id.*). The jury then asked Arias questions about the same subject. In response to their queries, Arias testified that T.A. told her it was kept in the closet unloaded. (RT 3-6-13, pp. 111-112). T.A. also told her that he considered storing it loaded, but assured her he had not done so. (*Id*., p. 116). When she pointed the gun at him the day she killed him, it did not matter whether it was loaded or unloaded, because she believed that merely pointing the gun at him would be enough to stop T.A.'s attack. (*Id.*). She did not intend to shoot him. (*Id*.). Because she did not intend to shoot the gun, at the time she handled it, while being attacked, she had not thought about whether or not it was loaded.

In a later exchange, Martinez badgered Arias, attempting to impeach her for having affirmatively claimed the gun was unloaded. (RT 3-13-13, p. 154). Arias disagreed with his assertion, stating her testimony was that ***T.A.*** claimed the gun was unloaded. (*Id.*). Martinez then badgered the witness with argumentative questions,

implying that her answer was wrong. (*Id.*, pp. 154, line 54; 155, line 9). He badgered Arias with the belittling, argumentative question, "Did I ask you [that]?" (*Id*., p. 156, line 14). He repeated his question even after she answered it. (*Id*., lines 13-21; p. 157, lines 6-11).

He asked the misleading question whether she was failing to remember her own prior testimony that she believed the gun was unloaded, despite her prior testimony that she would have guessed the gun was unloaded, based on what T.A. had told her. (*Id*., p. 157, lines 6-11). Martinez ended with another argumentative, misleading question which conflated Arias's prior testimony, about ***what she would have guessed to be true***, with Martinez's assertion about ***what she affirmatively knew*** and implied she was lying or changing her testimony, when he asked, "Again, do you have a problem remembering what you just said a couple of days ago?" (*Id*.).

The prosecutor also badgered Arias in an exchange about why she had not called the police when T.A. had assaulted her. (RT 3-13-13, pp. 142-43) (*See* Appendix 16). Martinez badgered LaViolette in an exchange that concluded with him accusing her of being willing to change her testimony just to spite him. (RT 4-4-13 #2, pp. 111-114) (*See* Appendix 17). This was Martinez's tactic of badgering cross-examination: he asserted that a witness changed their story or failed to

remember their own testimony. He did so when in fact he changed the context of the earlier testimony, or the actual words the witness used. He would then flog the witness with his argumentative questions and snide comments. Finally, he would repeat his questions no matter what the witness answered until the badgered and bewildered witness would just agree with him. (*See* Appendix 18).

Another common tactic employed by the prosecutor was to yell at and berate witnesses. During the prior example with LaViolette, defense counsel moved for a mistrial in part because Martinez screamed at the witness. (RT 4-4-13 #2, pp. 112-113). Martinez yelled at LaViolette during another exchange, to which the defense objected. (RT 4-10-13, pp. 37-38). He argued that he had not raised his voice, but the court disagreed. (*Id.*, p. 38).

The defense also objected when Martinez yelled at Samuels. (RT 3-25-13, p. 190). The court stated that he was close to yelling, but not there yet, and to take a deep breath. (*Id.*). Finally, Arias testified that Martinez yelled at her during her cross-examination. (RT 2-21-13, p. 107) (*See* Appendix 19).

3. The prosecutor improperly acted as a witness.

In addition to asking improper questions, the prosecutor committed misconduct by improperly interjecting his own unsworn testimony and opinion into

the trial. Martinez acted as a witness, through questions including: 1) comments on the witnesses' answers, 2) refusing to accept an answer given by a witness and re-asking the same question, 3) mischaracterizing the testimony given so many times as to create his own false facts, and 4) through a litany of speaking objections.

A prosecutor may not refer to matters not in evidence. *State v. Roscoe*, 184 Ariz. 484, 497(1996). They must prove their case through admissible evidence, not through aspersions that rest on inadmissible evidence, hunch, or spite. *United States v. Schindler*, 614 F.2d 227, 228(9th Cir.1980). A prosecutor's opinion of the evidence is not admissible evidence itself. It is misconduct for a prosecutor to improperly interject her personal opinion into a case. *United States v. Perez-Zazueta*, 180 Fed. Appx. 675, 676(9th Cir.2006). Such statements are problematic in part because a prosecutor has no business telling the jury her individual impressions of the evidence since, as the state's representative, the jury may be misled into thinking her conclusions have been validated by the government's investigatory apparatus. *Id.* A prosecutor has a special obligation to avoid improper suggestion, insinuations, and especially personal knowledge assertions. *State v. Salcido*, 140 Ariz. 342, 344(1984), *citing Berger*, 295 U.S. at 88.

While Arizona courts have held it improper when a prosecutor refers to matters not in evidence or makes assertions of personal knowledge, Arizona law does not explicitly prohibit the subset of speaking objections, except "[t]o the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means." *Lynch*, 238 Ariz. at 94, ¶17, *citing* Ariz.R.Evid., Rule 103(d). Other jurisdictions have considered prosecutorial misconduct that included speaking objections and reversed convictions based in part on that misconduct. The California Court of Appeals reversed in a case where the prosecutor used speaking objections to place information before the jury that was not admitted into evidence. *People v. Pitts*, 273 Cal.Rptr. 757(Cal. App.1990)(*superseded by statute on other grounds as stated in People v. Levesque*, 41 Cal.Rptr.2d 439(Cal. App.1995)). The court noted:

> It is settled that "the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." It is improper for a prosecutor to present potentially prejudicial "evidence" to a jury in the form of argument.

Id., at 825, internal citations omitted. *See also*, *State v. Soares*, 815 P.2d 428(Haw.1991)(numerous speaking objections contributed to the cumulative prosecutorial misconduct requiring reversal).

In this case, Martinez injected inadmissible evidence by offering his own opinions and comments on the evidence. Martinez was the prosecutor, not a witness. His disagreements with the witnesses' testimony were not admissible. Martinez used his own questions and speaking objections to put his inadmissible opinions, disagreements, and version of the facts before the jury.

The speaking objections that did not introduce new facts or his personal opinion still served a strategic function not addressed by the *Lynch* Court. By using speaking objections, Martinez personally rebutted witness testimony at the moment they uttered it. This allowed him to avoid having to wait until his rebuttal case to bring his version of the facts back to the jury's attention. Even where Martinez did not introduce new facts, he repeatedly violated the evidentiary rules, always in a way designed to give him an unfair trial advantage.

For instance, Martinez twice inserted the fact that Samuels told Martinez that he felt sorry for Arias, despite Samuels denying that he said it. (RT 3-25-13, p. 149). Martinez then slightly pivoted to whether Samuels remembered using the word

"sorry" when discussing a dictionary definition (*id*., p. 149), but this was misleading. Earlier in his testimony, in response to a jury question, Samuels testified that there were no ethical rules prohibiting his practice of sending books to clients, which he did because he was a compassionate person. (RT 3-21-13, p. 48). Martinez attempted to get Samuels to agree that compassion was the same as sympathy and he felt sympathy for Arias, but Samuels disagreed. (*Id.*, p. 166). Samuels explained that he thought sympathy was akin to feeling sorry for someone and he did not feel sorry for Arias. (*Id*., p. 171). Despite this answer, Martinez asked two more times if Samuels felt sorry for her. (*Id*., pp. 171-172). Samuels disagreed. (*Id*.).

Days later, when Martinez asserted that Samuels said he felt sorry for Arias, he presented false facts to the jury. Martinez followed up this impeachment by asking Samuels if he used the word "sorry" when discussing the dictionary definition. This was misleading because, while it was technically true that Samuels mentioned the word "sorry," it was only to say that he did not feel sorry for Arias. But the context of Martinez's question implied that Samuels just could not remember admitting that he felt sorry for Arias, just as Martinez claimed in previous questioning. (RT 3-25-13, p. 149). This misled the jury by mischaracterizing and

changing the witness's answers when rephrasing them in questions. This tactic was condemned by the *Berger* Court. 295 U.S. at 84. (*See* Appendix 20).

Martinez frequently inserted his own version of false facts. When questioning Arias, Martinez inserted his own factual version of her testimony that T.A. was down and not able to get up, meaning she returned to him with a knife. (RT 3-13-13, p. 51). But that was not her testimony. He also inserted facts into the trial to which no one else testified at all. (*See e.g.*, *Id*., pp. 159-160; 163 [regarding the shelves Arias had testified she climbed up to get the gun, how they were held up and that the shelves were rated to only hold 40 pounds of weight]) (*See* Appendix 21).

A different variation where Martinez used his questions to testify were the editorial, belittling comments which allowed him to inject his opinion into the trial. Martinez asked LaViolette whether she was biased in Arias's favor. (RT 4-8-13, p. 160). LaViolette answered that bias was the wrong word, he responded, "No. That is the correct word. Isn't it true that you are biased in favor of the defendant, yes or no?" (*Id*.; RT 3-13-13, p. 50 [after Arias had testified to memory problems regarding parts of the killing, Martinez asked a follow up question to something she remembered which included the comment, "…which you now seem to remember…"]) (*See* Appendix 22).

As a matter of course, Martinez commented on evidence and asked argumentative questions while refusing to accept answers given by witnesses. Arias testified that she did not know whether she had gone to get a knife. (*Id.*, p. 35). When he asked Arias if not having the knife in her hand during the shooting meant that she went to go get the knife from somewhere, she responded that she guessed so, but did not know. (*Id*.). Martinez told her, "No, no, no, there is no guessing here now." (*Id*.). Then he asked her again if she went to get the knife. (*Id*., p. 36).

Martinez interrupted witnesses to stop their answers. (RT 1-29-13, pp. 42-43; RT 3-25-13, pp. 58; 77) (*See* Appendix 23). He did this even after the court sustained an objection and ordered that the witness be allowed to answer. (RT 3-19-13, pp. 124; 126). Other times he would actually disagree with the witness's testimony by stating "No" after they answered or would often proceed to repeat the same question. (RT 3-25-13, p. 140 ["Samuels: Well, I believe it occurred in the same time frame. Martinez: No. Not the same time frame…."]; RT 2-27-13, p. 146) (*See* Appendix 24).

Sometimes Martinez would badger the witness by asking the same question over and over, thereby signaling to the witness and the jury that the witness's answer would not be accepted until they agreed with Martinez's conclusions. This tactic

had additional strategic value in the possibility that the repeated fact in his question would be what the jurors remembered and/or believed, not the witnesses' denials.

One such exchange occurred about how long it took Arias to obtain a second weapon, a knife, during the attack. This point depended on the knife's location. On cross-examination, Arias testified she last saw the knife when T.A. used it to cut a rope. (RT 3-13-13, p. 29). Thereafter she maintained that she did not know the knife's whereabouts. (*Id*., pp. 29-30; 33; 37-39). She repeated that she did not have the knife. (*Id*., pp. 49; 50-51; 51). Despite her testimony, Martinez injected the fact that she had the knife in her hand by asking, "Ma'am, at some point, you remember that you had a knife in your hand, correct?" (*Id*., p. 92). Similarly, Martinez asserted that Arias got out to investigate the license plate on the ground despite previous answers from Arias that she had not been sure what she saw. (RT 2-27-13, pp. 159-60; *cf*. *id*., pp. 143-44; 146; 151; 158) (*See* Appendix 25).

Martinez used speaking objections to disagree with the witness's testimony and to stop them from offering testimony he did not like. Arias testified about incidents that caused her to "lose focus on what's going on." (RT 3-5-13, p. 65). She described incidents where T.A. would snap and yell at her. (*Id*., p. 66). When asked for the first instance when this happened with T.A., Arias answered that it was

while driving to the Getty Center. (*Id*., p. 67). Martinez's speaking objection that began with his claim that her answer was speculation, then stated, "If she doesn't remember, how can she relate something she doesn't remember?" (*Id*.). Arias shortly after testified about a time that T.A. "really flipped out" and began to described the next time T.A. flipped out. (*Id*., p. 68). Martinez interposed, "I am going to object to the characterization, 'flipping out.' Is she answering the question of when she had the reaction or, according to her, T.A. got upset?" (*Id*., pp. 68-69). The court sustained the objection. (*Id*., p. 69). The defense and the witness then moved away from witness's answer.

Martinez otherwise used speaking objections to introduce facts, advance arguments, disparage defense counsel, and to comment on evidence. He made an objection where he outright disagreed with testimony an expert had just given that certain information came from T.A. (RT 4-4-13 #2, p. 29). When Nurmi asked Arias whether T.A. sought to hide their involvement, Martinez offered his own opinion, "Objection. Speculation. Maybe he didn't want to have sex with her." (RT 2-6-13, p. 67) (*See* Appendix 26).

4. Other misconduct.

i. Ignoring court rulings and orders regarding evidence.

The prosecutor committed misconduct by ignoring court rulings and orders. Attorneys have an imperative duty to respectfully yield to court rulings, whether they believe them right or wrong. When an attorney repeats questions after a court sustains objections to the questions, it shows a disregard for the court's authority and is an impertinence to the court. *Pool*, 139 Ariz. at 102. Martinez disregarded court rulings by 1) repeating his questions after the court sustained an objection to them, or 2) repeating his objections just after the court overruled the same. (RT 2-25-13, p. 190; RT 4-9-13, p. 143) (*See* Appendix 27).

The prosecutor committed misconduct by ignoring the court's ruling regarding the proper purpose for the admission of evidence. The defense objected to Officer Friedman testifying as to hearsay statements from Arias's grandparents that a handgun was stolen in a burglary at their house. (RT 1-14-13, p. 17). Martinez told the court he was not offering this testimony for its truth, but only to show what the officer wrote in his report. (*Id*.). Martinez claimed that another detective would testify that Arias admitted that the burglary happened and a .25 caliber gun was stolen. (*Id*., p. 18).

In overruling the objection, the court ruled that Martinez's question did not involve hearsay. (*Id*.). The defense objected that Arias did not make the statements Martinez described, only the other detective based on Friedman's report, so it was still hearsay. (*Id*., pp. 18-19). Defense counsel argued that the evidence was being offered to show that the gun was stolen. (*Id*., p. 19). The court ruled that the officer was only relaying what he wrote in his report, so it was not offered for its truth. (*Id*.).

Despite this ruling, Martinez used the evidence, but as substantive evidence that Arias staged the burglary and stole the gun. When the defense made a Rule 20 motion after the state's rebuttal case concluded, Martinez argued that evidence that Arias premeditated the killing existed because she staged the burglary to get the gun she planned to use in the murder. (RT 4-25-13, p. 7).

Martinez's use of this hearsay, in violation of the court's ruling on its admission, is reversible error on its own, in addition to being part of the cumulative error analysis. The defense objected to the admission of the evidence of the gun theft because Martinez would use it substantively, and he did. Given that premeditation was a critical issue, proven with evidence of the staged gun theft, it is impossible to conclude, beyond a reasonable doubt, that this misconduct had no effect on the jury.

ii. Ignoring court orders protecting witnesses.

The prosecutor flagrantly ignored court orders designed to protect defense witnesses. The state showed hostility to allowing any defense witness to testify under pseudonyms. The first example of Martinez's unwillingness to abide by court rulings on witness anonymity occurred after the court ordered that a defense witness's name be redacted. (RT 12-6-13, p. 16). A week later, the prosecutor filed a motion objecting to the pseudonym use for that witness and openly referred to the witness's name throughout the motion. (I. 1305). The minute entry from the hearing showed that the court sealed the motion. (I. 1307). Martinez's motion did not indicate it was filed under seal, (I. 1305), nor does the transcript reflect any such request.

A second violation of a court anonymity order occurred with another witness. This time, Martinez filed another motion which used the witness's name despite the court's order that the parties refer to him by pseudonym. Martinez styled the motion as a notice to the court that the witness disclosed his own name and involvement in the trial. (I. 1885).

The entire basis for his claim was that some unknown person on the internet wrote that the protected witness disclosed his name. This alleged disclosure

occurred in some other chatroom discussion. So the prosecutor's claim rested not on evidence from the witness in any documented setting, but from an anonymous person making an assertion based on something they read elsewhere on the internet, which they believed was written by another person claiming to be the witness. Based on this scanty third-hand, anonymous "evidence," Martinez decided he need not comply with the court's order and disclosed the witness's name in his motion.

The prosecutor's unwillingness to follow court orders to protect defense witnesses continued in the courtroom. The public and cameras were present. During trial, at the bench the parties discussed how they should refer to the anonymous witnesses and the court ruled that they use anonymous descriptors. (RT 1-20-15 #2, p. 31). Martinez showed his continuing hostility to court orders when he claimed that since a name appeared in an affidavit, he should be allowed to use it in the courtroom. (*Id*., p. 34). Willmott explained it was a mistake and would be taken out. (*Id*.). The court again stated they should not use the witness's names. (*Id*., p. 35).

Despite this ruling, and despite pretrial incidents, during questioning, Martinez used the witness's name. (RT 1-21-15, p. 119). The defense moved for a mistrial. (*Id*., p. 120). The court denied the mistrial, finding it was inadvertent, the

witness had identified themselves online, and so no prejudice was caused. (*Id*., pp. 121-122). Then Martinez asked ***another*** question using the witness's name. (*Id*., p. 132). When the defense objected, Martinez claimed he had not used the name. (*Id*., p. 134). The court stated she did not hear it. (*Id*., pp. 134-135). He argued to the court that he had not used the witness's name. (*Id*., p. 135). Immediately after this bench conference, the prosecutor's *very next question* included the witness's name. (*Id*., p. 137). The court took the mistrial request under advisement, again focusing on whether prejudice occurred. (*Id*., p. 138). The court still believed Martinez's use of the name was inadvertent. (*Id*.). The defense filed a written motion for mistrial based on his intentional misconduct. (I. 1943). Thereafter, Martinez questioned whether the witness whose name he had disclosed was the one who had been looking at child porn on the computer. (*Id*., p. 144). Martinez not only publicly identified the witness, but then improperly accused the outed witness of viewing child porn. (*Id*., p. 150).

iii. Attempting to show the jury Arias's restraints.

The prosecutor committed misconduct by attempting to place inadmissible and prejudicial information before the jury. Case law recognizes defendants should not be required to wear restraints visible to the jury unless the court has made an

individualized determination that they are needed and violations may result in structural error. *See* Issue 4. When Arias testified, the prosecutor invited her to step down from the witness stand to enact a demonstration for the jury. (RT 2-28-13, p. 126). He did so knowing that Arias wore restraints. (RT 1-10-13, pp. 62-63; RT 2-5-13, p. 4). Nevertheless, Martinez asked Arias to walk down from the stand, take steps into the courtroom's well, and crouch before the jury to illustrate how T.A. attacked her. The jury would be able to see Arias's restraints.

iv. Asking witnesses to comment on the veracity of other witnesses.

The prosecutor committed misconduct by improperly asking witnesses to comment on the credibility of other witnesses. It is improper to ask questions which cause one witness to comment upon the veracity of another witness's testimony. *United States v. Sanchez*, 176 F.3d 1214, 1219-1220(9th Cir.1999). Arizona prohibits lay and expert testimony judging whether another witness's testimony was truthful because it is the jury's province to determine truthfulness and credibility, and opinions about witness credibility are nothing more than advice to jurors on how to decide the case. *Lynch*, 238 Ariz. at 93, ¶13.

Martinez engaged in improper questioning with several witnesses. For example, Arias testified she told M.M. about T.A. abusing her when M.M. asked about her bruises. (RT 2-25-13, p. 190). Martinez asked Arias why M.M. said he had no knowledge of this particular incident. (*Id*.). The court overruled a defense objection, after which Martinez asked Arias why M.M. would say that he had no such knowledge. (*Id*.). The court sustained a speculation objection, but Martinez ignored the ruling, asking, "So you don't know whether or not he, when interviewed, whether or not he admitted to knowing about that?" (*Id*.; *see also,* RT 2-21-13, pp. 126-127, challenging Arias whether she told LaViolette that T.A. had been masturbating to a computer and when Arias denied this, whether she heard LaViolette testify that Arias told her same) (*See* Appendix 28).

v. Seeking out publicity regardless of trial impact.

The prosecutor committed misconduct in his behavior outside the courtroom. *See* Issue 1. The prosecution has a duty not to engage in behavior that will affect the jury's ability to judge the evidence fairly. *United States v. McKoy*, 771 F.2d 1207, 1212(9th Cir.1985). Ethical guidelines regarding extrajudicial statement-making are in accord. *See* ABA Standards, 3-1.4 (a)("A prosecutor should not make or authorize the making of an extrajudicial statement that a reasonable person would expect to be

disseminated by means of public communication if the prosecutor knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding."). Arias objected after Martinez stood outside the courthouse taking photographs with his fans and signing autographs. (RT 3-28-13, p. 8).

The defense argued Martinez was indifferent to the danger of causing a mistrial or prejudicing the jury, especially where witnesses had already been harassed by spectators. (RT 4-15-13, p. 73; I. 921). During the first time the issue was broached, the prosecutor asserted, "What happens outside the courtroom is not misconduct[,]" which he claimed would be true even if jurors saw it. (RT 3-28-13, pp. 10-11). Later, he retorted that it was a nonissue that the defense was raising to just make more money off the trial. (RT 4-15-13, p. 75).

The court declined to decide if Martinez's behavior was misconduct and instead denied the mistrial request because no juror had actually witnessed events. (*Id*., p. 76). Despite the court's unwillingness to decide if Martinez's actions were misconduct, they were, and should be considered as part of a pattern of his indifference to Arias's right to a fair trial. Standing on the courthouse steps signing autographs with his approving fans showed Martinez was utterly indifferent to the danger that a juror might see how much the public supported his courtroom antics.

vi. Appealing to the jury's sympathy or prejudice.

The prosecutor committed misconduct by appealing to the jury's sympathy or prejudice. Prosecutors may not appeal to the jury's sympathy, passion, prejudice or fears. *Comer,* 165 Ariz. at 426. While Martinez cross-examined L.D., who previously dated T.A., Martinez questioned her feelings about Exhibit 205 given her experiences with the victim. (RT 1-30-13, p. 123). Exhibit 205 depicted a frontal view of T.A.'s neck wound with the jugular and the carotid arteries cut all the way to his spine, stopping only at the bone. (RT 1-8-13, p. 69). The defense objected but Martinez continued with his question. (RT 1-30-13, p. 123).

The defense noted that Martinez continued putting the photo on the overhead projector even after the objection. (*Id*., p. 124). Both the witness and the victim's family members in the audience reacted to the photograph by crying. (*Id*.). The defense asked for a mistrial, arguing that Martinez used the photo in an irrelevant and prejudicial way, to deliberately get an emotional reaction from L.D. (*Id*.).

Martinez did not deny trying to make L.D. cry, but instead argued that if Arias can make a self-defense claim, everyone should be able to decide whether this was really self-defense. (*Id*.). The victim's family and friends' visible distress was not admissible evidence to rebut Arias's self-defense claim. It was prejudicial,

irrelevant evidence that Martinez deliberately elicited to gain the jury's sympathy for T.A. and his friends rather than the evidence. His use of the photograph was misconduct.

Beyond this appeal to jury sympathy, Martinez also sought to appeal to prejudice against women, by eliciting inflammatory sexual evidence about Arias. (RT 11-20-14, p. 138 [twice Martinez asked the witness whether Arias was described as "in heat," even after the court sustained an objection and struck the information]).[5] Eliciting such prejudicial sexualized and irrelevant evidence fit together with his earlier attempt to strike all women from the jury. *See* Issue 5.

[5] Martinez had a pattern of making inappropriate, sexualized comments. At the bench, Martinez described Arias as "squealing" during the sex tape. (RT 10-28-14, p. 128). During motion argument, while disparaging the idea that a witness could estimate a child's age in pornographic image, Martinez stated, "Well, how do you know it's an eight-year-old girl unless, what, you count the vaginal rings or something….?" (RT 10-16-14, p. 8). At the bench, Martinez based an argument on what he thought the female jurors likely did with their pubic hair. (RT 11-17-14, p. 134). Martinez stated to female opposing counsel, during an argument about the meaning of the victim's potential suicide threat, "…if Ms. Willmott and I were married, I certainly would say I F'g want to kill myself. That doesn't mean I want to kill myself. It just means there's a bad relationship and I want you to leave me alone." (RT 4-2-13, pp. 155-156).

Prejudice:

The prosecutor persistently engaged in pervasive misconduct and he did so with indifference, if not specific intent, to prejudice Arias. The misconduct in this case was pervasive. Martinez committed misconduct with every witness in the trial and on nearly every day of the trials, regardless of court rulings or defense objections. The sheer number of improper questions and improper arguments are staggering. This was not a trial which merely ***included*** pervasive misconduct, but was a trial ***built upon*** pervasive misconduct.

The record shows that Martinez was indifferent to or intended to prejudice Arias's trial. It is true that when weighing cumulative misconduct, courts focus on the trial's fairness, not the prosecutor's culpability. *State v. Bible*, 175 Ariz. 549, 601(1993). But determining whether a prosecutor is indifferent to the prejudice his misconduct causes is measured by considering facts that might seem to address the prosecutor's culpability, but instead help prove that the errors were not inadvertent, accidental, or related to inexperience. Whether the prosecutor's misconduct is isolated or a consistent pattern is relevant. *Minnitt*, 203 Ariz. at 431, ¶37("Like the misdeeds in [*Pool*, 139 Ariz. at 108], Peasley's misdeeds were not isolated events but became a consistent pattern of prosecutorial misconduct that began in 1993 and

continued through retrial in 1997."); *State v. Jorgenson*, 198 Ariz. 390, 393, ¶14(2000)("This is perhaps the third or fourth time that the conduct of this same prosecutor has raised the same type of problem. It is unfortunate that he was permitted to try so serious a case and, without proper supervision, permitted to try it in such an improper manner.").

The prosecutor's experience level is relevant. *Minnitt*, 203 Ariz. at 439, ¶38(in reversing a conviction for prosecutorial misconduct which permeated the trials in question, the court noted, "Peasley is not an inexperienced prosecutor, but rather a veteran homicide prosecutor"). A lawyer's substantial experience affords, or should afford, a greater appreciation of the tactical advantages gained through misconduct. *In re Peasley*, 208 Ariz. 27, 37, ¶40(2004).

Martinez is a "veteran homicide prosecutor," aware of all the advantages to be gained through the various types of misconduct he employed. Indeed, Martinez's conduct has been considered by the Arizona Supreme Court on at least six previous occasions. *State v. Hulsey*, 243 Ariz. 367, ¶89(2018); *Lynch*, 238 Ariz. 84; *State v. Dixon*, 226 Ariz. 545, ¶¶6-11(2011); *State v. Gallardo*, 225 Ariz. 560, ¶¶33-47(2010); *State v. Lynch (Lynch I)*, 225 Ariz. 27, ¶¶54-65(2010); *State v. Morris*, 215 Ariz. 324, ¶¶46-67(2007). He cannot be ignorant of his impropriety. Given that

repeated findings of improper or inappropriate conduct by the Arizona Supreme Court has not caused this prosecutor to desist, he either does not care about such court rulings or he believes the behavior is necessary to win his cases. Martinez's recent statements about this trial prove the point. When an interviewer asked him about his harsh style of questioning Arias, Martinez stated it was part of his strategy to cut off the witness, to interrupt her flow, and to raise his voice at her. He went on to admit that without these tactics, there was "…a strong possibility that [Arias] would have been acquitted outright."[6] (*See* Appendix 29). His decision to engage in the pervasive and persistent misconduct is not inadvertent or accidental, but is intentional.

Martinez's misconduct here was like the conduct that caused reversal in *Pool*. *Pool's* extreme misconduct included cross-examination questions ranging from irrelevant and prejudicial to abusive, argumentative and disrespectful. Martinez liberally employed each of these tactics. Like *Pool*, where permanent prejudice became clear due to the prosecutor's persistence in improper cross, fairness was impossible to achieve in Arias's trial either. Martinez's purposes, as evident from

[6] Appellant requests the Court take judicial notice of the prosecutor's public statements. Ariz.R.Evid. 201.

our record as that of *Pool*, was to avoid an acquittal, prejudice the jury and obtain a conviction with indifference to the danger of mistrial, reversal, or unfair verdicts.

Prosecutorial misconduct that permeates the process and intentionally destroys the ability of the tribunal to reach a fair verdict must necessarily be remedied. *Minnitt*, 203 Ariz. at 438, ¶¶31-32, *citing Pool*, 139 Ariz. at 109. Martinez's extreme misconduct culminated in a closing argument depicting everyone associated with the defense as despicable and dishonest, from Arias, to her experts, to her attorneys.

Each instance of misconduct, from accusing experts of having feelings for Arias, to insinuating defense counsel hid evidence, to making comments on the evidence to show his opinion why the evidence should not be believed, was used to weave the picture that no one in the courtroom could be believed other than Martinez. The prosecutor's pervasive and persistent misconduct was not harmless. It cannot be said, beyond a reasonable doubt, that it had no effect on the jury's verdict.

CONCLUSION

Reversal is required based on pervasive and prejudicial prosecutorial misconduct, the due process violations resulting from the court's failure to control the media's access to the trial, the improper admission of hearsay testimony that helped establish premeditation, the improper testimony from the state's expert regarding Arias's mental state that helped establish premeditation, the fact that Arias wore a stun belt throughout trial without justification, and the prosecutor's exercise of peremptory strikes in a discriminatory manner during jury selection. For these reasons, Arias respectfully requests that her conviction for First Degree Murder be reversed.

RESPECTFULLY SUBMITTED this 3rd day of July, 2018.

MARICOPA COUNTY PUBLIC DEFENDER

By /s/
PEG GREEN
Deputy Public Defender

By /s/
CORY ENGLE
Deputy Public Defender

PGCEKL070318P

APPENDIX 1

APPENDIX 1

RT 4-4-13 #1, pp. 39-42; 48-51; 66; 73-74

RT 4-4-13 #2, pp. 12; 23-26

APPENDIX 2

Arizona Statutes Annotated - 2013

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
XII. Miscellaneous Provisions

17A A.R.S. Sup.Ct.Rules, **Rule 122**

Rule 122. Electronic and Photographic Coverage of Public Judicial Proceedings

Currentness

Electronic and still photographic coverage of public judicial proceedings conducted by a judicial officer during sessions of court may be permitted in accordance with the following guidelines:

(a) No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.

(b) Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted in the discretion of the judge giving due consideration to the following factors:

(i) The impact of coverage upon the right of any party to a fair trial;

(ii) The impact of coverage upon the right of privacy of any party or witness;

(iii) The impact of coverage upon the safety and well-being of any party, witness or juror;

(iv) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;

(v) The adequacy of the physical facilities of the court for coverage;

(vi) The timeliness of the request pursuant to subsection (f) of this **Rule**; and

(vii) Any other factor affecting the fair administration of justice.

(c) The judge may limit or prohibit electronic or still photographic coverage only after making specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors that outweighs the benefit to the public of camera coverage.

(d) Electronic and still photographic coverage of the appearance or testimony of a particular witness may be prohibited if the judge determines that such coverage would have a greater adverse impact upon the witness or his or her testimony than non-electronic and non-photographic coverage would have.

(e) The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of particular witness shall apply to the coverage hereunder. The exercise of the judge's discretion in limiting or precluding electronic or still photographic coverage shall be reviewable only by special action.

(f) Requests by the media for coverage shall be made to the judge of the particular proceeding sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it. Unless the judicial proceeding is scheduled on less than three days notice, the request to tape or photograph a proceeding must be made no less than two days in advance of the hearing. The judge shall notify all parties and witnesses of the request. If there is any objection to a request for camera coverage or an order allowing electronic or still photographic coverage, the court shall hold a hearing promptly.

(g) Objections of a party to coverage must be made on the record prior to commencement of the proceeding or portion thereof for which coverage is requested. Objections of a non-party witness to coverage of his or her appearance or testimony may be made to the judge at any time. Any objection not so made will be deemed waived.

(h) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Arizona **Rules** of Professional Conduct governing trial publicity.

(i) Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.

(j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal thereof.

(k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing jurors in any manner.

(l) Absent express permission of the court, there shall be no audio recording or broadcasting of conferences in the court building between attorneys and their clients, between attorneys, of jury interviews or in any part of the court building where a judicial proceeding is not being conducted.

(m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures which meet the approval of the judge of the particular proceeding prior to any coverage and without disruption to the court. If necessary the media representatives shall elect a spokesperson to confer with the court.

(n) No more than one television camera and one still camera mounted on a tripod, each with a single camera operator, shall be permitted in the courtroom for coverage at any time while court is in session. The broadcast media shall select a representative to arrange the pooling of media participants. The court shall not participate in the pooling agreement.

(o) The judge of a particular proceeding shall, in a manner which preserves the dignity of the proceeding, designate the placement of equipment and personnel for electronic and still photographic coverage of that proceeding, and all equipment and personnel shall be restricted to the area so designated. Whenever possible, media equipment and personnel shall be placed outside the courtroom. Videotape recording equipment not a component part of a television camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in session, equipment shall not be installed, moved or taken from the courtroom, nor shall photographers or camera operators move about the courtroom.

(p) All persons engaged in the coverage permitted hereunder shall avoid conduct or dress which may detract from the dignity of the proceedings.

(q) If possible, media equipment shall be connected to existing courtroom sound systems. No flash bulbs, strobe lights or other artificial lights of any kind shall be brought into the courtroom by the media for use in coverage of a proceeding. Where the addition of higher wattage light bulbs, additional standard light fixtures, additional microphones or other modifications or improvements are sought by the media, the media, through their spokesperson, shall make their recommendations to the presiding judge of the Superior Court, who may direct whatever modifications or improvements deemed necessary. Any such modifications or improvements shall be made and maintained without public expense.

(r) Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a non-digital still camera acceptable if accompanied by a device that effectively muffles camera sounds.

(s) Cameras and microphones used in the coverage permitted hereunder shall meet the "state of the art." A camera or microphone shall be deemed to meet the "state of the art" when equal in unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major broadcast stations in the community in which the courtroom is located.

(t) Any questions concerning whether particular equipment complies with these guidelines shall be resolved by the presiding

judge of the Superior Court or designee.

(u) To facilitate implementation of this **rule**, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.

(v) In the case of coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, references herein to the "judge of the particular proceeding" or the "presiding judge of the Superior Court" shall mean the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as the case may be.

Credits

Added June 15, 1993, effective Sept. 1, 1993. Amended nunc pro tunc July 27, 1993; nunc pro tunc August 30, 1993. Amended Oct. 2, 1998, effective Dec. 1, 1998; Sept. 16, 2008, effective Jan. 1, 2009.

<Formerly Part XI. Redesignated as Part XII January 15, 2003, effective July 1, 2003.>

LIBRARY REFERENCES

Criminal Law ⚖633.16, 635.10.
Trial ⚖20.
Westlaw Topic Nos. 110, 388.
C.J.S. Criminal Law §§ 1542 to 1555.
C.J.S. Trial § 97.

RESEARCH REFERENCES

ALR Library
14 ALR 4th 121, Validity, Propriety, And Effect Of Allowing Or Prohibiting Media's Broadcasting, Recording, Or Photographing Court Proceedings.

Treatises and Practice Aids
Arizona Practice § 2:21, Publicizing Judicial Proceedings.
5 Arizona Practice § 7:11, Hearing.
17A A. R. S. Sup. Ct. **Rules**, **Rule 122**, AZ ST S CT **Rule 122**

Current with amendments received through 8/15/13

End of Document

APPENDIX 3

APPENDIX 3

RT 3-25-13, p. 195

> Q. And creating an alternative reality by your definition also indicates not telling the truth, right?
> A. Well, not telling the truth to me implies that the person has voluntary control over the story they're telling.
> Q. And I know you want to say that. But --
> MS. WILLMOTT: Objection, argumentative.
> THE COURT: Sustained.

RT 3-19-13, p. 98
RT 3-25-13, p. 126
RT 4-4-13 #2, pp 112; 121
RT 4-9-13, pp. 120; 133; 142
RT 4-10-13, pp. 50; 75; 106

RT 4-9-13, p. 122

> Q. With regard to that particular activity, did you go back and address that issue with the defendant to get the specifics about that or did your prejudices prevent you from doing that?
> MS. WILLMOTT: Objection, argumentative.
> THE COURT: Sustained

RT 4-9-13, p. 195

> Q. Right. I'm not asking what people do with jealousy. I want you to tell me a situation, for example, where a woman is very jealous of a man. Tell me in that circumstance where a woman is very jealous of a man of all the couples that you treated where that -- where she, that woman has done something positive so that we can hold jealousy as a virtue right up there with love.

MS. WILLMOTT: Objection, argumentative.
THE COURT: Sustained.

Examples of county attorney's argumentative questions that the court sustained during cross-examination of defense expert Geffner.

RT 5-1-13 #1, p. 203

Q: Even though you're not getting any money for this particular case, sir, you're still the same individual who will go to court if you believe in something and make things up, right?
MS. WILLMOTT: Objection, Argumentative.
THE COURT: Sustained.
MS. WILLMOTT: Move to strike.
THE COURT: Granted.

RT 5-1-13 #2, p. 21

Q. How do you know that she didn't know what she needed to do? How do you -- can you read minds, sir?
MS. WILLMOTT: Objection, argumentative.
THE COURT: Sustained.

RT 5-1-13 #2, p. 25

Q. But if someone as experienced as you is a clinical psychologist or is an expert in this, to be honest, you don't really need the summary scales, you're way too smart for that, right?
MS. WILLMOTT: Objection, argumentative.
THE COURT: Sustained.

APPENDIX 4

APPENDIX 4

RT 3-18-13, p. 133

Q. Well, if she was suicidal, it was somebody else's responsibility to take care of it, right?
MS. WILLMOTT: Judge, objection, can we ask the State not to yell at the witness. It's not necessary.
THE COURT: Approach, please.
(Sidebar discussion.)
MS. WILLMOTT: What's going on is unprofessional conduct and it doesn't come across in the Court Reporter's notes, but for the record, he is yelling. He is raising his voice. He's slapping his hands together in a loud fashion to make drama or for whatever reason, but it's unprofessional conduct.
THE COURT: Mr. Martinez?
MR. MARTINEZ: It's my style. I don't think that my voice is raised or is so high that it disturbs the witness. He hasn't shown any indication that he's bothered by it. Nobody else is bothered by it. You heard what was going on and I'll defer to you.
MS. WILLMOTT: That's not necessarily true, Judge. For the record, Dr. Samuels raised his voice back at one point because of the frustration. And I'm bothered by it because it's unprofessional.
MR. MARTINEZ: Well, we don't really care why you're bothered by it. We don't know that he was frustrated. He raised his voice just as much as I did. So it's tit for tat.
MR. NURMI: Judge, I think what is really dispositive here and I can't think of the name of the case. This sort of conduct, this yelling, this rolling of eyes was recently frowned upon in case law. And I haven't seen Mr. Martinez roll his eyes but obviously it's been a great deal of yelling. It's frowned upon, it's misconduct. And I will once again move for a mistrial based on this continued conduct of yelling at witnesses.

MR. MARTINEZ: And I dispute that there was any yelling.
THE COURT: All right. I do not find that Mr. Martinez's conduct raises to the level that would require any kind of admonition from the Court. I believe that a calmer tone could be appropriate. Certainly this is cross-examination and different styles are permitted. The Motion for Mistrial is denied. Let's see if we can take it down just a tad.

RT 3-25-13, p. 191

MS. WILLMOTT: I ask the prosecutor not yell at the witness. It's unprofessional conduct.
MR. MARTINEZ: I'm not yelling at the witness.
THE COURT: It's close but not quite there. Take a deep breath.

RT 4-10-13, p. 38

THE COURT: Hold on; hold on. There's another objection.
MS. WILLMOTT: The prosecutor's tone.
THE COURT: Approach please. (Sidebar conference heard, reported as follows:)
MS. WILLMOTT: On the record that the prosecutor's tone has raised now to a higher level and that he is yelling at the witness.
MR. MARTINEZ: I disagree that I'm yelling at the witness, Judge.
THE COURT: Your voice did raise. Take a deep breath and let's move forward.

APPENDIX 5

APPENDIX 5

RT 3-19-13, pp. 15-17

RT 3-25-13, p. 193

RT 5-1-13 #1, p. 194

APPENDIX 6

APPENDIX 6

A. Examples of county attorney's argumentative questions that the court sustained during cross-examination of the defendant:

RT 2-25-13, p. 38
RT 2-26-13, pp. 109; 116; 120; 136
RT 2-27-13, pp. 13; 93; 169
RT 2-28-13, pp. 25; 45; 126; 208; 217; 157
RT 3-7-13, pp. 114; 122; 125
RT 3-13-13, pp. 35 (twice); 37; 38; 40; 94; 106;107; 114; 138; 143; 157; 169; 191

RT 2-25-13, p. 37

> Q. To use your standard ma'am of how you stopped because it stung, can you imagine how much it must have hurt Mr. Alexander when you stuck that knife right into his chest, that really must have hurt?
> MR. NURMI: Objection, relevance, argumentative.
> THE COURT: Sustained.

RT 2-25-13, pp. 88-89

> Q. If you knew -- if you knew that you were there, that he was dead, then why are you calling for information? Is it to rub it in?
> MR. NURMI: Objection. Argumentative.
> THE COURT: Sustained.
> MR. NURMI: May we approach, Your Honor?
> THE COURT: Pardon?
> MR. NURMI: Can we approach?
> THE COURT: You may. (Sidebar discussion.)
> MR. NURMI: Your Honor, I have to make another Motion for Mistrial based on misconduct. He keeps saying argumentative, irrelevant questions that aren't even

questions to Ms. Arias' statements about rubbing it in and things like that. Again, this is misconduct. This Court cannot allow this to keep going on. And we're going to move for a mistrial.

MR. MARTINEZ: If he has an objection he can simply stand up and say, argumentative or relevance. And the Court has been quite capable of restraining Mr. Martinez by sustaining the objections. And quite frankly, I think the Court knows what it's been doing and so I do not believe a Motion for Mistrial is appropriate. I do not believe that approaching here and making this objection is appropriate.

THE COURT: All right. The Motion for Mistrial is denied. However, Counsel, try to phrase your questions in a non-argumentative fashion. I know emotions are running high. But please be very cautious about argumentative questions in the future. Motion denied.

RT 2-26-13, pp. 67-69
(Sidebar discussion.)

MR. NURMI: Again, Your Honor, every time I object, he just pulls one of these stunts. He just pulls the same stunt again and it's improper comment on Counsel. You sustained the objection. What's he do, go back to the same sort of play acting he did before. Again we have more and more misconduct, Judge. We're going to ask for a mistrial yet again. And while I suspect that will be denied, at least be admonishing the prosecutor to again stop these stunts.

MR. MARTINEZ: The prosecutor is not engaging in any stunt. The prosecutor moved over to the lectern and rephrased the question and asked her whether she would be more comfortable if he stood behind the lectern. I think that's appropriate.

THE COURT: All right. The motion for mistrial is denied. I'm going to ask the parties to please not make personal jabs at the other side. You both have done it throughout the trial. I understand emotions are running

high. Let's attempt to be as professional as you possibly can. And I know you're both capable of that. So let's try to avoid argumentative questions as much as possible. Let's continue.

RT 2-26-13, p. 136

Q. And one of the things that you said that was kind of striking about that was that when he was performing oral sex on you, you said he sure knew what he was doing. Do you remember saying that on direct examination?
A. Yes.
Q. Do you remember that?
A. Yes.
Q. Well, doesn't it take one to know one?
MR. NURMI: Objection, Your Honor, argumentative, improper.
THE COURT: Sustained.

RT 2-27-13, p. 109

Q. And if he flourished on compliments, the way it sounds is that you were not sincere about the compliments?
A. Well, hum, I believe he was amazing. He was a rock to me. He was a light and inspiration at one time. I did love him dearly, I still do. And he did go out of his way for me and I wanted to express my gratitude.
Q. So with regard to this particular love, is that how you believed love should be shown like it was on the evening of June 4th of 2008?
MR. NURMI: Objection. Argumentative. Badgering.
THE COURT: Sustained.

RT 2-27-13, p. 160

> Q. Right. Exactly. And so you're familiar with that and you're saying that as you're backing up, the lights are on this rectangular object that's got numbers or letters, whatever they are, and its got bugs on it, and you're backing up and your headlights are on it and you say you don't know what it is?
> MR. NURMI: Objection. Asked and answered. She said she got out to investigate three times now.
> THE COURT: Sustained.

RT 3-13-13, p. 40

> Q. Well, again, you keep saying "I guess" like you don't know about time. You owned a watch, right? Or at some point in your life you've owned watches, right?
> MR. NURMI: Objection. Argumentative.
> THE COURT: Sustained.
> Q. BY MR. MARTINEZ: You know about time, ma'am; you know that movement takes time, don't you?
> MR. NURMI: Objection. Argumentative.
> THE COURT: Sustained.

RT 3-13-13, p. 157

> Q. Again, do you have a problem with remembering what you just said a couple days ago?
> MR. NURMI: Objection. Argumentative.
> THE COURT: Sustained.

B. Cite to the record where the county attorney screamed or yelled at the defendant during cross-examination:

RT 2-21-13, pp. 104-107

C. Cite to the record where the court sustained an "Asked and Answered" objection during the prosecutor's cross-examination of the defendant:

RT 2-27-13, p. 160
RT 3-13-13, pp. 23; 114; 164; 167 (twice)

D. Cites to the record where the prosecutor asked questions that belittled the defendant:

RT 2-25-13, p. 16
RT 2-26-13, pp. 31; 77

E. Cites to the record where the court sustained a "badgering" objection during the prosecutor's cross-examination of the defendant:

RT 2-27-13, p. 81

APPENDIX 7

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee,	)	1 CA-CR 15-0302
vs.	)	CR 2008-031021
JODI ANN ARIAS, Appellant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS's

Phoenix, Arizona
February 21, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

PREPARED FOR:

PUBLIC DEFENDER
COPY

Q. With regard to these memory issues that you claim to have, when did you start having them?

A. It depends on the type of memory issues.

Q. If it benefits you, you have a memory issue?

MR. NURMI: Objection. Argumentative, Your Honor.

MR. MARTINEZ: Or a virtue --

THE COURT: Sustained.

MR. NURMI: Again objection, Your Honor.

THE COURT: Sustained.

BY MR. MARTINEZ:

Q. Well --

A. When it hurts, sometimes.

MR. NURMI: Wait a minute.

BY MR. MARTINEZ:

Q. You say that you have memory problems but it depends on the circumstances, right.

A. That's right.

Q. And give me the factors, I don't want to know about the specific circumstances, what factors influence your having a memory problem?

A. Usually when men like you are screaming at me or grilling me or someone like Travis doing the same.

Q. So that affects your memory?

A. It does. It makes my brain scramble.

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee,	)	1 CA-CR 15-0302
vs.	)	CR 2008-031021
JODI ANN ARIAS, Appellant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
February 25, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

ATTORNEY GENERAL
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(Sidebar discussion.)

MR. NURMI: Your Honor, I have to make another Motion for Mistrial based on misconduct. He keeps saying argumentative, irrelevant questions that aren't even questions to Ms. Arias' statements about rubbing it in and things like that. Again, this is misconduct. This Court cannot allow this to keep going on. And we're going to move for a mistrial.

MR. MARTINEZ: If he has an objection he can simply stand up and say, argumentative or relevance. And the Court has been quite capable of restraining Mr. Martinez by sustaining the objections.

And quite frankly, I think the Court knows what it's been doing and so I do not believe a Motion for Mistrial is appropriate. I do not believe that approaching here and making this objection is appropriate.

THE COURT: All right. The Motion for Mistrial is denied. However, Counsel, try to phrase your questions in a non-argumentative fashion. I know emotions are running high. But please be very cautious about argumentative questions in the future. Motion denied.

(Open court.)

THE COURT: You may continue.

BY MR. MARTINEZ:

Q. After Bishop Layton, who did you call?

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee,	)	1 CA-CR 15-0302
vs.	)	CR 2008-031021
JODI ANN ARIAS, Appellant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
February 26, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

PREPARED FOR:

PUBLIC DEFENDER
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Q. And didn't you just say it was a good word, right?

A. Yeah. There's many descriptors to use.

Q. But you're just said it was a good word, right?

A. Yes, I think.

Q. You think means you don't remember what you just said?

A. I don't know.

Q. What do you mean you don't know? You just said offended was a good word. And when I used it, then you took issue with it. Is it a good word or is it not a good word?

A. It depends on how you used it.

Q. Well, I'm saying you're the one that -- I asked you the question, you were offended and you said offended is a good word, right? That's what you said, right?

A. I think so, yes.

Q. Well, you think so means you don't know, right?

A. I don't know.

Q. This just happened. How is it that you are not remembering what you're saying?

A. Because you're making my brain scramble.

Q. I'm again making your brain scramble. So in this particular case, the problem is not you, it's the question being posed by the prosecutor, right?

A. No.
Q. Yes or no?
A. Not the questions.
Q. Yes or no?
A. I was saying no when you interrupted me.
Q. So in this case you're looking to point the finger at somebody else again, right?
A. No, it's my fault.
Q. Well, you're saying it's the prosecutor that's asking you the questions and that's creating a problem for you, right?
A. That's not what I said.
Q. Well, you said it's the way you're posing the questions, you just said that, right?
A. I don't know.
Q. You don't know what you just said, ma'am?
MR. NURMI: Objection. Argumentative, Your Honor.
THE COURT: Overruled.
A. I don't know.
BY MR. MARTINEZ:
Q. Didn't it just happen?
A. Yes.
Q. So how is it that if it just happened, you can't even remember what you just said?

A. I think I'm more focused on your posture and your tone and your anger. So it's hard to process the question.

Q. So the answer is it's again the prosecutor's fault because you perceive him to be angry?

A. It's not your fault.

Q. Well, is somebody asking you whose faults it is?

A. You did.

Q. Well, you seem to be pointing it at the prosecutor, right? So you believe the reason you can't be effective on the witnesses stand is because somebody is asking you questions in a way you don't like?

A. I think that was a compound question.

Q. Ma'am, isn't it true that you are having problems up on the witness stand, according to you, because the way the prosecutor is asking the questions, right?

A. Yes.

Q. And so according to you, the truth with regard to this issue depends on the style that's being used, right, that's what the truth is?

MR. NURMI: Objection. Argumentative. Mischaracterizes her testimony.

THE COURT: Sustained. Rephrase.

BY MR. MARTINEZ:

Q. You're saying you're having trouble telling us -- you're telling us the truth on the witness stand, right?

A. Absolutely.

Q. You're telling us you that you're having trouble telling us the truth because of the way the questions are being posed, right?

MR. NURMI: Objection. Mischaracterizes her testimony.

THE COURT: Overruled. You may answer.

A. I have no problem telling the truth.

BY MR. MARTINEZ:

Q. I'm not asking you if you have a problem telling the truth. But what you seem to be telling us now is that you have problems telling us the truth now because of the way the questions are being phrased, right?

A. That's not right.

Q. So it's something else then that the prosecutor is doing that's bothering you, right?

A. I don't know how to answer that.

Q. Well, it is something else that the prosecutor is doing that's stopping you from telling us the truth, right?

A. I don't know how to answer that.

Q. Why don't you know how to answer that? You're

the one that brought it up. You're the one that pointed the finger at the prosecutor, right?

MR. NURMI: Objection. Argumentative, badgering.

THE COURT: Sustained.

BY MR. MARTINEZ:

Q. Ma'am, you're the one that complained about the way the questions were being posed by the prosecutor just now, didn't you?

A. Yes.

Q. And you indicated that the prosecutor's posture was aggressive, right?

A. I didn't say aggressive.

Q. You indicated posture though, right?

A. Yes.

Q. And there was something with the prosecutor's posture that you had problems with, right?

A. I don't know.

Q. Well, no, you're the one that used the word posture, ma'am. You're the one that said you have problems with the posture. So is it the posture --

A. It's not the problem with your posture, it's that it creates a problem with me processing what you're saying because I'm focused more on your posture than the content of your questions.

APPENDIX 8

APPENDIX 8

Dr. Drew video, "Juan Martinez, Rock Star."

http://www.hlntv.com/video/2013/03/26/juan-martinez-rock-star/

APPENDIX 9

APPENDIX 9

RT 1-8-13, pp. 4-22

RT 1-15-13, pp. 41-58

RT 3-28-13, pp. 104-142

RT 5-9-13, pp. 7-43

RT 5-16-13, pp. 23-51

APPENDIX 10

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee, vs. JODI ANN ARIAS, Appellant.	1 CA-CR 15-0303 CR 2008-031021

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CLOSING ARGUMENTS

Phoenix, Arizona
May 2, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

PREPARED FOR:

PUBLIC DEFENDER
COPY

the prosecutor, you know, I took it back and I received cash. Yet you heard from Amanda Webb, the individual or the woman who works for Walmart checked each and every single register, even those that were not geared to geared to give refunds, checked each and every single register. And each one of those registers indicated, no, there had been no such refund.

And then of course you have the confirmatory action in Salt Lake City after first indicating that, no, I have never been to Salt Lake City. I have never put gas in Salt Lake City. You saw the receipts that she had. And not only had she put gas in to her car in Salt Lake City, she had two other transactions, one from 5.09 gallons of gas and then one for slightly under 10 gallons of gas. She looked at each and every one of you, this person, and attempted to manipulate you.

Well, this individual that attempted to manipulate you believes, based on what we've heard, that even though she may have engaged in actions, she may have done certain things, none of it, absolutely none of it is her fault. Why could it possibly be her fault? If you look back in her history which is the important part of it involving her relationship with men, what do you see? Well, even when she was young, she had this personality of manipulating the facts.

help it if she's working as a waitress and people come by when she's working as a waitress and try to tell her things about her boyfriend, Matthew McCartney. She can't help that. That's what she wants you to believe.

And again isn't that reminiscent of what happened involving Mr. Alexander? It seems that this is cyclical. And it seems that the story repeats itself and repeats itself because she's lying. And it repeats itself because she's trying to manipulate you through all the days that she spent talking to you from the witness stand after she had taken an oath.

Well, she gets to the point where she moves to Palm Desert in California to be with an individual by the name of Daryl Brewer. And of course, when she's there with Daryl Brewer, it's not her fault again that that relationship is souring, no, not at all. It's not her fault because, well, Mr. Brewer didn't want to marry her. What's a girl to do? It's not her fault. She's got to look for another guy. And it appears that he doesn't want to have any kids and she does. And so again it's not her fault. How can it possibly be her fault that somebody has free will? Absolutely not her fault. That's what she tried to tell you.

But resourceful as ever, resourceful as she's always been, this person who is manipulative, she starts

And she talked about him having sexual rendezvous with these other people. But that's quick, if you will, on the slime and very slow on the facts, very low on the facts. You don't have any individual that they could even point to a name.

MR. NURMI: Objection, Your Honor, burden shifting.

THE COURT: Overruled.

MR. MARTINEZ: There was no name even pointed out that even had any sexual contact with them at that time. But she felt it. So according to her that justified it, this person with this borderline personality disorder. And so as a result of that, she says, that's it, we're going to break up and we're done with it, except that I'm so hurt, I'm so absolutely hurt, she said. You could almost feel it oozing through those fake tears that were supposed to be coming from her from the witness stand. You could almost feel this.

And what you could feel, of course was, yeah, yeah, I'm really hurt except, let's go on vacation. Let's go ahead and go on vacation anyway, even though I know all about this, I'm so hurt that I would really go on vacation with you and enjoy it. And let's continue going on vacation, yeah. That's her way of manipulating him. That's a way of not letting go of something that she

something and she apologizes and everything is supposed to be okay. By this time, he's has enough. And he says, I don't want your apology. I want you to understand what I think of you. That's what he's telling her. He's telling her he wants her to understand what he thinks of her. He says I want you to understand how evil I think you are. At that point when he's writing that, he is extremely afraid her because of her stalking behavior. And he does think she's evil.

And how prophetic. Look at it, the next words, how absolutely prophetic. No one can dispute that that is the truest, those are the truest words that are spoken in this case. And they're spoken by Mr. Alexander even though he's not here through his writings. You, Jodi Arias, are the worst thing that ever happened to me. Any doubt that's the truth? Do you need to look at the pictures of the gashed throat? Do we need to look at the sort of frog like state that she left him in all crumbled up in that shower or do we need to look at his face where she put that bullet in his right temple to know that what he says there is true. You're the worst thing that ever happened to me. He is telling her enough is enough. And, yes, he's angry. Absolutely angry. After everything that she's done to him.

And you have seen the manipulation when she

is trying to manipulate you with what she has told you. And the prime example is these gas cans. No one can argue that she lied to you. Well, he's had enough. And, yes, he says you're the worst thing that ever happened to me. And then he says, this Exhibit 450, you're a sociopath. No, he did not have a psychology degree. But that certainly expresses a feeling about what she says, what she does and how she deals with it, how she always is manipulating him. Teases this anger out of him and tries to mix in the sex.

And he says, you only cry for yourself. Well, you saw her crying on the witness stand. Anybody debate it? The reason she was crying is because she cries for herself. After all she never intended to be caught. She said that to herself after she lied to the police, oh, no, I was saying it because I did not want to be caught. And so you only cry for yourself. And then he says, you have never cared about me. Supposedly that could be for and you have betrayed me worse than any example I could conger.

She has betrayed him. Whatever reason he believes that she has done something that is absolutely horrific. And he's telling her, I've had it. I'm done with you. And again, this is May 26th. He's done with her. You're sick and you have scammed me. Again, she

print, but the fingerprint, isn't it true that the fingerprint in blood was there? And she said, well of course it's there. I'd been there all this time. And so it shows you the adaptability and how nimble this individual is such that when she gets in any situation whether it's being involving Mr. Alexander or here in court, this individual is quick thinking and is good on her feet. So that when she's talking to you on cross-examination and you get those answers, those answers are designed to manipulate. So if that's why those statements to the police are important. Because they show how she can attempt to manipulate things and is able to say whatever fits the story at the time.

So initially when the police came to her, when Detective Flores came to her and asked her, well, this is what we have. Let's talk about it. She had denied everything. And she kept saying, let me see the photographs. I want to see the photographs. The reason she wanted to see the photographs is because she wanted to conform her story to what the police knew or what she thought the police knew. And in fact, in other conversations during the telephone conversation they discussed it. And that just shows you this type of individual that can adapt, if you will, as she's going along with the interview with the police officer. And in

asking to see the photographs it's interesting that she asks that. And the only reason that I mention it is because previously when the State's, when I was showing the photographs of the killing of Mr. Alexander, we had the defendant crying. Well, why did you want to see the photographs when the police officer was there? You knew what had happened. And yet she still was asking to see it. Again, it's just another form of manipulation to have you feel some sympathy for her as she sits there with a red nose, face down, apparently crying. But yet she asks the police officer, you know, can I take a look at these photographs. The police officer, of course, did not show her the photographs.

So the first story on July 15th is, I wasn't even there, wasn't even there. Then has overnight to think about it and on July 16th changes it, changes it to something else because it will make much more sense. Because now she knows about -- a little bit about what they have there. She wants to now be able to say that she was there. But what does she do? See says not just that she was there but she makes herself the hero, just switching it up. Not only does she say that she was there but she makes herself hero in the sense she pushes the woman down. And has the gun pointed to her head. And, you know, by luck is not killed.

it's worth referencing it because it directly relates to the two primarily allegations in this case that of physical abuse and the fact that Mr. Alexander was interested in little boys and girls, according to her.

It tells you in deciding the facts of this case, you should consider what testimony to accept and what to reject. What it's telling you there is that you ultimately decide whether or not this person here who is the epitome of a liar, whether this individual, whether you can accept or reject what she tells you. Are you going to pick and choose some things of what she said and then accept some other things? How is it that you can know with any certainty whatsoever whether or not she's telling the truth about anything? It says you may accept everything a witness says or part of it or none of it.

The State submits to you that you are, based on what you've seen, based on what you've heard, and based on the testimony of others, you should accept none of it. It doesn't mean that the 18 days that she was on the witness stand are wasted, no. What that means is that you're finally able to see this individual in the light of day, able to see how she reacts, you're able to see that when push comes to shove, she will look each and every one of you in the eye and lie. Doesn't matter where.

And this instruction then goes on and says, in

evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in every day life. Important matter, what kind the matters would those be? Medical care, would you -- anybody, not you, but anybody go to a doctor who has lied to them consistently about major aspects of their life? No. People would not go to a doctor who lies to them. And the factors that you're to consider are the witness's ability to see or hear or know the things the witness testified to. If we're talking about the defendant, she was there. She knows.

The quality of the witness's memory. The quality of her memory is incredible, absolutely incredible down to follicles of hair, unless it hurts her. Then the fog rolls in. Then there's an excuse, then there's a reason why she doesn't remember. She has an incredible memory, all right, when it comes to lying. And the witnesses manner while testifying. How it was that she testified, how it was that the defendant testified.

Well, you saw her at times attempt to cry. You saw her at times get angry. You saw her at other times just solemnly stand there. And you saw her at times when the questions were getting difficult snap out, and try to somehow make the person that was asking the questions the villan, saying, well you're scrambling my brain. It's not

my fault. Again, it's not my fault. It's the fact that you're asking me these questions just like Travis. That's exactly what's going on here. So that's not my fault that I keep lying here on the witness stand, it's yours, because of the way you're asking me the questions. The fact that you're raising your voice, that's whose fault it is and that's why I can snap at you from the witness stand. I can smirk at you from the witness stand and look knowingly towards the jury because it's not her fault. It's the person whose asking the questions.

Whether or not the witness had a motive, bias or prejudice. If there's any witness in this case who had a motive to lie, it's this defendant. She's the person that's charged. All of the other witnesses that came here, some of them had a motive. For example, Alyce Laviolette. She had a motive to lie. I mean, maybe perhaps it was her reputation that she was interested in or things like that.

All the other individuals, for example, Ryan Burns, why would he want to lie about anything? He lives in Utah. He just met her at one time. There's no reason to believe that he's going to be making these things up. Amanda Webb, why would she want to come in here after all the work that she's done to make things up? The only person with a motive is the defendant. So when evaluating

APPENDIX 11

APPENDIX 11

Examples of improper closing argument.

RT 5-2-13, p. 164 [Martinez made his opinions and himself part of the case when he argued that Arias had tried to make him a villain during the trial].

RT 5-2-13, p. 165 [Martinez made his opinions and himself part of the case when he argued that Arias tried to blame him for her own lying and "smirking" on the witness stand].

RT 5-2-13, pp. 69; 81; 86; 127; 156; 164 [Martinez injected his personal opinion of Arias's credibility when he told the jury that when Arias had cried on the witness stand, it was fake].

RT 5-15-13 #2, p. 65 [Martinez argued about what the victim was thinking about as he was murdered, defense objected, the court sustained, and Martinez then stated, "Who is he thinking about?"].

RT 5-16-13 #2, p. 74 [Martinez misstated the law when he argued the jury should not act as investigator or advocate to try to find mitigating factors].

RT 5-16-13 #2, p. 78 [Martinez misstated the law when he argued there was no connection between Arias's suffering abuse and neglect as a child, her trying to improve herself, being an artist, and the crime].

RT 5-16-13 #2, p. 79 [Martinez misstated the law when he argued that Arias's suffering abuse and neglect as a child, her trying to improve herself, and her being an artist could not be considered mitigating circumstances].

RT 2-24-15 #2, pp. 40-41 [Arguing facts not in evidence in closing argument, when he stated that Abdelhadi testified that Arias never sent the letter, not that Abdelhadi had never received the email, but that Arias never sent it].

RT 2-24-15 #2, p. 74 [Arguing that specific category of evidence was not mitigating circumstance rather than that the mitigating factor had not been proven in this case and arguing nexus].

RT 2-24-15 #2, p. 88 [Objection that Martinez was arguing heinousness by asking the jury to consider the smiling photo of Arias and asking them to think about whether she smiled while she killed the victim].

APPENDIX 12

APPENDIX 12

Examples of "hired gun" accusations.

RT 5-15-13, p. 84

RT 1-22-15 #1, p. 27

RT 1-22-15 #1, p. 28

RT 2-3-15 #1, p. 32

RT 2-9-15 #1, p. 34 [Martinez contrasted that Dr. DeMarte had never been called a hired gun].

APPENDIX 13

APPENDIX 13

Examples of misleading cross-examination.

RT 1-9-13, pp. 108-109; 115-116 [When questioning Burns about an exhibit that included only his text messages from a conversation he had had with Arias, which the defense admitted to show Burns's interest in a sexual relationship with Arias, Martinez posed a misleading question whether one of Arias's texts could have said that she and Burns would have sex, despite Martinez having read all of Arias's text messages and therefore being aware no such text was ever sent].

RT 2-4-13, pp. 55-56 [A misleading series of questions where Martinez impeached the witness for giving inconsistent answers, when Martinez had changed the question being asked]:

> MR. MARTINEZ: With regard to that computer, did you check to see whether or not there were any images at all of ***women's breasts*** in the victim's computer?
> MR. DWORKIN: Not specifically. No, I did not.
> * * *
> MR. MARTINEZ: And you can't tell us that there are any images, whatsoever, ***of any nude women, whether it's breasts or otherwise***, right?
> MR. DWORKIN: Not without reviewing my notes. I would have to review my notes. If you'd like I could.
> MR. MARTINEZ: You're now telling me that this may be in your notes, and before you told me that you didn't review the data; which one is it?
> MR. DWORKIN: When I'm asked to provide --
> MR. MARTINEZ: Sir, my question is which one is it? Not a long answer, if you don't mind.

RT 2-21-13, pp. 126-127 [A misleading series of questions where Martinez impeached Arias with whether she "heard" facts from another witness's testimony during a pretrial hearing in which the jury was not present, implying that testimony was inconsistent with Arias's testimony, though what the witness testified to was direct opposition to Martinez's claim]:

MR. MARTINEZ: Isn't the true (*sic*) that you told [LaViolette] that the masturbatory -- the masturbatory conduct involving [T.A.] took place while he was on the computer?
MS. ARIAS: No. I never said that.
MR. MARTINEZ: Isn't it true that you heard a statement from her indicating that you told her that the masturbatory conduct took place while he was on the computer?

Cf. RT 2-7-13, p. 52:

MR. MARTINEZ: All right. And with regard to the scene itself, my understanding, based on my previous conversation with you, was that it was on a computer, right?
MS. LAVIOLETTE: I was mistaken and I got -- I had reviewed Dr. Samuels' report right before I spoke to you, and he had said child pornography. When I talked to Ms. Arias, she told me it was pictures.
MR. MARTINEZ: Okay. So --
MS. LAVIOLETTE: So I misspoke.
MR. MARTINEZ: So we're talking about photographs then, right?
MS. LAVIOLETTE: Yes.
MR. MARTINEZ: And these photographs were seen on the computer then?
MS. LAVIOLETTE: No, they were on a bed. They were spread out on a bed. No computer.

RT 3-13-13, pp. 17-18 [Martinez presented Arias two options: 1) T.A. "came after her;" or 2) T.A. did not come after her, which by definition meant that no attack happened at all, versus Arias's testimony that T.A. was next to her, picked her up and slammed her down].

RT 3-19-13, pp. 25-28 [Martinez asked Samuels to agree that Arias told him T.A. wanted her to take his photographs in the shower, the defense objected that the question was deliberately misleading and improper as Martinez was aware that Samuels's notes showed that Arias told him she and T.A. discussed the photographs, not that T.A. requested them, to which Martinez argued he could try the case the way he wanted and the remedy was redirect].

RT 3-25-13, pp. 192-193 [Martinez questioning whether Samuels meant the Durango jail or the Estrella jail on Durango Street].

RT 4-4-13 #2, p. 118 [A misleading series of questions where Martinez impeached the witness for not answering his query, when Martinez had changed the question being asked]:

> MR. MARTINEZ: So as a result of those -- reading of those journals, you then said to us, for example, well, there is nothing in those journals ***that is said by the defendant negative about the person that she killed***, right?
> MS. LAVIOLETTE: No, that's not true.
> * * *
> MR. MARTINEZ: Tell me what negative things ***the defendant wrote about herself***.
> MS. LAVIOLETTE: I thought you asked me if she said anything negative about [T.A.].
> MR. MARTINEZ: Did you have a problem understanding the question? Tell me what negative things the defendant wrote about herself in those journals. That was my question.

RT 4-4-13 #2, p. 125 [A misleading series of questions where Martinez stated the witness was not answering his question, when Martinez had changed the question being asked]:

> MR. MARTINEZ: Isn't it true that you also gave that presentation in Los Angeles again in 2010?

MS. LAVIOLETTE: An altered version.
MR. MARTINEZ: But you did give this presentation involving Snow White and whether or not she was a battered woman in Los Angeles, right?
MS. LAVIOLETTE: Yes.
MR. MARTINEZ: And one of the items that you used with regard to that, in trying to determine whether or not an individual is a battered person, you look at 558. That's a guideline that you use, right?
MS. LAVIOLETTE: I did not use that at all in any of those speaking engagements, Mr. Martinez.
MR. MARTINEZ: Well, I'm not asking if you used it in speaking engagements....

RT 4-4-13 #2, pp. 100-101 [Martinez misleadingly presented only two possible options to LaViolette: either she had a Ph.D. or she had not "continued in her studies" versus LaViolette testifying that she had studied after her bachelor degree but had not obtained a Ph.D.].

RT 4-8-13, pp. 67-68 [When questioning LaViolette, Martinez misleadingly attempted to apply to written communication her prior statement that 90% of communication is nonverbal, when that prior statement was about verbal communication]. *Cf.* RT 3-28-13, pp. 73; 78 [LaViolette testified about Arias's writings where Arias described getting nonverbal cues from T.A. that he did not want her to date other people even though he was telling her he was okay with the idea and LaViolette noted that 90% of communication is through such nonverbal means].

RT 5-1-13 #1, pp. 203-206 [Misleadingly conflating when the witness was contacted to tell him when he would testify and when he was contacted to conduct review of documents for the case].

RT 5-1-13 #2, pp. 147-149 [Martinez asked another defense expert questions that misleadingly conflated DeMarte's use of a psychological test six months after an updated version was released with Samuels's use of a DSM that was 10 years old].

- *Cf.* RT 3-14-13, p. 113 [Samuels testified about the PTSD criteria as noted in the ***DSM-4***];
- *Cf.* RT 3-19-13, p. 112 [Samuels explained that the next DSM after the DSM-4 ***had not been released*** at the time of the trial];
- *Cf.* RT 3-19-13, p. 139 [Samuels testified that the DSM-4 TR had been released, but it was the same book with somewhat revised language to make it easier for lay people to understand];
- *Cf.* RT 5-1-13 #2, p. 125 [Geffner testified the DSM-4 TR did not change the PTSD criteria];
- *Cf.* RT 5-1-13 #2, p. 125 [Geffner did not believe there would be a problem if Samuels used the DSM-4 instead of the DSM-4 TR];
- *Cf.* RT 5-1-13 #2, p. 111 [Geffner testified a doctor using an older DSM was not comparable to using an outdated test];
- *Cf.* RT 5-1-13 #1, p. 99 [Geffner testified it was not appropriate to use an outdated test].

APPENDIX 14

APPENDIX 14

Examples of argumentative cross-examination.

RT 2-21-13, p. 92 [Martinez asked Arias, "Just because you're in this court doesn't mean you have to tell the truth, that's what you're telling us, right?"].

RT 2-26-13, pp. 30-31 [Martinez asked Arias, "In other words, you didn't even have the courtesy to tell them that you weren't going to come in until after this computer issue was --"].

RT 2-27-13, p. 127 [When impeaching Arias, Martinez asked, "So whenever it doesn't suit you, it's a lie, right?"].

RT 3-13-13, p. 36

> MR. MARTINEZ: So, as [T.A.] is coming towards you, he now has a knife in his hand; that's what you're telling us?
> MS. ARIAS: No. I didn't say that either.
> MR. MARTINEZ: Okay. So, as [T.A.] is getting blasted and going down, he's got the knife in his hand, right?

RT 3-13-13, p. 40

RT 3-13-13, p. 43 ["Now, ma'am, the other thing that -- there is another reason why your scenario is impossible, the one that you've talked to us about, isn't there?"].

RT 3-13-13, p. 94 [When impeaching Arias on her lack of memory about a murder weapon, "Well, you're the one that brought this up about not gripping it. You seem to think that's important. Why do you think that's important?"].

RT 3-19-13, p. 94 ["I thought we were talking about being assertive. Do you have a problem with remembering?"].

RT 3-19-13, p. 127 [Asking if Samuels's $250 an hour fee was not enough for him to pay attention].

RT 3-25-13, p. 30

> MR. MARTINEZ: Why is it that then this sheet after it's completed and disclosed and presented to us, Exhibit Number 541, and I'm just looking at the top, that's all I care about is the date, how come somehow a date magically appears on it?
> DR. SAMUELS: Honestly I don't know.
> MR. MARTINEZ: Okay.
> DR. SAMUELS: I don't know.
> MR. MARTINEZ: It's not your mistake, it's (*sic*) else's mistake, right?
> DR. SAMUELS: It couldn't by (*sic*) my mistake because that comes off the Internet. That's a printout. And I can't account for the fact that one had a date and one didn't have a date.

RT 3-25-13, pp. 60-61 [Martinez asked Samuels, "And you can bang on it all you want and it's still your judgment, isn't it?"].

RT 3-25-13, p. 120

> MR. MARTINEZ: Did you know that it was a flight she took?
> DR. SAMUELS: I didn't know it was a flight. She got there somehow.
> MR. MARTINEZ: ***Did you want to see the receipt***?

RT 3-25-13, p. 148 ["Could it be, sir, that in this particular case with regard to everything that we have seen, for example, your finding of PTSD, some of your findings of the elements and your scoring of the PDS and your Milan test, could it be, sir, that you looked at those results and because of the fact that it appears they're not objective any more, that perhaps that could have colored the way you viewed your conversations and your results under the PTSD."].

RT 4-4-13 #2, p. 118 ["Did you have a problem understanding the question?"].

RT 4-4-13 #2, p. 121 ["Oh, so in order for you to tell us what she wrote in the journal, you have to have it in front of your face so that you can read it, right?"].

RT 4-8-13, p. 59

> MR. MARTINEZ: Ma'am, I'm not implying. I'm indicating that you're misrepresenting what you indicated here in Exhibit Number 596?
> MS. LAVIOLETTE: I was told --
> MR. MARTINEZ: Ma'am, let me finish my question, please?
> MS. LAVIOLETTE: Sure.
> MR. MARTINEZ: I'm not implying anything. I'm indicating that you misrepresented the fact that you were the keynote speaker with regard to this, Was Snow White a Battered Woman because 597 indicates otherwise, doesn't it? And 597 is this one. Yes or no?

RT 4-8-13, p. 74 ["Ultimately what you're saying is that you are a human lie detector, right?"].

RT 4-8-13, p. 167 ["And one of the questions here is why is it that you felt so strongly about her that you felt the need to coddle her by giving her books and apologizing?"].

RT 4-8-13, p. 172

RT 5-1-13 #1, p. 220 [Asking, "Aren't you an expert in this thing?"].

RT 5-1-13 #1, p. 221 ["I'm asking you a question, sir."].

RT 5-1-13 #2, pp. 48-49

> MR. MARTINEZ: How many autopsies have you conducted, sir? If you could just give me -- ***I know it may be a lot.*** So just give me a ballpark?
> MS. WILLMOTT: Objection, argumentative.

THE COURT: Overruled.
DR. GEFFNER: I have not. That is not my area of expertise.
MR. MARTINEZ: So the answer is how many?
DR. GEFFNER: Zero.

RT 5-1-13 #2, p. 53

RT 5-1-13 #2, p. 136 [Asking defense expert if, in determining what is an exaggeration and what is a lie, if he went to the Alyce LaViolette school].

RT 1-22-15 #2, p. 73 [After defense expert testified that it would only minimally affect her opinion as to Arias's diagnosis if it turned out that T.A. had not been masturbating to images of children, Martinez then asked if the expert was saying that the only purpose was to smear the victim].

APPENDIX 15

APPENDIX 15

Examples of questions akin to, "I am not asking you [that], am I?"

RT 1-28-13, p. 15

MR. MARTINEZ: Isn't your reputation, sir, that you want to make yourself the center of attention?
MR. SEARCY: Where did you get that from?
MR. MARTINEZ: I'm asking you a question, sir. ***You don't get to ask me questions***.

RT 2-21-13, p. 5

MR. MARTINEZ: You said that, right?
MS. ARIAS: Yes. I called her dumb and stupid.
MR. MARTINEZ: Did I ask you whether or not you called her stupid, ma'am?
MS. ARIAS: No.

RT 2-21-13, pp. 8-9

MR. MARTINEZ: And you indicated that you loved your mother, right?
MS. ARIAS: I do; I love my mother, yes.
MR. MARTINEZ: Did you or did you not indicate that you loved your mother? I'm not asking you if you loved your mother. I'm asking you if you indicated it?

RT 2-21-13, p. 15

MR. MARTINEZ: What's the name of the female?
MS. ARIAS: He didn't tell me her name.
MR. MARTINEZ: Did I ask you if he told you the name?
MS. ARIAS: No.

RT 2-21-13, pp. 17-18

> MR. MARTINEZ: But you saw -- so what happened then is you actually were watching what they were doing then, right?
> MS. ARIAS: Briefly, yes.
> MR. MARTINEZ: Did I ask you for how long, ma'am?
> MS. ARIAS: No.
> MR. MARTINEZ: I asked you if you stood there and watched them, right?

RT 3-7-13, p. 114

RT 3-7-13, p. 120

RT 3-13-13, p. 156

RT 3-21-13, p. 177 ["And that wasn't my question now, was it?"].

RT 3-25-13, p. 20, lines 15-17

RT 3-25-13, p. 21

RT 3-25-13, p. 25

RT 3-25-13, p. 75

RT 3-25-13, p. 92

RT 3-25-13, p. 172

RT 3-25-13, p. 193

RT 4-4-13 #2, p. 112

RT 4-4-13 #2, p. 119

RT 4-4-13 #2, p. 124

RT 4-4-13 #2, p. 129

> MR. MARTINEZ: According to you, the wicked stepmother, in [Arias's] circumstance, is her mother, right?
> MS. LAVIOLETTE: I didn't say that.
> MR. MARTINEZ: ***No. I'm the one that's asking the question***. Isn't that true?

RT 4-8-13, p. 46

RT 4-8-13, p. 165

RT 4-8-13, pp. 166-167

RT 4-9-13, p. 48

RT 4-12-13, p. 144

APPENDIX 16

APPENDIX 16

Example where Martinez badgered Arias.

RT 3-13-13, pp. 142-143 [See attached]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Appellee, vs. JODI ANN ARIAS, Appellant.	1 CA-CR 15-0302 CR2008-031021-001

Phoenix, Arizona
March 13, 2013

BEFORE: THE HONORABLE SHERRY STEPHENS, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Jury Trial)

SEALED

JANELL ROSE, RPR, CSR
Certified Court Reporter #50455
Prepared for Appeal

A. Yes.

Q. And that as a result of that, the police didn't come out there, right?

A. That's correct.

Q. And so you said, well, because of that, that's the reason I didn't call the police when Mr. Alexander, that you claim, abused you, right?

A. No. That's not what I said.

Q. Well, you did say that in response to the question by the jurors.

You were asked why didn't you call 9-1-1, right?

A. Yes.

Q. And you said, well, I had the situation with Mr. Juarez; do you remember saying that?

A. Yes.

Q. And so you're saying that just because of this situation that happened many years ago, that's the reason why you didn't call 9-1-1 when Mr. Alexander abused you, right?

A. No. That might have been a small reason, but I gave a bigger reason for not calling 9-1-1.

Q. But that was part of the reason that you told us about, right? You did connect the two together, didn't you?

A. The question connected the two, so I answered it accordingly.

Q. I'm not asking the question. You responded to the question, and you connected the two together?

MR. NURMI: Objection. Asked and answered. Mischaracterizes her testimony.

THE COURT: Overruled.

THE WITNESS: No. The question connected the two, and I responded to the question.

Q. BY MR. MARTINEZ: So, in this case, you're saying that your response was the fault of the question, not your response?

MR. NURMI: Objection. Argumentative.

THE COURT: Sustained.

Q. BY MR. MARTINEZ: Well, did you or did you not connect the two in response to whatever the question was?

MR. NURMI: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: If the question had mentioned both calls, or the time I called on Bobby but I didn't with Travis, then that's the reason I answered that way.

Q. BY MR. MARTINEZ: Ma'am, I'm not asking you that. I'm asking you whether or not you did tell us the story about Bobby Juarez in the 9-1-1 call?

MR. NURMI: Objection. Asked and answered.

APPENDIX 17

APPENDIX 17

Example where Martinez badgered LaViolette.

RT 4-4-13 #2, pp. 111-114 [See attached]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	No. 1 CA CR-15-0302
	)	
vs.	)	No. CR 2008-031021
	)	
JODI ANN ARIAS,	)	**SEALED**
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE SHERRY K. STEPHENS, JUDGE

(Trial - Afternoon Session)

SEALED

Phoenix, Arizona
April 4, 2013

REPORTED BY:

BARBARA H. STOCKFORD, CRR/RMR/CCP
Certified Court Reporter
Certificate No. 50463

PREPARED FOR:

(COPY)

somebody is an abused individual, right?

A. That's not correct.

Q. Well, what we actually have, ma'am, is -- let's take Exhibit 558. Isn't this what you used to tell us --

A. That was an example.

Q. Ma'am, I'm not --

A. Oh, I'm sorry. I apologize.

Q. Isn't it true -- Exhibit 558, isn't that what you ended your testimony with, talking about this particular continuum of aggression and abuse to tell us that the defendant, in your opinion, was the victim of abuse, right?

A. That was not the only thing that I used, Mr. Martinez.

Q. Yes or no? Did you use this to tell us that the defendant was in an abusive relationship, yes or no?

MS. WILLMOTT: Objection, Judge. She tried to answer the question. He interrupted her.

THE COURT: Overruled.

You may answer.

BY MR. MARTINEZ:

Q. Yes or no?

A. It's not a yes or no. Do you want the truth, Mr. Martinez, or do you want yes or no?

Q. Ma'am, I'm asking you questions. You seem to be having trouble answering my questions.

A. I have trouble with --

Q. If you have a problem understanding the question, ask me that. If you want to -- do you want to spar with me? Will that affect the way you view the testimony?

MS. WILLMOTT: Objection, Judge. Argumentative.

THE COURT: Sustained.

MR. NURMI: Can we approach, Your Honor?

THE COURT: Yes.

(Sidebar conference heard, reported as follows:)

MR. NURMI: Judge, I'm going to again renew my motion for mistrial based on the cumulative conduct of this prosecutor, as he likes to refer to himself. He has now yelled at this witness, badgered this witness, offered to spar with this witness. This conduct is, apart from being completely unprofessional, is damaging to Ms. Arias' right to a fair trial, and I'd ask that a mistrial be declared for prosecutorial misconduct at this time.

MR. MARTINEZ: There has been no yelling going on with regard to this particular witness. This witness does not want to answer any questions, and the

record is clear as to what her issues are. She apparently has an agenda and I have a right to address that agenda. I was asking her a question, and then she appears to have been coached into bringing up issues that are not relevant to this particular inquiry.

MS. WILLMOTT: Judge, there has been no coaching.

MR. MARTINEZ: There was only one person.

THE COURT: All right. One at a time, so...

Mr. Nurmi, if you have anything else you want to put on the record?

MR. NURMI: This idea that there was no yelling is absolutely preposterous. He was yelling at the witness repeatedly. I know the record cannot -- the court reporter's record cannot reflect it, but it was obviously happening. He was screaming at her. That tends to be his style, to scream at witnesses who don't tell him what he wants to hear. While Ms. LaViolette is familiar with abusive patterns of conduct, certainly yelling at the witness in a courtroom is -- is inappropriate.

THE COURT: Well, I will agree with you that Mr. Martinez has a style very different from Ms. Willmott. However, he is entitled to cross-examine the witness.

I think that you went a little over- -- you were a little overzealous a few moments ago before the objection was made. I am going to ask that you scale it back a bit.

Motion for mistrial is denied.

You may continue.

(End of sidebar conference.)

BY MR. MARTINEZ:

Q. With regard to this particular case, ma'am, you did refer to this Exhibit 558, yes or no?

A. I referred to it.

Q. Yes or no?

A. Yes, I referred to it.

Q. And when you referred to it, Ms. Willmott was asking you questions about it, yes or no?

A. Yes.

Q. And she was asking you questions about that and it involved the defendant, didn't they?

A. Yes.

Q. And it involved the defendant and your opinion as to whether or not she was somebody who was abused, correct?

A. Not exactly.

Q. Well, is it somebody that was not abused then?

APPENDIX 18

APPENDIX 18

Examples of badgering cross-examination.

RT 1-28-13, pp. 12-13

> MR. MARTINEZ: And then he called you and you missed his call though, right, the first time, right?
> MR. SEARCY: Perhaps. I could check and see.
> MR. MARTINEZ: Don't need you to check. I want you to tell me what you remember right now. We can get your phone. And then after that, sir, didn't you call him back?
> MR. SEARCY: Yes.
> MR. MARTINEZ: And you missed him, didn't you?
> MR. SEARCY: Let's see, yes.
> MR. MARTINEZ: Well, don't say it just to say it. That's what happened, right?
> MR. SEARCY: If you say so. I can look at my phone and see for sure.

RT 1-28-13, pp. 15-19 [See attached]

RT 2-26-13, pp. 59-62 [See attached]

RT 2-26-13, pp. 65-71 [See attached]

RT 2-26-13, pp. 82-84 [See attached]

RT 2-26-13, pp. 154-158 [See attached]

RT 3-13-13, pp. 32-38 [See attached]

RT 4-4-13 #2, pp. 141-145 [See attached]

RT 4-8-13, pp. 124-128

RT 4-10-13, p. 18

RT 5-1-13 #2, pp. 158-160

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee, vs. JODI ANN ARIAS, Appellant.	)	1 CA-CR 15-0302 CR 2008-031021

(CORRECTED)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
January 28, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

PREPARED FOR:

PUBLIC DEFENDER
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A. Yes, I know Abe.

Q. He also works for Legal Shield, doesn't he?

A. Yes, he does.

Q. Didn't you tell him you were upset that you had called the prosecutor's office and they hadn't returned your call?

A. I wouldn't say I was upset. I was surprised.

Q. And also when you were talking to Chris Hughes about returning or calling the County Attorney's Office, you said something to the affect that you were upset, and you were going to try to serve them, in other words, get back at them. Did you ever tell him that?

A. No.

Q. And with regard to this conversation about the lawyers, that was the context about the comment involving Mr. Nurmi, wasn't it?

A. No.

Q. In other words, that you were upset with the prosecution because they weren't calling you, right?

A. No.

Q. Isn't your reputation, sir, that you want to make yourself the center of attention?

A. Where did you get that from?

Q. I'm asking you a question, sir. You don't get to ask me questions.

A. No.

Q. Isn't it true, sir, that you want to use this situation so that the limelight can be focused on you?

A. No.

Q. Isn't it true when you go to these PPL meetings or Legal Shield meetings, whatever they are, that they don't even want you to talk because you always want to talk about yourself; isn't that true?

A. No.

Q. And in terms of this context that we're talking about, sir, involving you, talking badly about the prosecution because they hadn't returned your calls, that's when you asked him about Mr. Nurmi, right?

A. I never spoke badly about the prosecution.

Q. You were upset that they hadn't called you back, right?

A. Not upset. I was surprised.

Q. And it was in this context about the prosecution not calling you back that the comment was made about Mr. Nurmi, right?

A. No.

Q. Isn't it true also that he never told you that he never even had any contact with the prosecution in the last three years?

A. That's not true.

Q. You think he's had contact with the prosecution in the last three years? Yes or no?

A. I know what he's told me.

Q. I want to know what you know?

A. Then let me tell you.

Q. Then tell me, did he tell you he's had contact with the prosecution in the last three years?

A. Yes.

Q. He's told you he's talked to Juan Martinez the prosecutor?

A. He didn't name a name. He said he was working with the prosecutor. He said that Mr -- whatever, I don't know people's names here, the defense attorney had tried to get him on the witness list so that he wouldn't be in the courtroom, but it backfired because the thing was televised so he gets to see all the information. He mentioned that he was watching the television and giving you information and that's how it came up.

Q. So he's saying that he's talking to me. According to you, he's talking to the prosecutor, Mr. Martinez, that's what you're telling today?

A. That's what he told me.

Q. That's what you interpreted he told you, right?

A. I understand English pretty well.

Q. And you're having problems with it today, aren't

you?

A. Not that I know of.

Q. Isn't it true that he never told you that he spoke to the prosecutor?

A. That's a double negative.

Q. What is your answer?

A. Yes. It is true.

Q. So what's your answer?

A. No. It's not true. Yes, it is true. You asked a double negative.

Q. That's right and I'm asking you to answer it?

MR. NURMI: Objection. Compound question.

THE COURT: Yes. Restate the question.

BY MR. MARTINEZ:

Q. Did he tell you -- do it this way. Isn't it true that he never told you that he talked to the prosecutor?

MR. NURMI: Again, I'm going to object.

A. Double negative.

THE COURT: Sir, you can't answer the question as phrased?

A. As phrased.

THE COURT: Please rephrase.

BY MR. MARTINEZ:

Q. He told you he talked to the prosecutor?

A. Yes.

BY MR. MARTINEZ:

Q. I don't have any other questions. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. NURMI:

Q. I just want to make it clear here through all the bluster. Between the time you spoke with Mr. Hughes on the 15th and your testimony here today, did you talk to Mr. Martinez about that conversation?

A. No.

Q. The things -- Mr. Martinez asked you a lot about the subject matter of your phone call with Mr. Hughes on the 15th. Do you recall that?

A. Yes.

Q. Did you give him that information?

A. No.

MR. NURMI: That's all I have. Thank you.

THE COURT: Thank you. You may step down. Any other witnesses for today, Mr. Nurmi?

MR. NURMI: Nothing for today, Your Honor.

MR. MARTINEZ: We do have a witness.

THE COURT: All right.

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

STATE OF ARIZONA, Appellee,	)	1 CA-CR 15-0302
vs.	)	CR 2008-031021
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
February 26, 2013

Before The Hon. Sherry K. Stephens

REPORTED BY:

MICHAEL A. BABICKY, RPR
Certified Reporter
Certificate No. 50361

PREPARED FOR:

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A. Yes.

Q. And, in fact, what you told us what that one of the persons was married, right?

A. No. That was his My Space.

Q. Okay. So that was something that occurred back at the time that you and he first started to date, right?

A. Prior to that. It occurred a few months prior.

Q. But the messages, what did they say? I'm not saying specifically, but what was the subject matter?

A. Things referencing specific sexual body parts interacting with other sexual body parts. Things like that. And plans in the making of meeting up at hotel rooms or his house, things like that.

Q. And you were very offended by that, right?

A. Yeah. Offended would be accurate.

Q. Right. And you were so offended that you still decided to go on vacation with him, right?

A. That wasn't why.

Q. Well, no, you were very offended. You just told us that, right?

A. I didn't say very but, yes, I was offended.

Q. You were offended, right?

A. I was hurt.

Q. Ma'am, didn't you just say you were offended?

A. Offended would be accurate.

Q. And didn't you just say it was a good word, right?

A. Yeah. There's many descriptors to use.

Q. But you're just said it was a good word, right?

A. Yes, I think.

Q. You think means you don't remember what you just said?

A. I don't know.

Q. What do you mean you don't know? You just said offended was a good word. And when I used it, then you took issue with it. Is it a good word or is it not a good word?

A. It depends on how you used it.

Q. Well, I'm saying you're the one that -- I asked you the question, you were offended and you said offended is a good word, right? That's what you said, right?

A. I think so, yes.

Q. Well, you think so means you don't know, right?

A. I don't know.

Q. This just happened. How is it that you are not remembering what you're saying?

A. Because you're making my brain scramble.

Q. I'm again making your brain scramble. So in this particular case, the problem is not you, it's the question being posed by the prosecutor, right?

A. No.
Q. Yes or no?
A. Not the questions.
Q. Yes or no?
A. I was saying no when you interrupted me.
Q. So in this case you're looking to point the finger at somebody else again, right?
A. No, it's my fault.
Q. Well, you're saying it's the prosecutor that's asking you the questions and that's creating a problem for you, right?
A. That's not what I said.
Q. Well, you said it's the way you're posing the questions, you just said that, right?
A. I don't know.
Q. You don't know what you just said, ma'am?
MR. NURMI: Objection. Argumentative, Your Honor.
THE COURT: Overruled.
A. I don't know.
BY MR. MARTINEZ:
Q. Didn't it just happen?
A. Yes.
Q. So how is it that if it just happened, you can't even remember what you just said?

A. I think I'm more focused on your posture and your tone and your anger. So it's hard to process the question.

Q. So the answer is it's again the prosecutor's fault because you perceive him to be angry?

A. It's not your fault.

Q. Well, is somebody asking you whose faults it is?

A. You did.

Q. Well, you seem to be pointing it at the prosecutor, right? So you believe the reason you can't be effective on the witnesses stand is because somebody is asking you questions in a way you don't like?

A. I think that was a compound question.

Q. Ma'am, isn't it true that you are having problems up on the witness stand, according to you, because the way the prosecutor is asking the questions, right?

A. Yes.

Q. And so according to you, the truth with regard to this issue depends on the style that's being used, right, that's what the truth is?

MR. NURMI: Objection. Argumentative. Mischaracterizes her testimony.

THE COURT: Sustained. Rephrase.

BY MR. MARTINEZ:

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Q. So you're that you need to take some more time between questions to answer them. Is that what you're saying?

A. Sometimes.

Q. Well, no, is that what's going to help your memory to take my time between the questions?

MR. NURMI: Objection. Asked and answered.

THE COURT: Overruled.

BY MR. MARTINEZ:

Q. What's your answer?

A. Sometimes.

Q. Ma'am, with regard to this issue of posturing, do you remember back on July 15th, 2008, when Detective Flores interviewed you? Do you remember that?

A. Yes.

Q. And he was sitting down, right?

A. Yes.

Q. And his voice was very quiet, right?

A. Yes.

Q. And when he was asking you these questions and his voice was very quiet, you still lied to him, didn't you?

A. Yes.

Q. So it doesn't have anything to do with the volume of the question then, does it, as to whether or not

you'll tell the truth?

A. I'll always tell the truth.

Q. Well, so you'll always tell the truth. So you told the truth to Detective Flores back then, right?

A. I mean here under oath.

Q. No. You said, I always will tell the truth, right?

A. I said, I will always tell the trial.

Q. Right. Did you tell the truth? Isn't it true you did not tell the truth to Detective Flores?

A. That's true.

Q. Okay. And he had a posture or a demeanor where he was just sitting back, right?

A. He was leaning forward but he was --

Q. All right. He was sitting down, right?

A. Yes.

Q. He wasn't standing, right?

A. Not for most of the interview.

Q. No, he wasn't, was he? And the reason you're having problems now is because the prosecutor is standing?

A. It's my own internal mental problem I think.

Q. Well, if it's your own internal mental problem that means that what you're telling us are inaccurate answers, right?

MR. NURMI: Objection. She said she had trouble

recalling, not telling the truth. Mischaracterizes her testimony and it's continued badgering.

THE COURT: Sustained as to the first objection. Rephrase.

BY MR. MARTINEZ:

Q. Here are you having trouble because the prosecutor is standing?

A. Having trouble what?

Q. What are we talking about here?

A. You're talking about the truth. I'm talking about memory.

Q. Aren't we talking about answering the questions?

A. You keep saying truth. I'm referring to memory.

Q. Aren't we, though, basically talking about you answering the questions?

A. Both, regarding answering questions.

Q. Right. Isn't that what we're talking about?

A. You keep mentioning truth. I'm not having a problem telling the truth.

Q. All right. But you're having problems answering my questions, right?

A. I don't have a problem answering your question if I remember the answer.

Q. So -- but you just told us that you're having problems answering the questions because of the

prosecutor's posture. Didn't you tell us that?

A. That's not the direct reason, but that's a trigger.

Q. Well, that's what you told us just now, right?

A. Something to that affect.

Q. Right. And so would you like it if I stood over here like your Counsel was asking you the questions? Would that make you feel more comfortable?

MR. NURMI: Your Honor, improper comment on Counsel.

THE COURT: Sustained. Rephrase.

Q (By Mr. Martinez)

BY MR. MARTINEZ:

Q. Would it make you feel more comfortable if stood over here and used the lectern, ma'am?

MR. NURMI: Why don't we approach again before he does the same thing over and over again, Judge?

THE COURT: Mr. Nurmi, are you asking to approach the bench with an objection?

MR. NURMI: Yes.

THE COURT: You may approach.

(Sidebar discussion.)

MR. NURMI: Again, Your Honor, every time I object, he just pulls one of these stunts. He just pulls the same stunt again and it's improper comment on Counsel.

You sustained the objection. What's he do, go back to the same sort of play acting he did before. Again we have more and more misconduct, Judge. We're going to ask for a mistrial yet again.

And while I suspect that will be denied, at least be admonishing the prosecutor to again stop these stunts.

MR. MARTINEZ: The prosecutor is not engaging in any stunt. The prosecutor moved over to the lectern and rephrased the question and asked her whether she would be more comfortable if he stood behind the lectern. I think that's appropriate.

THE COURT: All right. The motion mistrial is denied. I'm going to ask the parties to please not make personal jabs at the other side. You both have done it throughout the trial. I understand emotions are running high.

Let's attempt to be as professional as you possibly can. And I know you're both capable of that. So let's try to avoid argumentative questions as much as possible. Let's continue.

(Open court.)

THE COURT: You may proceed.

BY MR. MARTINEZ:

Q. Would you be more comfortable if I stood here?

A. No.

Q. Would you be more comfortable if I stood back here?

A. Where you stand won't make a difference to my comfort.

Q. So what you're saying is that you're hampered in your ability to answer the questions irrespective of where the prosecutor is, correct?

A. At times, yes.

Q. Well, that's not how you phrased it initially. You're saying that you are having problems answering the questions because of the prosecutor's posture, right?

A. In that moment that was correct.

Q. So it changes from moment to moment then?

A. Sometimes, yeah.

Q. So in this case it changes from moment to moment depending on what the prosecutor is doing, right?

A. It's not necessarily just dependent upon the prosecutor.

Q. With regard to your conversation with Detective Flores back on July 16th of 2008, he was pretty much sitting down in a chair back then, wasn't he?

A. Yes.

Q. And yet you lied to him then, right?

A. Yes.

Q. So it really doesn't have to do anything with the posture or where the person is sitting in terms of the whether or not you'll lie?

MR. NURMI: Again objection. Mischaracterizes her testimony. She said over and over again it deals with memory, not telling the truth.

THE COURT: Objection noted. Overruled. You may answer the question.

A. What was the question?

MR. MARTINEZ: Mike, can you read it back?

(Pending question read back.)

A. Well, sometimes I lied to Travis based on his posture.

MR. MARTINEZ: Objection, Judge, she's not responding to the question.

THE COURT: State another question.

BY MR. MARTINEZ:

Q. So you understand we're not talking about right now about your relationship with Mr. Alexander, you understand that?

A. I understand we got very off truck, yes.

Q. Pardon?

A. I understand we got very off track, the subject my relationship --

Q. I'm asking you whether or not you understand

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February 26, 2013

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Q. And even though you didn't have permission to look at those e-mails, did you?

A. I don't know. It was kind of a trade off. He did it to me so --

Q. I'm not asking if he did it to you, am I?

A. No.

Q. I'm asking if you had permission to go into his My Space to look at his e-mails?

A. No. I guess I didn't.

Q. And so again this is this conduct, this dishonest conduct on your part, right?

A. Yes.

Q. You went and you looked at his e-mails and you saw him e-mails between him and at least two females, right?

A. Yes.

Q. One of them involved the New Years Eve meeting, right?

A. Yes.

Q. And that upset you, though, right?

A. Not really.

Q. Well, it didn't make you happy, right?

A. It didn't thrill me.

Q. Pardon?

A. It didn't thrill me.

Q. So if it didn't thrill you, that's a way of saying it didn't make you happy, right?

MR. NURMI: Objection. Now it's argumentative, putting words in her mouth.

THE COURT: Overruled.

A. That's right.

BY MR. MARTINEZ:

Q. And -- but that happened before you and he were actually officially dating, right?

A. Yes.

Q. And so that really shouldn't have had any bearing on how you felt, would you agree?

A. That wasn't the part that bothered me.

Q. I understand that. Okay. Tell me what is the part that bothered you?

A. He lied about what it was about.

Q. He lied to you what it was about after you confronted him, right?

A. No. He called me preemptively to explain.

Q. Ma'am, you looked at his My Space e-mails, right?

A. Yes.

Q. Then you and he had a conversation about it, right?

A. Yes.

Q. So it wasn't that he had a conversation about it before you looked at his My Space e-mail, right?

A. About the messages, yes, we did.

Q. So he talked to you about them before?

A. Yes.

Q. If he talked to you about them before then why were you upset?

A. Because I found out that what he said was false.

Q. I see. So he lied to you then, right?

A. About the messages.

Q. And what you were doing is you were sort of checking up on him, right?

A. Yeah, I was.

Q. And that's because you wanted to see whether or not he was cheating on you, right?

A. No. It wouldn't have been cheating in December because you weren't together. I wanted to see whether it was accurate what he told me.

Q. So anything that we would tell you, you would want to check to make sure that he's being truthful to you, right?

A. That's not right, not anything.

Q. Well, things having to do with relationships involving other women, right?

A. Sometimes.

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Q. So it appears that in term of the KY, you were the one that introduced Mr. Alexander to it, right?

A. Yes, that's right.

Q. And it was used as part of these sexual encounters that the two of you had?

A. Yes.

Q. And you introduced that into the relationship because it was enjoyable to you, right?

A. It made our activities more enjoyable.

Q. So they were enjoyable to start with and this just enhanced them, right?

A. Most were enjoyable to start with.

Q. Pardon?

A. Most were, the first time we did it.

Q. I'm just asking about the KY. You introduced the KY into the relationship to make it more sexually enjoyable, right?

A. Yes.

Q. And in fact, before that your experience had been with baby oil, right?

A. That's right.

Q. And at least as to Bobby Juarez, that's what was involved. That's what the used with him, right?

A. Probably. I don't remember that far back but definitely with Matt.

Q. So when we're talking about this level of experimentation in this case, it looks like the both of you were experimenting together sexually, right?

A. That's right.

Q. So that when we hear things like, well, I felt like a prostitute, that's not exactly true?

MR. NURMI: Objection. Argumentative.

THE COURT: Rephrase.

BY MR. MARTINEZ:

Q. When you say that you felt like a prostitute that's at odds with what you're telling us or what we're hearing here about the KY?

A. Well, you're talking about two different incidents so, yes, it would be at odds.

Q. So your participation, if you will, in these activities was equal to his, right, wasn't it?

A. Yes.

Q. So any derogatory statement such as I felt like a prostitute, isn't really what was going on representative of what's going on, right?

A. It was. But it was my fault for feeling that way because I allowed it.

Q. Well, I know that you allowed it and you felt that way but -- and you say that you felt like a prostitute, but when we hear, for example, this partial

clip of this sexual conversation it looks like you're the one that's moving it along as opposed to him?

A. Is that a question?

Q. It is a question.

A. What's the question?

Q. The question is, isn't it true that you were the one that was moving it along?

A. I'd say it was mutual.

Q. Well, if it's mutual then there is no, I guess, suggestion then or any reason why you should feel like a prostitute if it's mutual then, right?

A. I didn't feel like a prostitute during, just afterward I did.

Q. Well, this is suggestive of you being as much of a participant in these activities as he was, right?

A. Yes. And I was.

Q. And so you indicated on two occasions on direct examination that you felt like a prostitute, right?

A. I believe referencing Ehrenberg, yes.

Q. And in Ehrenberg, you said that's when you felt like one, correct?

A. Not when, after Ehrenberg, after thinking about it and he didn't call me for three days, I thought, you know, hotel room, all that, just kind of felt that way.

Q. Right. And then additionally you also said that

you feet like that after the baptism, right?

A. No. I think after that, I said I felt like a used piece of toilet paper.

Q. And you didn't convey that to him, did you?

A. No.

Q. Did you also say that you felt like a prostitute when he came over to your house and engaged in oral sex on the porch, is that the other time?

A. If I did say that that would be accurate.

Q. So if you did feel like that, remember you even referenced a piece of chocolate being thrown your way, do you remember that?

A. Yes.

Q. And then you said, well, I felt kind of like a prostitute. Do you remember saying that now?

A. Yes.

Q. So that was already when you were in Mesa, right, living in Mesa, right?

A. That's right.

Q. That's after you had broken up with him on June 28th of 2007, right?

A. Yes.

Q. That's after you and he had sex many times, right?

A. Yes.

Q. That's after you and he had already starting using the KY, right?

A. Yes.

Q. And so how is it that you can say, I felt like a prostitute, if you're the one that's sort of moving the relationship ahead?

A. Well, your question doesn't make sense to me.

Q. It doesn't make sense to you? Why is that, ma'am, because you're moving the relationship ahead by providing the KY, right?

A. I don't know we would have used something else if it wasn't KY so, no.

Q. Well, you might have used something else if it wasn't KY, but you provided the something else, didn't you, the KY?

A. In this case I did, yes.

Q. Well, we're not talking about any other cases, ma'am. We're talking about this case. You were the one that had the KY or brought it into the relationship to make it better, right?

A. To facilitate our activities.

Q. Sure. That would make them better if it facilitated your activities, right?

A. Yes.

Q. And yet you're telling us that, and on the other

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Appellee, vs. JODI ANN ARIAS, Appellant.	1 CA-CR 15-0302 CR2008-031021-001

Phoenix, Arizona
March 13, 2013

BEFORE: THE HONORABLE SHERRY STEPHENS, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Jury Trial)

* SEALED *

JANELL ROSE, RPR, CSR
Certified Court Reporter #50455
Prepared for Appeal

Q. Sure. You're the only one that knows about this memory stuff, right? Because, according to you, it happened to you, right?

A. I don't think I'm the only one that knows.

Q. Well, I'm not asking if you're the only one that knows. I'm asking you whether or not you are the one that has the best knowledge about what happens to you when this fog rolls in?

MR. NURMI: Objection. Calls for speculation.

THE COURT: Overruled. You may answer.

THE DEFENDANT: I don't really have an understanding of what happens. I just know -- I can only describe it the best that I can.

Q. BY MR. MARTINEZ: Right. And in describing it, ma'am, to use your words, when the fog rolls in, it does not improve your memory, does it?

A. I don't know. I wouldn't say it does.

Q. Well, in this case, ma'am -- so you now shot him? You've told us that the fog is rolling in and that you have no memory. You still don't know where the knife is, do you?

MR. NURMI: Objection. Argumentative.

THE DEFENDANT: I don't know.

THE COURT: Overruled.

THE DEFENDANT: I don't remember a lot from that period. It could be --

Q. BY MR. MARTINEZ: Right. But you told us before that period even that you didn't know where the knife was; do you remember just telling me that?

A. Today, as I sit here, I don't remember where the knife was. On June 4th I might have remembered where it was.

Q. Ma'am, do you remember on cross-examination that I asked you if you knew where the knife was on June 4th, and you said, "No. I don't remember where the knife was because I didn't pay attention to what he was doing with it."

Do you remember telling us that on cross-examination?

A. I didn't use those words. I just said that he cut the rope, and I don't remember where he put it when he was done cutting it.

Q. Right. Those aren't the exact words, but that was the understanding that you remembered about him cutting the knife, but you didn't remember where he had put the knife back then.

That's what you told us on cross-examination. Do you remember that? Because the prosecutor was trying to ascertain from you where the

knife had gone, right?

A. That was two questions.

Q. Which one do you want to answer? Answer them both.

A. I'll answer the first one.

I don't remember saying that. I remember speculating that it could have gone to the nightstand or it could have been left in the bathroom. I don't recall talking about the closet, which you brought up a few minutes ago. And then if that's right, I don't remember the second question.

Q. So, if you don't know where it was, it could have been in the closet, right?

MR. NURMI: Objection. Argumentative.

THE DEFENDANT: I don't know.

THE COURT: Ms. Arias, when there is an objection, don't answer the question --

THE DEFENDANT: I'm sorry.

THE COURT: -- until I rule on the objection.

THE DEFENDANT: Okay.

THE COURT: Your objection is?

MR. NURMI: Argumentative.

THE COURT: Overruled. You may answer now.

THE DEFENDANT: I don't know.

Q. BY MR. MARTINEZ: And so as you shot Mr. Alexander, you, by necessity, then have to go look for the knife, don't you?

A. I don't know the answer to that.

Q. Well, you didn't have the knife in your hand when you shot him?

MR. NURMI: Objection. Argumentative.

Q. BY MR. MARTINEZ: Did you?

THE COURT: Sustained.

Q. BY MR. MARTINEZ: Did you have the knife in your hand when you shot him?

MR. NURMI: Objection. Argumentative. It's the same question.

THE COURT: Overruled.

THE DEFENDANT: No, I did not.

Q. BY MR. MARTINEZ: So, that means that if you didn't have the knife in your hand, you needed to go get it from somewhere, right?

A. I guess. I don't know.

Q. No, no, no, there is no guessing here now. Huh-uh.

If you didn't have it in your hand, and you just shot him, and you rolled away, right?

MR. NURMI: Objection. Argumentative.

THE COURT: Sustained.

Q. BY MR. MARTINEZ: You got up? You were able to get away, right? That's what you told us, right?

A. That's right.

Q. You needed to go get that knife at that point, correct?

A. No. It's possible Travis grabbed the knife first.

Q. Okay. But you told us that the knife wasn't there; do you remember telling us that?

MR. NURMI: Objection. Mischaracterizes her testimony.

THE COURT: Overruled.

THE DEFENDANT: No. I remember testifying that it wasn't in my hand when the gun went off.

Q. BY MR. MARTINEZ: So, as Mr. Alexander is coming towards you, he now has a knife in his hand; that's what you're telling us?

A. No. I didn't say that either.

Q. Okay. So, as Mr. Alexander is getting blasted and going down, he's got the knife in his hand, right?

MR. NURMI: Objection. Argumentative.

THE COURT: Overruled.

THE DEFENDANT: That was all in the same moment when he was lunging at me.

Q. BY MR. MARTINEZ: He doesn't have the knife in

his hand, does he?

A. Not in that particular moment, no.

Q. Ma'am, I'm asking you, at that particular time, he didn't have the knife in his hand, right?

A. I just said no.

Q. And he goes down, sort of next to you, right?

A. Yes. We both go tumbling --

Q. Sure you both go down.

You never told us that he had any knife there, did you?

A. No. I wasn't asked.

Q. Oh, I see.

So what you're saying is now he has the knife with him, right? Now that's what you're saying, he's got the knife?

A. I didn't say that either.

Q. Well, which one is it, ma'am?

Does he have the knife or he doesn't have the knife? You were there.

MR. NURMI: Objection. Argumentative. Asked and answered about three times now.

THE COURT: Sustained.

Q. BY MR. MARTINEZ: You do then agree that if the knife -- if you didn't know where the knife was, and Mr. Alexander didn't have it, it would take time for you to go

find that knife, wouldn't it?

MR. NURMI: Objection. Argumentative.

THE COURT: Overruled.

THE DEFENDANT: I don't know. I don't know where the knife was.

Q. BY MR. MARTINEZ: Right. Since you didn't know where the knife was, it would take time to go find it, irrespective of where it was, wouldn't it?

MR. NURMI: Objection. This mischaracterizes her testimony or memory now and her memory -- or awareness at that time.

THE COURT: Overruled.

THE DEFENDANT: Can you repeat your question?

MR. MARTINEZ: Janell, can you read the question?

(Record read.)

THE DEFENDANT: I don't know the answer to that.

Q. BY MR. MARTINEZ: You don't think that a movement, such as a step, takes time?

MR. NURMI: Again, argumentative.

THE COURT: Sustained.

Q. BY MR. MARTINEZ: Ma'am, if the knife wasn't -- even if the knife was there, your grabbing it took time,

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	No. 1 CA CR-15-0302
	)	
vs.	)	No. CR 2008-031021
	)	
JODI ANN ARIAS,	)	SEALED
	)	
Defendant.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE SHERRY K. STEPHENS, JUDGE

(Trial - Afternoon Session)

SEALED

Phoenix, Arizona
April 4, 2013

REPORTED BY:

BARBARA H. STOCKFORD, CRR/RMR/CCP
Certified Court Reporter
Certificate No. 50463

PREPARED FOR:

(COPY)

question.

Restate your question.

BY MR. MARTINEZ:

Q. Isn't it true, ma'am, that if we take a look at this continuum of aggression and abuse, which is Exhibit 558, if we use that and we refer to something that's wholly a myth, using your expertise, we can make a determination, for example, that Snow White was a battered women, can't we?

A. No, we cannot.

Q. Well, then let's talk a little bit about Snow White and whether or not we have some of these issues that are presented here.

A. We're talk --

Q. Yes or no? Can we do that? Yes? Can we do that? Could you do that with me?

A. You're mischaracterizing.

MS. WILLMOTT: Objection. Argumentative and relevance.

THE COURT: Overruled.

BY MR. MARTINEZ:

Q. I would like to go through it with you. And what you've told us is that these columns are not necessarily exclusive, right?

A. That is specific to adult relationship, adult

intimate partner relationship, Mr. Martinez. And I have no information about the relationship between Prince Charming and Snow White. I don't know what their relationship was. So you're mischaracterizing that by saying that that can be applied to Snow White as a child. This is not about child abuse.

Q. Well, let's talk about, for example, whether or not we can find some of the items that were present in the *Snow White and the Seven Dwarfs* and whether or not Snow White was a battered woman. Okay?

With regard to your -- the conference agenda, that conference agenda that we're talking about, it dealt with adults, didn't it?

A. It dealt with adults.

Q. Yes, it did. And in it you said, "Is Snow White a Battered Woman?" That was the title, right?

MS. WILLMOTT: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. MARTINEZ:

Q. And that being the case, ma'am, now you're trying to tell me that, well, no, no, no, no, I don't want to talk about Snow White now because it involved a child, right?

A. No, that's not what I said, Mr. Martinez.

Q. Well, then --

A. Do you want me to answer that, Mr. Martinez? Because I can.

Q. Yes. I want you to answer me why it is now that you don't want to talk about Snow White as an adult when you did talk about Snow White as an adult when you made the presentation back in 2010.

A. I talked about Snow White in regard to growing up and what we believe about ourselves as men and women growing up. I did not talk about Snow White in an intimate relationship with a prince.

Q. What did you say at the end there? In an intimate relationship where?

A. With the prince or the king or whoever.

Q. My question was a little bit more narrow than that. And my question was that, in this presentation, this involved adults that you were talking about, right?

A. I spoke to adults.

Q. And it involved adult abuse, didn't it?

A. It involved gender. We were talking about gender and expectation about gender. And it was in a domestic violence conference. So I spoke about it in a domestic violence conference.

Q. Right. And it involved adults, right?

A. It involved what we learn as children and

bring into adulthood.

Q. So it involved what you learn as children and what now?

A. And what we can bring into adulthood about what we learn -- what we learn as children.

Q. Right. So, for example, if we have anger as an issue in the family, that's something that we can learn as a child and take into adulthood, which is what you told us about Mr. Alexander, right?

A. Correct.

Q. And so we can talk about a number of things that are here and use this as a guide, can't we, to determine whether or not an individual is a victim of abuse, right?

A. I'm confused. Are you talking about Snow White again? Because I'm not sure where you're going here. I'm not understanding this.

Q. I'm talking about Snow White, Exhibit 558.

A. That is not applicable to Snow White and the prince's relationship, which is the relationship that that -- this is about adult intimate partner violence. And you keep referring to Snow White as a child. And what I'm saying to you is that that's about adult intimate partner violence and not about her relationship with the prince, which I know nothing about after they

get married.

Q. So what you're saying is, though, even though this involved adults and you did say, "Is Snow White a Battered Woman?" which would imply she was involved with a man as an adult, right? You're saying disregard that now, right, because it doesn't mean what it says?

MS. WILLMOTT: Objection. Mischaracterizes her testimony.

THE COURT: All right. We're going to take the recess at this time. Ladies and gentlemen, Monday, 9:30 a.m. Please remember the admonition. Are there any questions?

Have a nice weekend. You are excused.

(In open court; jury not present.)

THE COURT: The record will show the jury has left the courtroom.

Ms. LaViolette, you may step down.

(Witness stands down.)

THE COURT: Is there anything else for today?

MR. MARTINEZ: Just the issue we talked about that you would address in private.

MR. NURMI: I'm sorry. I didn't understand what he said.

MR. MARTINEZ: I said just the issue the judge indicated she would address in private with

APPENDIX 19

APPENDIX 19

Examples of yelling during cross-examination.

RT 10-22-14, pp. 138-139 [Defense objected to Martinez approaching witness, acting out stabbing with pen to the witness's chest while yelling at the witness].

RT 11-24-14, p. 58

RT 1-22-15 #2, p. 52

RT 1-26-15 #1, p. 78

RT 1-26-15 #1, pp. 85-86

RT 2-19-15 #1, p. 41

RT 2-19-15 #1, p. 52

APPENDIX 20

APPENDIX 20

Examples of mischaracterizing prior testimony.

Martinez's questions regarding where the knife was:

- RT 3-13-13, p. 36 ["Okay. But you told us that the knife wasn't there; do you remember telling us that?"];
- *Id.*, p. 94 ["And you previously had seen that knife in the bedroom, right?"];
- *Id.*, p. 48 ["And given the time constraints here, and the fact that you didn't know where the knife was, it would have been impossible for you not to have the knife with you when the attack happened, right?"].

Cf., prior related testimony on this subject:

- RT 2-27-13, p. 198 [Arias testified T.A. cut the rope in the bathroom and she did not remember what he did with the knife after];
- RT 3-13-13, p. 29 [Same];
- *Id.*, p. 33 [Same];
- *Id.*, p. 38 [Same];
- RT 2-19-13, p. 128 [Arias believed T.A. would have left the knife in the bathroom or on the nightstand, but she did not recall specifically];
- *Id.*, p. 128 [Arias had a lot of gaps in her memory from that day];
- RT 2-28-13, p. 159 [Same];
- RT 2-20-13, p. 21 [Arias had memories of the knife dropping to a tile floor];
- RT 3-5-13, p. 132 [Same];
- RT 3-7-13, p. 15 [Same];
- RT 2-28-13, p. 160 [Due to the tile, Arias guessed she was in the bathroom when the knife hit the floor];
- RT 3-13-13, p. 36 [Arias testified it was not correct that she had to have gone to get the knife from somewhere, as T.A. may have gotten it].

Martinez's questions as to whether LaViolette had testified Arias never said anything negative about T.A.

- RT 4-4-13 #2, p. 116 [Martinez asked LaViolette to agree that she previously testified that Arias never said anything negative about T.A.];
- *Id.*, p. 118 [Same].

Cf., prior related testimony on this subject:

- RT 4-3-13, p. 5 [LaViolette testified T.A. instructed Arias to rip out pages of her journal where she wrote about bad things he had said to her];
- *Id.*, pp. 6-7 [LaViolette testified because Arias was trying to follow the Law of Attraction and because T.A. was telling her not to write about negative things between them, Arias was restricted in writing details];
- *Id.*, pp. 37-39 [LaViolette testified Arias wrote about T.A. being rude to her, but not the specific names he had called her or for how many hours];
- *Id.*, p. 22 [LaViolette testified about one specific instance of T.A.'s negative behavior Arias was able to include in her journal].

Martinez's questions asserting LaViolette's seminar concluded that a fairytale character was actually a battered woman:

- RT 4-4-13 #2, p. 138 [Martinez asserted LaViolette's seminar analyzed the Snow White fable and concluded the character was a battered woman];
- *Id.*, p. 139 [Martinez asserted that LaViolette could determine if a mythical character was a domestic violence victim];
- *Id.*, p. 142 [Martinez impeached LaViolette for having previously been willing to discuss whether Snow White was a battered woman and not being willing to do so at trial].

Cf., prior related testimony on this subject:

- *Cf. Id.*, p. 124 [LaViolette just used a catchy title, "Is Snow White a Battered Woman?"];
- *Id.*, p. 125 [LaViolette did not use, in any seminar, her guideline for determining abuse];
- *Id.*, p. 139 [LaViolette used a catchy title, but that was not the content of the seminar];
- *Id.*, p. 140 [LaViolette used a catchy title, but she did not talk about whether Snow White was actually a battered woman].

RT 4-4-13 #2, pp. 142-145 [LaViolette testified that she did not have enough information about the relationship between Snow White and Prince Charming to

determine whether it involved domestic violence, but Martinez impeached her as being unwilling to answer his questions for a nonsensical reason].

RT 4-8-13, p. 127 [Martinez asserted that LaViolette did not mention that Arias might have been the cause of a mistake about a name T.A. wrote]. *Cf. Id.*, pp. 124-125 [LaViolette stated that one of them [Arias or T.A.] made a mistake and T.A. could have been mistaken].

RT 4-8-13, p. 157 [Martinez asserted that Arias could have sent T.A. the second part of a text message]. *Cf.* RT 2-21-13, pp. 23-24 [Arias having testified that she had already deleted the second part of the text and could not send the original to T.A.].

RT 5-1-13 #2, p. 42 [Martinez mischaracterized testimony conflating correlation with diagnosis and impeached the witness based on the mischaracterization, "Sir, isn't it true that you told us that in your view there's ***no correlation*** between this, what we're looking at here [Exhibit 646, which was DeMarte's scoring of raw data from the test, RT 5-1-13 #1, p. 83], and borderline personality disorder? That's what you told us right?"]

Cf., prior related testimony on this subject:

- *Id.*, pp. 52-53 [Geffner previously testified that studies tested the hypothesis that the floating profile was associated with BPD and ***did not find any significant association*** nor did the research support the use of the floating profile in the MMPI to ***predict*** disorders, like BPD or PTSD];
- RT 5-1-13 #2, p. 4 [Geffner testified the scale could ***not predict*** borderline personality disorder];
- *Id.*, p. 4 [Geffner stated the scale was ***not indicative*** of BPD].

Martinez's assertions regarding prior testimony. RT 5-1-13 #2, pp. 51-52:

> MR. MARTINEZ: And you indicated that it didn't matter to you whether or not the trauma was caused by a bear or a tiger. Do you remember saying that?
> DR. GEFFNER: No. I was asked if that would have changed the results, not whether it mattered to me.

MR. MARTINEZ: You do remember the question involving a bear or a tiger, right?
DR. GEFFNER: Yes, sir.
MR. MARTINEZ: What you're saying is that what's important is the report that follows it, correct?
DR. GEFFNER: No. You're adding words now. I didn't say what was important. I said that test assesses reaction to the event. Important is a whole different word that I don't even recall saying.

Cf., prior related testimony on this subject. RT 5-1-13 #1, pp. 129-130:

MS. WILLMOTT: ....If a person says that -- let me give you this example. If a person says that a tiger -- they were attacked by a tiger, but, in reality, they were attacked by a bear, either way, they're telling you that they've suffered trauma. Is it going to matter one way or the other?
DR. GEFFNER: No, not for this test or for the diagnosis of PTSD. It's the reaction --
MR. MARTINEZ: Objection. Beyond the scope of the question. He answered it.
MS. WILLMOTT: He's not finished answering it.
THE COURT: Overruled. You may continue.
DR. GEFFNER: It's the reaction to the event that is assessed and goes into the diagnosis. As long as there is some type of traumatic event. The diagnosis requires there to be a traumatic event. It doesn't require what it is. So, either one of those would qualify, but the test is focusing on the reaction to it.

RT 5-1-13 #2, p. 220 [Mischaracterizing Geffner's testimony about inappropriateness of using an outdated test and asking the witness to bolster DeMarte's use of the test].

RT 11-24-14, pp. 139-141 [Martinez asserted that Arias had told two different stories about whether she walked in on T.A. masturbating to photographs on a computer or actual photographs, mischaracterizing LaViolette's testimony where she disagreed with his claims on these facts]. *Cf.* RT 2-7-13, p. 52 [LaViolette testified Arias had not told her the photos were on a computer].

APPENDIX 21

APPENDIX 21

Examples of the prosecutor using his questions to testify.

RT 1-9-13, p. 108 [Martinez placed an evidentiary-discovery issue before the jury when he asked the witness, Burns, about the location of texts not in an exhibit]. *Cf.* RT 1-9-13, pp. 90-96 [Defense admitted Burns's side of conversations he had with Arias through text messages, admitted this way to show Burns's mindset]; *id.*, p. 91 [Martinez's objections for various evidentiary reasons and because the defense had not included Arias's responding text messages].

RT 2-7-13, p. 53

> MR. MARTINEZ: So when you told me about the clicking of the computer and all of that, you agree that you did tell me that?
> MS. LAVIOLETTE: I don't agree I told you about clicking a computer. I agree that I said something about child pornography, but, Mr. Martinez, I've never gotten to see any record of a deposition you and I did together so I have never reviewed that, and that would be true for me in any of those kinds of conversations I have that I am able to review the materials. I was never able to do that with you.
> MR. MARTINEZ: All right. You're giving me an excuse as to what you did or did not say. I'm going to ask you once more: Did you say to me -- the question was: Right. An old guy or a young girl? And you answered: Oh, no, I didn't get the details on that. And then my question was: At all? And your answer was: No. And then my question was: So you -- and then --
> MS. LAVIOLETTE: I would want to look at what you're referring to because I can't really say if I agree with that and whether I agree with the context or if you're taking it out of context.

RT 3-7-13, p. 127, line 12

RT 3-13-13, p. 115, line 7

RT 3-13-13, p. 115, lines 17-23

MS. ARIAS: Yes, that I knew of only guys were going so far. We were still organizing the trip.
MR. MARTINEZ: That you knew of. We're not asking you to tell us anything about what anybody else knows. We're asking you to tell us what you know of. You don't have to add that on there; do you understand that?

RT 3-13-13, p. 142, lines 9-10

RT 3-25-13, p. 115

DR. SAMUELS: ...At that point the trauma in her mind, her perception was that she did it, no matter what she told me.
MR. MARTINEZ: But isn't it true in that conversation that she's the one that brought up [T.A.]? Are you aware of that?

RT 3-25-13, p. 120

MR. MARTINEZ: And so she has to book a flight, right?
DR. SAMUELS: Yes.
MR. MARTINEZ: Did you know that it was a flight she took?
DR. SAMUELS: I didn't know it was a flight. She got there somehow.
MR. MARTINEZ: Did you want to see the receipt?

RT 3-25-13, p. 149

MR. MARTINEZ: And, sir, didn't you also say when you and I were talking about it that you felt sorry at least during that first interview with the defendant?

DR. SAMUELS: No. I didn't say I felt sorry.
MR. MARTINEZ: You used the word sorry in connection with the first interview with the defendant?

RT 3-25-13, p. 190 [Martinez asked Samuels if he remembered telling Martinez that he did not know to whom to report a suicidal client in the jail].

RT 3-25-13, p. 192

MR. MARTINEZ: She wasn't asking you about the male jails, was she?
DR. SAMUELS: But I used that as an example. I qualified my answer.
MR. MARTINEZ: You didn't say that?
DR. SAMUELS: Okay, I thought I did.

RT 4-8-13, p. 129

MS. LAVIOLETTE: I don't know how she found out about Bianca, but I know that -- what she did in response to that.
MR. MARTINEZ: Well, isn't it true, I'm asking you whether or not you know this, that the defendant happened to be working at another fast food -- not a fast food, but another restaurant, this one's called Applebee's. And while she was working in Applebee's, two girls came in --
MS. WILLMOTT: Objection, your honor, testimony (*sic*) she just said she doesn't know.

RT 4-8-13, pp. 181-182

MR. MARTINEZ: Right? The other thing, ma'am, is that -- do you remember when she was in jail up in Yreka and the defendant's manifesto, do you know anything about that?
MS. LAVIOLETTE: I don't know anything about that.

MR. MARTINEZ: Do you remember that was in your notes?
MS. LAVIOLETTE: I remember hearing about it. I've never seen it.
MR. MARTINEZ: You haven't seen the manifesto. I'm not asking you if you have seen the manifesto, but you've heard about it, right?
MS. LAVIOLETTE: I've only heard that there was a manifesto. I don't honestly know anything about it.
MR. MARTINEZ: And I understand you may not have seen it. But isn't it true that the defendant was signing or autographing copies of the manifesto?

RT 4-8-13, p. 191 [Martinez asserted in his question that Arias signed the manifesto because she believed she would be famous, a fact to which no one testified].

RT 4-9-13, p. 74 ["Ma'am, the other thing we know is not only is there this indication that she was manipulative at that age, isn't it true that after --"].

RT 4-9-13, p. 131, line 19

RT 4-9-13, p. 131, lines 7-10

RT 4-9-13, p. 148 ["Part of the reason I pointed that out is that it appears that you seem to jump to making a conclusion when you're answering these questions, and like in this case, you were mistaken, wouldn't you agree?"].

RT 4-9-13, p. 149

MS. LAVIOLETTE: Yes. And I remembered quickly that it was November 6th.
MR. MARTINEZ: No. You didn't remember quickly. Actually, the prosecutor prompted you, correct?

RT 4-10-13, p. 42 [Martinez asserted in his question that Lisa Diadone testified that she was the one to make improper advances to T.A. and he refused her, which she had not said].

RT 4-10-13, pp. 53; 57 [Martinez asserted in his questions that Daniel Freeman testified T.A. told him that he informed Arias, "You need to move away; you need to get away from here[,]" in January, 2008, but this was not in his testimony].

RT 5-1-13 #2, p. 42

> MR. MARTINEZ: When you were asked a double negative by defense Counsel previously, do you remember commenting on that on direct examination.
> DR. GEFFNER: And I believe I asked to clarify.
> MR. MARTINEZ: You had no problem answering that. Do you remember that?
> DR. GEFFNER: No. I don't believe (*sic*) I asked to clarify and I rephrased.
> MR. MARTINEZ: You clarified your answer without clarifying the question. Do you remember that?
> DR. GEFFNER: In that one I was allowed to clarify.

RT 5-1-13 #2, p. 134 ["Well, let's start with the PDS, question 14, and the answer to Number 4, you have been told over and over that was a lie."].

RT 11-20-14, p. 120 [Martinez asked a defense expert if she had reviewed the interview of Carl Arias, then, given her agreement that she had, he asked her if she knew who Carl Arias was and the witness answered that she believed he was Arias's father, to which Martinez stated, "Actually the father is Bill."].

RT 2-19-15 #1, p. 69

> MR. MARTINEZ: Well, one of the times you laughed yesterday was at 10:06 when you were asked about Dr. DeMarte and whether or not she was practicing psychology. Do you remember that?
> DR. GEFFNER: I don't remember laughing. I remember the comment.

MR. MARTINEZ: Do you think there is something funny about that?

RT 2-19-15 #1, p. 71 [After Geffner repeated his testimony that he did not remember laughing during a question about Dr. DeMarte, Martinez retorted, "Or it could be that is one of the techniques when you testify, you ingratiate yourself to the Jury to smile, right?"].

RT 2-19-15 #1, pp. 71-76 [Martinez accused the witness of constantly moving towards Juror 1 as he testified, after which the defense objected and moved for a mistrial, and despite sustaining the objection, the court again allowed Martinez to ask if the witness had been moving his chair towards the jury].

APPENDIX 22

APPENDIX 22

Examples of using questions to offer his own belittling comments on the evidence or witness.

RT 2-27-13, p. 205 [Martinez stated, "You keep saying not any more, it isn't there at all, is it?"].

RT 3-13-13, p. 50, lines 23-24

RT 4-4-13 #2, p. 106

> MR. MARTINEZ: ...[Y]ou know what a clinical interview is, right?
> MS. LAVIOLETTE: Of course I know what a clinical interview is.
> MR. MARTINEZ: All right. ***Then we seem to be having problems with it.*** With regard to a clinical interview.

RT 4-4-13 #2, p. 112 ["...You seem to be having trouble answering my questions."].

RT 4-8-13, p. 72 ["I know that's what you want to tell us, but...."].

RT 4-8-13, p. 100

> MS. LAVIOLETTE: ...But if you look at the context, it would make perfect sense to you.
> MR. MARTINEZ: ***Well, I'm looking at it in context.*** Did you address whether or not in that presentation Snow White was a victim of being a battered woman?

RT 4-8-13, p. 121

> MS. LAVIOLETTE: That was not a real significant piece of information for me, Mr. Martinez.

> MR. MARTINEZ: ***I understand that you may say that now***. But it is something that was significant enough for you to write it down, correct?

RT 4-8-13, p. 169 ["Ma'am, I just want a number. I don't want you to give me a free flow of expression?"].

RT 5-1-13 #2, p. 161 ["Geffner: I thought that's what you asked me. Martinez: Then you thought wrong, right?"].

RT 4-8-13, p. 177

> MS. LAVIOLETTE: No. But you mischaracterized what I said.
> MR. MARTINEZ: ***I understand that you believe that.*** So now you have this good feeling and then you continue on with the case, right?

RT 5-1-13 #1, p. 206 ["And one of the things that you regaled us with on Direct Examination was that you have many students that you have that are part of this editorial board, right?"].

APPENDIX 23

APPENDIX 23

Examples of interrupting.

RT 2-4-13, p. 56

RT 2-27-13, p. 135

RT 2-27-13, p. 146

RT 2-27-13, p. 149

RT 2-27-13, p. 150

RT 3-13-13, p. 23

> MR. MARTINEZ: When you say you guess, that means what? What does that mean?
> MS. ARIAS: It means --
> MR. MARTINEZ: Yes or no?

RT 4-4-13 #2, p. 106

RT 4-4-13 #2, p. 108

RT 4-9-13, p. 12

RT 4-9-13, pp. 18-19

RT 4-9-13, p. 48

RT 4-9-13, p. 156

RT 4-10-13, p. 18

RT 4-10-13, p. 41

RT 4-10-13, p. 78

RT 4-11-13, p. 125

RT 4-11-13, p. 139

RT 5-1-13 #2, pp. 19-20

RT 5-1-13 #2, p. 36

RT 5-1-13 #2, p. 158

APPENDIX 24

APPENDIX 24

Examples of refusing the witnesses' answers.

RT 2-27-13, p. 149

RT 2-27-13, p. 156

RT 3-13-13, p. 25, lines 1-3

RT 3-13-13, p. 35

> MS. ARIAS: I guess. I don't know.
> MR. MARTINEZ: No, no, no, there is no guessing here now. Huh-uh.

RT 3-21-13, p. 166

> MR. MARTINEZ: And with regard to compassion, isn't that just sympathy for another individual in whatever situation they may be in?
> DR. SAMUELS: Perhaps.
> MR. MARTINEZ: Well, no. You're the one that used the word compassion.

RT 3-25-13, p. 81

> MR. MARTINEZ: With regard to this alternative universe that you're talking about, it's nothing more than a lie, right?
> DR. GEFFNER: In your words, sir.
> MR. MARTINEZ: No, sir, I am asking but (*sic*) you. Is it true that two individuals, based on everything that you know, is it true that two individuals came in and killed [T.A.], is that your understanding?
>
> * * *
>
> MR. MARTINEZ: Is that your understanding?

DR. GEFFNER: No. That is not what happened.
MR. MARTINEZ: Well, it's not your understanding, right? In other words, it's based on what she told you, right, you weren't there?

RT 3-25-13, p. 140

RT 4-4-13 #2, p. 129

MR. MARTINEZ: According to you, the wicked stepmother, in [Arias's] circumstance, is her mother, right?
MS. LAVIOLETTE: I didn't say that.
MR. MARTINEZ: No. I'm the one that's asking the question. Isn't that true?

RT 4-8-13, p. 160

MS. LAVIOLETTE: ...I think bias is an incorrect word, Mr. Martinez.
MR. MARTINEZ: No. That is the correct word. Isn't it true that you are biased in favor of the defendant, yes or no?

RT 4-10-13, p. 18

MS. LAVIOLETTE: It is -- it is not a "yes" or "no" question.
MR. MARTINEZ: Well, extremely afraid. [T.A.] was extremely afraid? Did you not agree with that assessment just minutes ago?
MS. LAVIOLETTE: I agreed with his verbiage.
MR. MARTINEZ: No.

RT 4-10-13, p. 18, line 20

RT 5-1-13 #2, p. 20

APPENDIX 25

APPENDIX 25

Examples of asking the same question over and over.

RT 2-21-13, p. 134 [Final repetition].

Cf. Earlier questions on the subject:

- RT 2-21-13, p. 92 [She had a car];
- *Id.*, p. 117 [She drove off in her car, was not yet driving T.A.'s car];
- *Id.*, p. 118 [Martinez asked Arias two times, if she agreed that T.A. had a car that day and Arias answered in the negative, two times];
- *Id.*, p. 121 [She and T.A. talked about exchanging cars];
- *Id.*, p. 132 [She and T.A. discussing car exchange];
- *Id.*, p. 133 [Martinez asked again about the car arrangements T.A. had made].

RT 2-21-13, p. 134 [Final repetition, having been asked and answered]

> MR. MARTINEZ: You have a car, right?
> MS. ARIAS: Yes.
> MR. MARTINEZ: His car, right?
> MR. NURMI: Objection. Asked and answered.
> THE COURT: Overruled.
> MS. ARIAS: I don't remember which car I was driving.
> MR. MARTINEZ: Well, it wouldn't have been his car because you wouldn't have needed to exchange his car for his car, right?
> MS. ARIAS: It would have been mine or his.
> MR. MARTINEZ: Right. So your (*sic*) driving your car, right?

RT 2-26-13, pp. 28-29 [Not sure of time elapsed between when Juarez accessed his email account and when Arias accessed it]:

- *Id.*, p. 30 [Not sure, not an hour, minutes]
- *Id.*, p. 30 [Did not know how long, not five minutes]

RT 2-27-13, pp. 80-81

MR. MARTINEZ: That we talked about nothing else other than gas cans so far. Is there anything else that you believe we talked about?
MS. ARIAS: I wasn't sure. That's why I asked.
MR. MARTINEZ: Ma'am, is there anything else that we have talked about --
MS. ARIAS: I'm not sure. That's why I asked.
MR. MARTINEZ: I'm asking you, is there anything else that has been posed to you other than this gas can issue involving Mr. Brewer?

RT 2-27-13, p. 81

MR. MARTINEZ: And are you saying you did not tell him that you were going to go to Mesa when you spoke to him?
MS. ARIAS: That's right. I told them after.

RT 2-27-13, pp. 81-82

MR. MARTINEZ: I'm asking you -- the question is this, isn't it true that before you went on the trip you told him you were going to Mesa?
MS. ARIAS: No. That is not true.

RT 2-27-13, p. 82

MR. MARTINEZ: All right. Isn't it true that as part of one or another conversation that you had, you told him that you were going to go to Arizona to visit some friends?
MS. ARIAS: No. I said Utah.
MR. MARTINEZ: You didn't – I'm asking you whether or not it's true that you told him that you were going to Mesa to visit some friends before you took the trip?
MS. ARIAS: No. I said Utah.

MR. MARTINEZ: I'm not asking what you said, am I?
MR. NURMI: Objection. Badgering, Your Honor.
THE COURT: Overruled.
MS. ARIAS: Yeah. I think you are.
MR. MARTINEZ: You're thinking my question to you is asking you what you told them, is that what you think it is, whether or not you told him that you were going to go to Utah? Do you think that's what the question was?
MS. ARIAS: No.
MR. MARTINEZ: The question was, isn't it true, ma'am, that you discussed with Mr. Brewer before the trip that you took that you were -- needed the gas cans to go and visit friends in Mesa, Arizona? What is your answer to that?
MS. ARIAS: My answer is, no, I told him Utah.

RT 2-27-13, p. 83

MR. MARTINEZ: And I'm asking you whether or not you think I'm asking what you told him. Am I asking you what you told him?
MS. ARIAS: That's kind of my interpretation of it. It's a yes or no question.
MR. MARTINEZ: It is a yes or no question, isn't it?
MS. ARIAS: And I answered no three times, yes.
MR. MARTINEZ: And you also added something three times, didn't you?
MS. ARIAS: Yes. The truth.
MR. MARTINEZ: Am I asking whether you're telling the truth?
MS. ARIAS: You have asked me that.
MR. MARTINEZ: Am I asking you right now if you're telling the truth?
MS. ARIAS: I don't know, are you?
MR. MARTINEZ: Well, have you heard that question prior to you saying that?

MS. ARIAS: Yes.
MR. MARTINEZ: You heard that question and immediately before, I'm telling the truth, the prosecution asking you if you were telling the truth, you heard the prosecutor say that?
MS. ARIAS: Not immediately.
MR. MARTINEZ: Pardon?
MS. ARIAS: Not immediately.

RT 2-27-13, pp. 83-84

MR. MARTINEZ: So the answer is yes or no. Did you hear the question immediately before you gave the answer that are you were telling the truth?
MS. ARIAS: No. Not immediately.

RT 3-13-13, pp. 36-37 [Whether T.A. had a knife in his hands].

RT 4-4-13 #2, p. 111 [Martinez asked repeatedly if LaViolette ended her testimony talking about a continuum of abuse and telling the jury that Arias was a victim of abuse despite the witness answering that the continuum was not the only thing she used].

RT 4-4-13 #2, p. 129

MR. MARTINEZ: According to you, the wicked stepmother, in [Arias's] circumstance, is her mother, right?
MS. LAVIOLETTE: I didn't say that.
MR. MARTINEZ: No. I'm the one that's asking the question. Isn't that true?

RT 4-8-13, p. 160

MR. MARTINEZ: Ma'am, in this case you actually are biased in favor of the defendant, aren't you?

MS. LAVIOLETTE: Do I believe the evidence that supports domestic violence? Yes. I think bias is an incorrect word, Mr. Martinez.
MR. MARTINEZ: No. That is the correct word. Isn't it true that you are biased in favor of the defendant, yes or no?

RT 4-8-13, pp. 43-44 [Repeating question about whether LaViolette used a guideline in the case when she answered multiple times that she used it to testify, but not to assess Arias]. *See also* RT 3-28-13, p. 20 [LaViolette had previously testified that she did not use the continuum exclusively when trying to decide what kind of a relationship people are in; it was more of a framework she had in her head or a way of thinking].

RT 5-1-13 #1, p. 204

MR. MARTINEZ: And in terms of coming in here and testifying about -- and criticizing Janeen DeMarte's work, you were contacted less than a week ago, right?
DR. GEFFNER: No, sir.
MR. MARTINEZ: Was it two weeks ago?
DR. GEFFNER: No. Unless you want to keep guessing, I can just tell you.
MR. MARTINEZ: Well, sir, didn't you and I have an interview?

RT 5-1-13 #1, p. 205

MR. MARTINEZ: At that time, I asked you when was it that you had been contacted about coming in here to testify. Do you remember me asking you that?
DR. GEFFNER: Yes, sir.

* * *

MR. MARTINEZ: So if Monday is it (*sic*) about a week away and now here we are on Wednesday, that's less than

two weeks away that you were contacted about testifying here, right?
DR. GEFFNER: You asked two different questions.
MR. MARTINEZ: No. I'm asking, sir: Isn't it true that you were contacted and started reviewing the documentation less than two weeks ago?
DR. GEFFNER: No. That is not correct.
MR. MARTINEZ: So you started reviewing then -- so when you told me that, you were in error when we had that interview, right?
DR. GEFFNER: No. You asked a different question.
MR. MARTINEZ: Sir, and with regard to reviewing these materials for the critique of Janeen DeMarte's work here --

RT 5-1-13 #1, p. 206

DR. GEFFNER: Yes.
MR. MARTINEZ: -- you started that, according to you, less than two weeks ago, right?
DR. GEFFNER: No, sir.
MR. MARTINEZ: So you knew you were going to testify in this case previous to two weeks from now?
DR. GEFFNER: No, sir.

APPENDIX 26

APPENDIX 26

Examples of speaking objections.

RT 1-9-13, p. 117

> MR. NURMI: Mr. Burns, I think you might have already answered this question, but I was afraid it might have gotten lost in the other voices speaking.
> MR. MARTINEZ: I'm going to object about the speaking voice. If he has something to say to me, he can say it directly.
> THE COURT: State the next question.

RT 1-29-13, pp. 17-18

> MR. MARTINEZ: I'm going to object as non-responsive. He was asked how he happened to know her. We don't care about his anomalies.
> THE COURT: Sustained.
> MR. NURMI: May we approach, Your Honor.
> THE COURT: You may.
> (Sidebar discussion.)
> MR. NURMI: I don't know if the Court heard the laughter in the courtroom after Mr. Martinez' objection. But I'm concerned about the gallery -- outbursts in the gallery. I'd like to have the jury retired to the jury room, have the Court admonish the gallery not to make any more audible comments, clearly audible from all the way up to me at the podium.
> THE COURT: Well, that's the first time it happened. I don't know if it was because of your statement or something else happened in the back of the courtroom. If it happens again, I will do that. And I'll admonish the gallery at the break. But let's proceed forward. If there's

any are another (*sic*) issues like that then I'll excuse the jury.
MR. NURMI: Judge, just for the record I heard it after Mr. Martinez' objection.
THE COURT: All right. And again, I did hear laughter, small laughter in the back. And again, I don't know if it was because of the statement or something else happened. But I'll certainly be very diligent and monitor it.

RT 2-5-13, p. 93:

MR. NURMI: Did he attempt to kiss you again?
MS. ARIAS: No. It seemed very --
MR. MARTINEZ: Objection. Assumes he attempted to kiss her. The first time she said he did not.
MR. NURMI: No. Actually that's not what she said.
THE COURT: Overruled. You may answer the question.

Cf. RT 2-5-13, p. 91 [Arias testified that T.A. leaned in like he wanted to kiss her, then stopped].

RT 2-5-13, p. 107 ["Martinez: Objection. Assumes facts not in evidence. She didn't say he called, they talked."].

RT 2-7-13, p. 64

MR. NURMI: And fear is probably the most powerful element that --
MR. MARTINEZ: Objection. Leading. I don't want to hear what counsel felt about it.

RT 2-11-13, p. 99 [After Martinez objected, Nurmi responded, and rather than the court making a ruling, Martinez stated, "No, he can't testify. She can, not him."].

RT 2-11-13, p. 100 ["Martinez: Objection, misstates the testimony. She didn't say that she defied him. He was just upset about it. The characterization is what's objectionable].

RT 2-11-13, pp. 109-110

> MR. MARTINEZ: I'm going to object as non-responsive.
> MS. ARIAS: I'm sorry.
> MR. MARTINEZ: We're talking about an argument and she wants to tell us about the journal and that sort of thing. She's just not being responsive. So objection, beyond the scope of the question, non-responsive.
> THE COURT: Restate your question.

RT 2-11-13, p. 115 ["Martinez: Again, beyond the scope. She was asked if she was called any names. Now we're talking about the family."].

RT 2-11-13, p. 154 ["Martinez: Objection, leading. Now he's introducing embarrassment."].

RT 2-12-13, pp. 54-55

> MR. NURMI: There was also some discussion about [T.A.] -- and I'm paraphrasing here -- tying you to a tree and putting it in your ass all the way. What was that a reference to your understanding (*sic*)?
> MR. MARTINEZ: Objection, lack of foundation. Is he talking about the time where she said she liked it?
> THE COURT: Rephrase the question.

RT 2-12-13, p. 55

> MR. NURMI: What was that a reference to?
> MS. ARIAS: That was a reference to a photo shoot that he wanted to do out in the woods somewhere and he had a

fantasy that he had had for quite some time since before I met him where he wanted --
MR. MARTINEZ: Objection, lack of foundation. How would she know? Hearsay.
MR. NURMI: She's describing it, Your Honor?
MR. MARTINEZ: Judge, the way it works is I make the objection and you rule.
THE COURT: Yes. Follow up with another question. Sustained.

RT 2-19-13, p. 5 [Interrupting Arias's answer, Martinez stated, "I'm going to object. Again, she's asked if she intended to, not what she was doing before."].

RT 2-19-13, p. 48

MR. NURMI: Why are you concerned if this message inadvertently goes to [T.A.]?
MS. ARIAS: Because of how he had reacted in the past when I told him about -- right before moving -- when I told him all about Abe and he got really upset. I told him about Sam --
MR. MARTINEZ: Again, I'm going to object. How did it affect her. We don't need a litany.

RT 2-19-13, p. 155

MR. NURMI: After this so-called sex took place, you cleaned yourself up?
MR. MARTINEZ: Objection. Mischaracterization (*sic*) what took place. It was sex.

RT 2-20-13, p. 66:

MR. NURMI: After you have that experience, did you forgive yourself for not escaping?
MR. MARTINEZ: Objection. Assumes facts not in evidence that she was escaping.

MR. NURMI: She's already testified to that, Judge.
MR. MARTINEZ: Judge, I make the objections. The way it works, I make the objections, you decide.

Cf. prior testimony on this issue:

- RT 2-20-13, p. 9 [Arias testified she did not know why she had not tried to just get away or run, but she knew that T.A. had caught her the last time she had tried to run away];
- RT 2-20-13, p. 13 [During the prior incident, Arias had tried to run away down the hallway, but T.A. caught her].

RT 3-19-13, pp. 177-178 [Speaking objection to disagree with facts in the question Willmott asked].

RT 3-19-13, p. 195

RT 3-26-13, p. 16

RT 3-26-13, p. 123

RT 4-2-13, p. 147 [Objection disagreeing with expert's description of dynamics between Arias and T.A.].

RT 4-4-13 #2, p. 29 [After LaViolette testified that she reviewed information about T.A.'s childhood and some of that information came from T.A., Martinez objected: "Objection. Misstates the testimony. It did not come from him."].

RT 4-8-13, p. 48 ["Martinez: Judge, she's being non-responsive. This is the issue we discussed."].

RT 5-1-13 #1, p. 94 [Speaking objection to disagree with facts in the question Willmott asked].

RT 5-1-13 #1, p. 96 [Speaking objection stating Willmott did not follow the court's instruction from the bench conference].

RT 5-1-13 #1, p. 100 [Speaking objection implying Willmott was misleading].

RT 5-1-13 #1, p. 107

RT 10-28-14, p. 75

RT 11-12-14, p. 18

RT 11-12-14, p. 64 [Nurmi asked if a witness had given contradictory statements about having engaged in sexual behavior with T.A. Martinez stated, "Objection. Mischaracterizes the evidence. She was never asked at the interview about that."].

RT 11-12-14, p. 99 ["Martinez: I'm going to object to the writings or highlights that are there. I don't know if a copy of that -- somebody highlighted that, I believe comes from defense Counsel."].

RT 11-17-14, p. 69

RT 12-16-14, p. 114 [Martinez objected, "Relevance. It is just smearing the victim."].

RT 12-17-14 #1, pp. 48-49

RT 12-17-14 #2, p. 11

RT 12-17-14 #2, p. 101

RT 12-17-14 #2, pp. 176-177

Martinez used a speaking objection to assert facts he had unsuccessfully argued at a bench conference. RT 1-20-15 #1, p. 65 ["Objection, speculation as to whoever put the numbers, what their motivation was."].

Cf. prior argument related to the issue:

- Willmott objected that Martinez's speaking objections about the lack of foundation about number along the side of an exhibit was not well taken. *Id.*, p. 59.

- During a bench conference, Martinez argued someone had altered a document the witness was relying on, to which Willmott responded she had placed the numbers on the exhibit and the witness already testified they assisted him in reading the texts in order. *Id.*, p. 60.
- Martinez wanted the witness to testify that defense counsel placed the numbers and Willmott objected that Martinez was trying to insinuate to the jury that defense counsel did something inappropriate, after which the court ruled that whoever put the numbers on was not relevant if the numbers accurately reflected the order of the texts. *Id.*, pp. 61-62.
- Willmott noted she would take the witness through the times on the texts to address the issue. *Id.*, p. 62.

RT 1-21-15, pp. 29-30 [Defense counsel questioned Geffner about Arias's coworker's denial that she was inappropriate or sexual with customers, to which Martinez objected his disagreement, "Objection. That doesn't go to the issue here about what we are discussing. This is just --"].

RT 1-26-15 #2, p. 50

RT 1-27-15, p. 131 [Where Martinez objected and admonished defense counsel].

RT 2-19-15 #1, pp. 11-13

APPENDIX 27

APPENDIX 27

Examples of disregarding court rulings by repeating himself after the court sustained an objection to him or overruled his objections.

RT 2-26-13, p. 68

> MR. MARTINEZ: Right. And so would you like it if I stood over here like your Counsel was asking you the questions? Would that make you feel more comfortable?
> MR. NURMI: Your Honor, improper comment on Counsel.
> THE COURT: Sustained. Rephrase.
> MR. MARTINEZ: Would it make you feel more comfortable if stood over here and used the lectern, ma'am?

RT 3-13-13, p. 35

RT 3-13-13, pp. 136-137

Repeating questions accusing the witness of changing test scores and not disclosing information.

- RT 3-21-13, p. 162 [Question: When being questioned about the scoring of a test he administered to Arias, Dr. Samuels testified that the exhibit in question had two totals on it because he calculated the score twice];
- *Id.* [Question: In his next question, Martinez accused the witness of changing the scores, which Samuels denied];
- *Id.* [Ruling: The defense objected to the question, which the court sustained];
- *Id.* [Question: Martinez's next questions were, "Sir, that's a change, isn't it? Yes or no?" and "And you only disclosed one of the changes, didn't you?"];
- *Id.* [Ruling: The defense objected to the latter question as it related to disclosure issues, because the item had not been disclosed at all and the court sustained the objection];
- *Id.*, p. 158 [Ruling: The court previously ruled that Martinez could ask about the substance of the raw data related to the test administered by the expert, but not about its disclosure by and amongst the attorneys].

RT 3-21-13, pp. 183-184 [After a sustained objection, Martinez returned to another question about Samuels's alleged failure to disclose what Martinez called a second test score].

RT 3-28-13, p. 92

RT 4-8-13, p. 127

RT 4-8-13, p. 167

> MR. MARTINEZ: And one of the questions here is why is it that you felt so strongly about her that you felt the need to coddle her by giving her books and apologizing?
> MS. WILLMOTT: Objection. Argumentative and mischaracterizes her testimony.
> THE COURT: Sustained.
> MR. MARTINEZ: Why is it that you felt the need to do that?
> MS. WILLMOTT: Same objection.
> THE COURT: Overruled.

RT 4-8-13, pp. 194-197 [During a bench conference, the parties addressed Martinez asking LaViolette questions regarding part of her notes regarding Arias's manifesto; Martinez wanted to elicit that one page had written on it, "important," "manifest" (*sic*), "25 pages"; the defense objected that it was not clear that the note about important modified the manifesto as opposed to anything else on the note page; the court ruled that Martinez could ask LaViolette ***why*** she wrote "important" on the note page; Martinez instead asked LaViolette a series of questions about ***if*** she wrote "important" on the page and if the manifesto was mentioned on that same page].

RT 5-15-13 #2, pp. 65-66 [Improper closing argument where Martinez argued about what the victim was thinking about as he was murdered, defense objected, the court sustained the objection but Martinez went back to the same argument, stating, "Who is he thinking about?"].

RT 5-21-13 #2, pp. 90-92 [Improper closing argument where Martinez returned to argument against Arias having a friendship that could be used in mitigation as that

supposed friend was not present in court for "whatever reason" and Arias was a known liar after sustained defense objection].

RT 10-21-14, p. 93 [Improper opening statement where Martinez returned to argument that in deciding whether Arias's age was a mitigating factor, the jury should also consider her age to that of her victim after sustained objection from the defense].

RT 10-28-14, p. 111 [Martinez asked Detective Flores if he had been asked a question on cross about his opinion on whether Arias was mentally ill and asked Flores what his opinion actually was, to which the defense objected for foundation and speculation and the court sustained the objection, and Martinez then stated to Flores had been asked that question and been allowed to answer it previously, followed again by the question whether Flores believed she was mentally ill].

RT 10-28-14, pp. 117-118 [Martinez asked Flores if he had ever had sex with defense counsel, the defense objected, the court sustained the objection but refused to allow the parties to come to bench did not strike the question or answer or instruct the jury, after which Martinez asked Flores, "Sir, you were asked about that, weren't you? Now with regard to that, were you naked on the witness stand?" and "Had you just had a sexual experience with the person asking you the questions?"].

RT 11-20-14, pp. 137-138 [Dr. Fonseca testified that T.A. brought a conversation back to sex, not incorporating other aspects of the relationship with Arias, to which Martinez then asked, "Or it could just be that Ms. Arias is just somebody who has been described as being in heat and he doesn't like that?", causing a defense objection, which the court sustained and struck the testimony on defense request, to be followed by Martinez showing the witness an exhibit and asking if she had read documentation that described Arias as "in heat"].

RT 11-24-14, pp. 139-142 [Martinez asked Dr. Fonseca if she was biased as her answer was "attempting to excuse the defendant's two stories," when he had asked her whether it was important that Arias reported that she saw T.A. looking at a photo or at an image on a computer and she had answered that she did not know if Arias had interposed the word image with the word photograph and whether T.A. was on a computer versus looking at a photograph was not important in her analysis of the dynamics between Arias and T.A.; the defense objected; the court sustained the

objection; and, Martinez's next question was, "It shows you're biased, doesn't it, your answer shows you're biased, doesn't it?"].

RT 1-22-15 #1, p. 103 [Martinez asked the witness if Arias had given two different dates regarding an issue with her finger, to which the Court sustained an objection from the defense that the witness lacked knowledge of whether Arias had given different dates, which Martinez followed by asking, "Well, this information as to the broken finger on January 22, 2008, show me in a document that that is when that happened. Show me in a document other than one provided by the Defendant. Show me."].

RT 2-4-15 #2, p. 20 [Martinez asked Dr. DeMarte if the conduct at the Purple Plum was an example of Arias idealizing people, to which the court sustained a defense objection, but Martinez's next question was, "You said no, right?"].

RT 2-12-15, pp. 66-70 [Martinez repeating questions about discovery issues and when information was provided to defense counsel].

RT 2-19-15 #1, p. 52

APPENDIX 28

APPENDIX 28

Examples requesting a witness comment on the veracity of another witness.

RT 2-26-13, p. 52 [Asking Arias if Samuels had testified that she did not tell him about specific sex acts, that meant she was not truthful to him].

RT 2-27-13, p. 139 [Asking Arias, after she gave a particular answer, whether she heard the contradictory testimony of a witness police officer].

RT 3-7-13, p. 149 [Asking Arias, after she testified she returned a purchased item to a store for, if it would surprise her that the store did not have a receipt to show she did so].

RT 3-13-13, p. 135 [After Arias testified she would not classify a particular conversation an "argument," Martinez asked her if she knew what a prior witness had testified about that incident].

RT 3-25-13, pp. 60-61 [After Samuels's testimony that Arias, post-trauma, had had trouble focusing to read, Martinez testified that Arias told the jury she had read the Book of Mormon and asked Samuels about it].

RT 4-8-13, p. 200 [Asking LaViolette if she was calling another person a liar and that she had no reason to believe the other person was not telling the truth].

APPENDIX 29

Prosecutor Juan Martinez Speaks Out On Jodi Arias Case, Death Threats & Other Wild Cases

NASHVILLE, TN — Juan Martinez is known to most ID Addicts as the prosecutor in one of the most famous modern trials, of one of the most famous modern criminals — Jodi Arias.

On Saturday, May 5, 2018, he was a guest speaker at Crime Con in Nashville, Tennessee, where he elaborated on the surprising difficulties involved in prosecuting a defendant who is claiming she committed murder in self-defense.

Related: Who Is Juan Martinez? The Controversial Prosecutor Who Helped Take Jodi Arias Down

Before Martinez delivered his presentation, he found time to talk to CrimeFeed about Jodi Arias, why he prefers to talk on the phone, and other noteworthy cases he's worked on.

CrimeFeed: I'm sure it won't be a surprise that I have a few Jodi Arias case questions. Can you tell me about finding the camera in the washing machine?
Martinez: Detective Flores indicated to me that there was something downstairs in the washing machine that he thought was of some interest. The only thing I noticed, to be honest, was a load of laundry there. Until he pointed out that in the load of laundry was a camera. His comment was something to the effect that, *"Well, we're probably not going to get anything from it, but we're going to see what we can get from the camera and whether or not we can develop any photographs from it."*

What I find fascinating about that is that after having just murdered Travis, that she was even of sound enough mind right after to think, *"Let me run the camera through the washing machine."* It's kind of a brilliant way to try to destroy it.
That's one of the things about Jodi Arias — that I guess people don't seem to give her enough credit. Throughout this whole thing, it was never a situation where she ever lost control of what her ultimate goal was. She was very much a planner. it didn't surprise me in looking back that that's something that she did.

Related: What Happened To Jodi Arias' Other Boyfriends & Ex-Lovers?

I think you also brought to light the importance of the evidence of the gas cans.
I think the issue of the gas cans was something that was not investigated by the

police. So, I started looking at some receipts showing that she bought a five-gallon gas can in Salinas, California. That didn't make sense to me. Then there were some notes indicating that she had, before the trip, tried to borrow gas cans from an ex-boyfriend. Who takes a trip and brings gas cans with them? Nobody that I know. So, that sort of began to give me an inkling of how well-prepared she was and how much she had actually planned this.

I started looking looking at the capacity of the gas cans and the kind of car that she had, and then I knew that that was part of the plan. She would be able to stand up before any authorities whether it be in California or Arizona — or I guess she did in court before God because she swore to tell the truth — that she could say, *"Well, I never filled up in Arizona. I never put gas in the car in Arizona."*

I'm sure she was aware there are usually cameras at gas stations.
Right. It would have been interesting to see, for example, even if she does do the thing with the gas cans and avoids being seen at a gas station, it would be interesting to see where she stopped to use the restroom. But there's a lot of empty desert out there!

Related: Jodi Arias: 4 Killer Books About The Notorious Boyfriend Slayer

How unusual is it that Arias testified for 18 days? Is that at all normal? Does that happen?
That is beyond the norm. I don't know of any other case where a defendant has actually been on the witness stand for 18 days. It wasn't ... 18 days of unfilled time or busy testimony. It was testimony that touched on the premeditation aspect of the case and that also touched on what happened at the scene. To me, I thought that it was quite the performance on her part.

It took so long to come to trial, in part, because initially she indicated that she wasn't there.

It was just her lies, and changing the story?
Well, it was just the way she manicured those lies so that they appeared very appropriate for the jury. So, that took some time, so it was a structuring kind of process. And not only going through the lies, but making them believable. One of the things that I always think is that if I were to have asked her, for example, does the sun rise in the East? Most of us would know that that's a fact that no one can dispute, but she would probably have said to me, *"Well, in my room I have a West facing window, and every morning sunlight comes in, so I can't tell you if the sun rises in the East."* That's the kind of logic that she seemed to apply.

Related: CrimeFeed Book Club: The Untold Story Of Putting Jodi Arias Behind Bars

Speaking of the courtroom, you're known for a dramatic and maybe a

little harsh style in the courtroom. I've read criticism of the way you interacted with her, but also that that was your strategy. Can you explain that a little bit?

Right. I mean, people had criticized me for being a bit harsh, but I would think that I would say that I'm appropriate. One of the things that we have to keep in mind is that we're talking to individuals who have, in this particular case, savagely murdered somebody. So, it wasn't inappropriate. I think it was wholly appropriate for me to attempt to deal with somebody that was so violent and was so willing to lie in an appropriate fashion. For her, that perhaps meant cutting her off a little bit, perhaps raising my voice a bit. But I think that in the scheme of things, that's what was needed in this particular case, because I can envision a situation where if I had come up there with just scripted questions and waited for her to finish, that it would have been the Jodi Arias acquittal show.

Is it just that she has such an ability to manipulate, or such charisma that she would have been able to have more of an influence in the way people saw her?

Self-defense cases, as a general rule, are the most difficult cases, because you have two people that were present when this happened, and one is dead. The other person is giving a narrative as to what *they* said happened. So, if she had been able to control the flow a bit better or a bit differently, I have the belief that there is a strong possibility that she would have been acquitted outright. So, I needed to show that even though she was somebody that came across as soft spoken at times, and that others would describe as not being unattractive, that even somebody like that can commit this type of crime.

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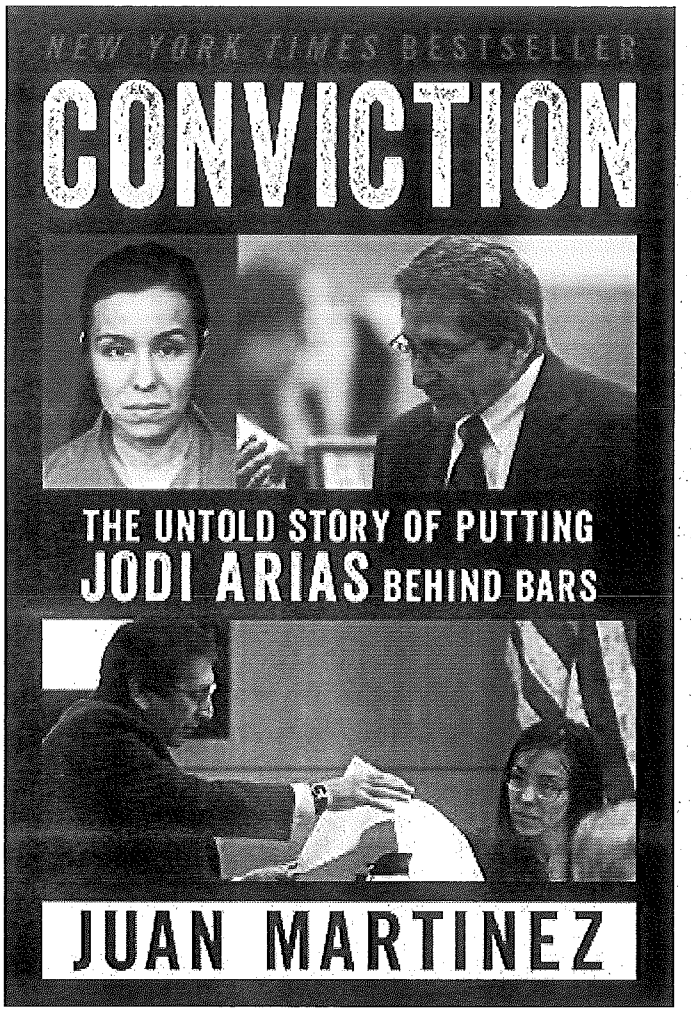

Conviction by Juan Martinez/front cover image [Amazon]

What do you think about the fact that Arias has a lot of supporters and even fans who buy her artwork and send her money?
There are Facebook pages, and she continues to have her supporters, but again it's not surprising. She's charismatic. That's one of the things that I have always indicated — that she's very intelligent, charismatic. People are willing to believe what she has to say. I can't be critical of people that follow her. All I can do is point out that she is somebody who has been convicted of first-degree murder. Whether they choose to accept it or not, that's something that she did.

You don't think you can be critical of them?
I try not to be. I always try to emphasize the positive in things. They're entitled to their opinion, although the jury has spoken and has indicated that they're wrong, and that whatever they choose to believe is not something that the evidence showed, and it was beyond a reasonable doubt.

If they want to believe that somehow she's innocent, go ahead and believe that if you will. I'm not going to worry about it. As I said, we all followed the rules. There's a system in place. And I look back on him [Travis Alexander] , the way that she tarnished his reputation, and the way that she went after him....

She called him a pedophile during trial, so I'm saying that, because my comment was going to be, *"That poor guy."* I know that a lot of people thought that perhaps the sexual content of their relationship was inappropriate. Even though that may be, they were both willing participants, and if she didn't like it, she could have just walked away. It happens every day, all the time, and nobody needs to get killed. So, I do believe that given what I know about the case and the intimacies — what a poor guy. What an absolutely poor guy. As the trial went on, I felt much more sorry for him. The character assassination was ... Sometimes when I think about it, I think he's lucky that he's dead, so he doesn't have to hear this.

Related: Musical Murderers: Watch Jodi Arias & 6 Other Killers Caught Singing On Camera

But his friends and family had to go through it and hear it.
They did. Without indicating what they told me, it was clear from their reactions out in the courtroom that this was very difficult for them. Somebody that they obviously loved had been murdered in such a horrific fashion. Not once, not twice, but three times. Then to have him killed again, if you will, in the courtroom that way. I am sure that was probably much more difficult than any of us can imagine.

Now, you also have had accusations leveled at you. I keep reading about charges and accusations that you've dealt with, maybe six different times, and then they're always dismissed.
If I talk about things like that, then it empowers the people that may have made the allegation. So, I just steer away from making any comments about that. I know what you're telling me is from the press, and that's what they've reported. So, I just leave it at that and stand on what has already happened.

I will say that there is a process in place to deal with these sorts of things, and as with a trial where all the safeguards are in place, and all the rules were followed, and she was ultimately found guilty of first-degree murder, I avail myself of the process, and I follow the rules that are in place for that.

And all the charges were eventually dismissed?
Like I said, I try not to comment on it, but that's what has been reported. Correct.

Related: Jodi Arias Sues Former Defense Attorney Over Juicy Tell-All Book

So, Arias' lawyers just missed the deadline for appealing her case. That seems like a big thing. How important is that in terms of her appeal?
There are deadlines in place for a reason. I believe that they should be followed, but I know that they explained their reasons to the court of appeals and even though they were late ... the court of appeals ultimately granted them an extension.

If she is granted an appeal, is that a smaller, behind-closed-doors situation or is that another big trial?
The deadline that was missed was her deadline to file the paperwork setting out the reasons why she believes the lower court committed error. Then of course the attorney general responds, indicating why they believe that she may be right or she may be wrong, or the court should just say that it's harmless what happened at the lower court level. After that, the court of appeals schedules oral argument. I believe every side has 20 minutes in which to make their argument.

After that, they will render an opinion. Whether it's to uphold what happened or affirm what happened at the lower court, or whether or not to reverse it.

Arias talked to a cell mate about having you killed. Like, she was going to do a mafia-style hit and have someone slit your throat if she got the death penalty. I can't imagine what that would feel like for you to hear that.
I don't really pay too much heed to those kinds of things, because it's not the first time that something like that has been said. So, if I worried about things like that, then I would probably worry about it while the matter is being prosecuted or while I was in court, and it could potentially affect the way I present a case, but I know what you're talking about. I have heard about it, but it's not something that I spent much time thinking about or worrying about.

Related: Former Cellmate Claims Jodi Arias Had Help When She Killed Travis Alexander

The cellmate also said that rooming with Arias was like Hell on earth, and she was very glad when she got out of that situation. She said that she was trying to manipulate everyone around her and trying to get everyone to listen to and eventually believe her side of the story, and it was all she talked about.
It doesn't surprise me. The way she seemed to describe it is ... what she did on the witness stand. She kept going over the same things over and over, hoping that the jury would believe what she had to say.

I'm sure you've worked on a lot of cases, but Jodi Arias is what everybody wants to talk about. I'm curious, if you had never been involved with the Jodi Arias case, what other case would you consider your biggest or most interesting or noteworthy?
There was one where we alleged that the defendant had convinced his wife that she was going to die, and that he had spoken to God about it and God had told him that she was going to die on a certain day. They were of the Mormon faith, and so he was using — I say misusing — that to say that he'd spoken to God and, as head of the household, he was entitled to speak the truth as conveyed to him by God. So, the wife was very devout. Believed him. They actually went up to Utah, because that's where she wanted to die and I think went to a place called Timpanogos Cave's National Monument Park. Lo and behold, on that day in Utah, she did fall off a cliff — but it wasn't serious. So, they flew back, and then

the next day after they flew back, she was found in the tub dead.

That one was just a very difficult case, but they ultimately found him guilty of the manslaughter of his wife. The fact that she could believe that he was speaking to God, and that she was going to die on a certain day, and that he had already picked a very young girl to be her successor. I always think of that case as probably one of the more interesting ones that I had. You can find it. The name of the defendant is Douglas Grant.

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Do you think she actually did just stumble and fall off that cliff or do you think he pushed her that day?
I don't know. I think that because she was so devout, she wanted to make it true somehow.

Do you have a headshot you could send me to use with this article?
No, I don't, but you can take one. And can you send it to me? I'll use that as my headshot now, if you don't mind.

Sure, what's your email address?
I don't have one. Message it to me on my phone.

You don't have an email address?
No, I don't have a computer.

How do you do your job without a computer?
Well, I have one for work, but I like to talk on the phone. If you email me, I'll call you back. If you text me, I'll call you back. I like talking on the phone; you make friends that way.

Watch Investigation Discovery's* Jodi Arias: An American Murder Mystery *on ID GO now!

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Main photo: Juan Martinez [Christine Colby]