

ARIZONA SUPREME COURT

In re Termination of Parental Rights
as to B.W.

Arizona Supreme Court
No. CV-24-0079-PR

Court of Appeals
Division One
No. 1 CA-JV 23-0202

Maricopa County
Superior Court
No. JS520409

APPELLANT JASON M.'S SUPPLEMENTAL BRIEF

Sherri McGuire Lawson
Maricopa County Legal Defender

Jamie R. Heller
Deputy Legal Defender
State Bar No. 023930
222 N. Central Avenue, Suite 8100
Phoenix, Arizona 85004
(602) 506-5800
(602) 506-0921 (fax)
Appeals-JDJS@maricopa.gov
Jamie.Heller@maricopa.gov

Attorneys for Appellant, Jason M.

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ISSUE FOR REVIEW

Did the appeals court misinterpret and misapply the just cause rebuttal under [A.R.S. § 8-531\(1\)](#)?

INTRODUCTION

Because both the Arizona and federal constitutions protect a parent's fundamental right to parent, Arizona public policy supports children having relationships with both parents, and the importance of fundamental fairness in the law, this Court must: (1) prevent custodial parents from using the judicial system as a weapon; (2) clarify the meaning and application of "just cause" in [A.R.S. § 8-531\(1\)](#) to ensure that it is not meaningless; and (3) set forth guidelines for applying "just cause" in abandonment cases. Based on the unique circumstances Jason M. endured, fundamental fairness, public policy, and common sense, he requests that this Court vacate the decision in *In re Termination of Parental Rights as to B.W.*, 1 CA-JV 23-0202, [2024 WL 1172862](#) (March 19, 2024) (Memorandum Decision), reverse the termination of his parental rights to his son, and allow this case to be litigated in family court. Alternatively, this Court should remand the case to the juvenile court to reconsider the case in light of the new standard it sets forth.

ARGUMENTS

- I. **Because parents have a fundamental right to parent their children, this Court should prevent custodial parents from using the judicial system as a weapon to permanently terminate that fundamental right.**

This Court should prevent custodial parents from using the judicial system as a weapon against noncustodial parents. This case is a stark example of why such guardrails are essential. The Arizona and federal constitutions protect a parent's fundamental right to raise one's own children. *Santosky v. Kramer*, [455 U.S. 745](#), 747-48 (1982); *Titus S. v. Dep't of Child Safety*, [244 Ariz. 365](#), 369 ¶ 17 (App. 2018); [U.S. Const. amend. XIV](#); [Ariz. Const. art. 2, § 4](#); [A.R.S § 1-601](#). The fundamental right to parent cannot evaporate based on a custodial parent's revenge tactics and abuse of the judicial system. Allowing such a result ignores common sense, public policy, and fundamental fairness – the cornerstone of due process. *State v. Melendez*, [172 Ariz. 68](#), 71 (1992) (finding “[t]he touchstone of due process under both the Arizona and federal constitutions is fundamental fairness”).

Here, Jessica W. (Mother) used the judicial system as a weapon against Jason at least three times by: (1) engineering the Incident that led to Jason's first-degree murder charges; (2) filing her Termination Petition four months after Jason initiated a family court case; and (3) refuting Jason's testimony

that he signed a document acknowledging paternity when B.W. was born and then finding the signed document when her Termination Petition was at risk of being dismissed.

First, Mother used the judicial system as a weapon against Jason by facilitating the events that led to the fatal shooting in August 2015 (the Incident) that resulted in Jason being charged with first-degree murder. The record demonstrated: (1) in August 2015, Mother and Jason were arguing about parenting time with B.W. (4-12-23 Transcript [Tr.] at 42-43; Exhibit [Ex.] 32); (2) after the argument, Mother's internet search history established her desire for revenge against Jason (Ex. 12); (3) Mother had stolen Jason's cell phone to obtain Williams's¹ phone number (4-12-23 Tr. at 24, 35², 36); (4) Jason filed a police report regarding the stolen cell phone (*id.* at 35); (5) Mother took pictures of Jason's truck and license plate (*id.* at 36-37); (6) Mother notified Jason she was communicating with William (5-17-23 Tr. at

1. William was the husband of Jason's girlfriend and victim of the Incident. (Ex. 12.) Mother was aware that Jason's girlfriend was married to William. (*Id.*; 4-12-23 Tr. at 36.)

2. Jason's criminal attorney testified during the juvenile termination hearing that during the first-degree murder trial Mother "admitted on the stand and to the police . . . she had gone into his house without his permission and taken his phone[.]" (4-12-23 Tr. at 35.)

24-25; Ex. 12); and (7) Mother was on an active call with William during the Incident (Ex. 12; 4-12-23 Tr. at 23, 36). Mother was the State's key witness against Jason regarding the Incident (4-12-23 Tr. at 34; 5-17-23 Tr. at 27), Mother and Jason both testified during the criminal trial, and their testimony was diametrically opposed (4-12-23 Tr. at 33-34.). Jason was found not guilty (Electronic Index of Record [IRA] 70 at 5), which strongly suggest the jury found Jason more credible than Mother.

Mother's significant role in facilitating the underlying Incident resulted in Jason's 6-year battle for his freedom and estrangement from his son during that time. The record unequivocally demonstrated Mother's desire for revenge against Jason. (Ex. 12; 4-12-23 Tr. at 42-43.) Any reasonable person in Jason's position would have followed his criminal attorney's advice after being arrested three separate times by a S.W.A.T team at gunpoint despite the facts that Jason had retained counsel and attended all hearings (4-12-23 Tr. at 47-48), and when he initially faced the death penalty, and then faced life in prison (*id.* 46). Thus, the juvenile and appeals courts findings erred by condoning Mother's illegal and revenge tactics and by ignoring that Mother was the **but-for cause** of the Incident. (IRA 70; Memorandum Decision.)

Second, Mother used the judicial system as a weapon when she filed a Termination Petition against Jason (IRA 1) four months after Jason initiated a family court case (Ex. 12). Mother – who was not facing first-degree murder charges – could have initiated a family court case or juvenile court case during Jason’s 6-year battle for his freedom. Yet, she waited until B.W. was seven years old (IRA 1), she had never spoken to B.W. about his father (3-30-23 Tr. at 37, 50), and she sought termination only after Jason initiated a family court case (Ex. 12).

Then, Mother argued Jason “failed to vigorously assert his legal rights” after his acquittal because he initiated the case in March 2022. (Mother’s Answering Brief at 22.) Jason was acquitted in December 2021 (4-12-23 Tr. at 44), he was formally discharged in January 2022 (IRA 70 at 5), he retained a family law attorney after multiple consults (5-17-23 Tr. at 91-94), and he filed in family court two months later in March 2022 (Ex. 12). The record demonstrated it was reasonable for Jason to initiate a family court case a few months after his acquittal based on the unique circumstances of this case – notably, Mother’s illegal and revenge tactics (Ex. 12) that forced him to defend first-degree murder charges for 6 years, his credible fears of Mother, and his valid concerns about pursuing a legal action without counsel (5-17-23

Tr. at 77, 86, 89-90). Notably, it took Mother at least four months from Jason's initiation of the family court case to file her Termination Petition. (IRA 1; Ex. 12.) Again, the juvenile and appeals courts erred by condoning Mother's unclean hands. (IRA 70; Memorandum Decision.)

Third, Mother used the judicial system as a weapon when she testified during the severance trial that Jason "didn't sign anything saying he was the parent" (3-30-23 Tr. at 25), directly contradicting Jason's testimony that he did sign something acknowledging his paternity at B.W.'s birth (4-12-23 Tr. at 24). Then, when the issue of paternity was crucial to preserving Mother's termination case, she miraculously found the Acknowledgement of Paternity document – signed by her and Jason – that she testified did not exist. (IRA 59 [Acknowledgement of Paternity].) Yet again, Mother dishonestly used the judicial system as a weapon to ensure her desired result – revenge against Jason (Ex. 12; 4-12-23 Tr. at 34-37, 42-43). Nevertheless, the juvenile and appeals courts condoned Mother's reprehensible conduct by terminating Jason's parental rights. (IRA 70; Memorandum Decision.)

While Arizona law provides some guardrails against improper actions by one party against another, such as laches or abuse of process, those principles do not apply to termination of parental rights cases. *See Ariz.*

Republican Party v. Richer, [257 Ariz. 210](#) at ¶30 (2024) (finding party seeking to use laches must demonstrate unreasonable delay and prejudice); *Fappani v. Bratton*, [243 Ariz. 306](#), 309 ¶ 9 (App. 2018) (to prove abuse of process, the complaining party must demonstrate “(1) a willful act in the use of judicial process” and “(2) for an ulterior purpose not proper in the regular conduct of the proceedings”) (quoting *Nienstedt v. Wetzel*, [133 Ariz. 348](#), 353 (App. 1982)). Based on [Rule 301\(b\)](#), Ariz. R.P. Juv. Ct., requiring the juvenile court “to protect[] the rights of the parties and the child’s best interests and give paramount consideration to the child’s health and safety,” and the constantly changing nature of juvenile court cases, the doctrines of laches and abuse of process are not feasible.

Yet, parents facing permanent termination of their fundamental rights to parent should be entitled to fundamental fairness and protection from misuse of the legal system. Arizona law cannot allow a custodial parent (Mother) to engineer a situation that places the noncustodial parent (Jason) in an impossible situation where he has to choose between fighting for his freedom to have a chance at being a parent to his son or jeopardizing his freedom by ignoring his criminal attorney’s reasonable advice to have no contact with the custodial parent because she is the key prosecution witness,

and for more than four years the noncustodial parent was under a court release order prohibiting him from contacting the custodial parent.

Mother's illegal and vengeful actions resulted in the weaponization of the legal system against Jason, first during the criminal trial, second during the family court case, and lastly during the juvenile court case. Mother benefitted from the 6-year criminal case – that she engineered – to then allege abandonment in juvenile court (IRA 1) – abandonment that resulted from her direct actions (4-12-23 Tr. at 34-37, 42-43; Ex. 12). While Mother used the judicial system as a weapon against Jason, the juvenile and appeals courts supported and condoned Mother's actions by ignoring fundamental fairness and common sense when they unreasonably expected Jason to disregard reasonable advice from his criminal attorney and place his criminal defense in jeopardy by demonstrating objective conduct of vigorously asserting his parental rights. (IRA 70; Memorandum Decision.)

Based on the circumstances of this case, a reasonable inference can be made and common sense and case law support that any steps Jason took would have been unproductive. *See Maricopa Cnty. Juv. Action. JD-5312, [178 Ariz. 372](#), 376 (App. 1994)* (a court may restrict a parent's visitation rights if visits "would endanger seriously the child's physical, mental, moral or

emotional health”); *State v. Mahaney*, [193 Ariz. 566](#), 569 ¶ 18 (App. 1999) (finding the term endanger to mean “to subject to potential harm”). Or worse, Jason’s actions – according to his criminal attorney – would have jeopardized his criminal case, including being convicted of first-degree murder. And a prison sentence for first-degree murder would have handed Mother a bullet-proof way to terminate his parental rights based on the felony length of incarceration ground under [A.R.S. § 8-533\(B\)\(4\)](#).

This case highlights the need for the juvenile court to act as a gatekeeper to ensure custodial parents do not abuse and weaponize private severance cases. Allowing the circumstances of this case to support permanently terminating Jason’s parental rights is fundamentally unfair and condones illegal acts and revenge. Moreover, it violates Arizona public policy that promotes children having substantial and meaningful contact with both parents and both parents participating in decision making about a child [A.R.S. § 25-103\(B\)](#).

II. This Court should clarify the just cause language in A.R.S. § 8-531(1) to ensure it is not meaningless.

This case demands clarification on the meaning and application of “just cause” in [A.R.S. § 8-531\(1\)](#). In Arizona, courts have not clearly defined what

constitutes “just cause” for purposes of defending against abandonment. While case law has set extreme limits for defeating abandonment, it has not defined or squarely addressed what, if any, action could be deemed just cause. *See, e.g., Calvin B. v. Brittany B.*, [232 Ariz. 292](#), 293-94, 296-98 ¶¶ 1, 21-30 (App. 2013) (without explaining just cause, holding “a parent who has persistently and substantially restricted the other parent’s interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child”); *In re Termination of Parental Rights as to C.R.*, [256 Ariz. 170](#) ¶ 15 (App. 2023) (without explaining just cause, clarified the *Calvin B.* holding to apply only if a custodial parent wrongfully restricts the noncustodial parent’s access to the child); *Pima Cnty. Juv. Sev. Action S-114487*, [179 Ariz. 86](#), 99 (1994) (without defining just cause, found no just cause where father argued mother gave child up for adoption and adoption attorneys were aware father did not want to lose his child).

In *Caterina W. v. Anthony R.*, No. 1 CA-JV 17-0558, [2018 WL 2341881](#) at * 1-3 ¶¶ 1, 8-13 (Ariz. App. May 24, 2018) (mem. decision), the court of appeals affirmed the juvenile court’s order denying mother’s severance petition and did not specifically address just cause. Instead, it found reasonable evidence supported the juvenile court’s finding that mother did

not prove abandonment by clear and convincing evidence. [Id.](#) at *1 ¶ 13. Specifically, it found reasonable evidence to support the juvenile court’s findings that father “believed he could not see [the child] until he completed the terms of the family court order and that his lack of contact was based on his good faith belief that he was complying with the terms of the family court order.” [Id.](#) at *2 ¶ 11. The *Caterina W.* case allowed the juvenile court to evaluate the parent’s efforts based on the specific circumstances of the case, including “belief” and “good faith.” [Id.](#) at *2 ¶ 13. Again, it did not address just cause.

A recent memorandum decision squarely addressed a father’s just cause argument and found “‘just cause’ is contradictory evidence that may rebut the *prima facie* evidence of abandonment[,]” and “[t]he law does not allow parents to legally abandon their children so long as ‘just cause’ explains their failure to maintain normal parental relationship with their children.” *In re Termination of Parental Rights as to S.W.*, 1 CA-JV 24-0016, [2024 WL 2738642](#) at *2 ¶ 8 (Ariz. App. May 28, 2024) (mem. decision). It also found rebutting *prima facie* evidence of abandonment “will not defeat a finding based on the additional affirmative evidence establishing abandonment[.]” and concluded the circumstances of the case did not

provide “just cause.” [Id.](#) at *2 ¶¶ 8, 10-11. The issue with *In re S.W.* is that its analysis ignores the plain meaning of just cause and adds to the confusion of what, if anything, could demonstrate just cause. [Id.](#) at *2 ¶¶ 8-11.

While Arizona law states that “abandonment is measured not by a parent’s subjective intent, but by the parent’s conduct” and when “circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary” *Michael J. v. Ariz. Dep’t of Econ Sec.*, [196 Ariz. 246](#), 249-250 ¶¶ 18, 22 (2000), it does not state what, if anything, could ever amount to “just cause” for purposes of defeating an abandonment claim. Yet, it provides many examples of what it not just cause. *See, e.g., Michael J.*, [196 Ariz. at 250](#) ¶¶ 21-22 (finding incarceration alone did not provide a legal defense to abandonment but was one factor to consider and upheld termination of parental rights on abandonment); *Pima Cnty. Juv. Severance Action No. S-114487*, [179 Ariz. at 99](#) (finding father failed to prove just cause when he argued: (1) mother placed the child for adoption and (2) the attorneys pursuing the adoption case knew father did not want to lose his child); *Christopher M. v. Aubrey R.*, 2 CA-JV 2021-0122, [2022 WL 95468](#) * 3 ¶ 12 (Ariz.

App. January 10, 2022) (mem. decision) (affirming termination of father's parental rights on abandonment where father claimed that mother prevented him from contact with child, parents had a family court case, father did not consistently exercise his court-ordered parenting time, and father did not seek to enforce his parenting-time rights until two years after he had last seen child and six months after mother petitioned to terminate his parental rights); *Matthew M. v. Precious M.*, 1 CA-JV 18-0424, [2019 WL 2184773](#) * 3 ¶ 15 (Ariz. App. May 21, 2019) (mem. decision) (affirming termination of father's parental rights on abandonment and juvenile court's finding that father's homelessness did not constitute just cause for lack of involvement in the children's lives); *Stephen B. v. Gricelda W.*, 1 CA-JV 14-0199, [2014 WL 7237057](#) * 1, 3 ¶¶ 1, 13 (Ariz. App. December 18, 2014) (mem. decision) (affirming termination of father's parental right on abandonment where father filed custody petition after three years of no contact with child and did not attempt contact after his petition was denied).

This Court should begin with "[a] cardinal principle of statutory interpretation [] to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, [245 Ariz. 566](#), 568 ¶ 11 (2019); *Tanya K. v. Dep't of Child Safety*, [240 Ariz. 154](#), 156

¶ 5 (App. 2016).

Although the Arizona legislature removed the “intent” language in defining abandonment in 1994, it kept the just cause language. *Michael J.*, [196 Ariz. at 249](#) ¶ 17 (prior to the 1994 amendment, abandonment definition had an intent component). Just cause is defined as “[a] cause outside legal cause, which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith. Fair, adequate, reasonable cause. Legitimate cause; legal or lawful ground for action; such reasons as will suffice in law to justify action.” Black’s Law Dictionary 1001 (4th ed. Rev. 1968) (internal citations omitted). In a non-legal dictionary, just cause is defined as “a morally good reason for taking a particular action.”

<https://dictionary.cambridge.org/dictionary/english/just-cause>,

Cambridge Advanced Learner’s Dictionary and Thesaurus, Cambridge University Press & Assessment (September 12, 2024). Thus, the legal and non-legal definitions of just cause necessarily inject a subjective element into the just cause analysis.

By keeping the just cause language in the definition of abandonment, the legislature preserved a subjective component for defeating an abandonment allegation. And here, like many prior cases, the juvenile and

appellate courts ignored the plain meaning of just cause, and instead put forth an interpretation and application of just cause that deemed the words meaningless. The juvenile court found “Arizona law does not define ‘just cause’” (IRA 70 at 9) and then concluded that “the then on-going murder prosecution, even with Petitioner as a key prosecution witness, cannot amount to just cause when Respondent had untried legal avenues available to him” (*id.* at 10). Likewise, the Court of Appeals rejected Jason’s just cause argument by finding a “just cause” showing is merely a rebuttal to a time-based presumption of abandonment” and concluding that reasonable evidence supported the juvenile court’s finding that Jason failed to show “just cause.” (Memorandum Decision at ¶ 8.) The juvenile and appeals courts findings and conclusions further Arizona’s practice of making the just cause language meaningless.

For years, Arizona law has ignored or deemed the plain language of “just cause” meaningless. Therefore, this Court should clarify the interpretation and application of just cause under [A.R.S. § 8-531\(1\)](#), including, what, if anything, amounts to “just cause” to defeat a presumption of abandonment. Moreover, Arizona law cannot allow a custodial parent (Mother) to act in a way that results in criminal prosecution of the

noncustodial parent (Jason) and then allow that custodial parent to terminate the noncustodial parent's parental rights on abandonment that was engineered by the custodial parent. The just cause provision of [A.R.S. § 8-531\(1\)](#) is meaningless if Mother's illegal and vengeful actions in this case are tolerated.

III. This Court should set forth guidelines for applying just cause in abandonment cases.

Based on a parent's fundamental right to parent and Arizona law ignoring the just cause language of [A.R.S. § 8-531\(1\)](#), this Court should set forth guidelines for applying "just cause" in abandonment cases to ensure the just cause language has meaning, fundamental fairness, and due process. As argued above, in section II, the plain meaning of just cause used by the legislature injects a subjective standard into the analysis of "just cause." Not surprisingly, based on the nature of termination of parental rights cases and the language in [A.R.S. § 8-531\(1\)](#), the analysis must be based on the specific facts and circumstances of each case. Arizona's abandonment law requires guidance on how to apply just cause – an issue of great statewide importance that will continue to arise.

In setting forth guidelines to ensure the term “just cause” has meaning, this Court should require lower courts to apply a reasonably prudent person standard for the actions or nonactions of the noncustodial parent arguing justification for abandonment. *See, e.g., In re Adoption of B.D.S.*, [431 A.2d 203](#), 207 (Pa. 1981) (acknowledging a parent must make efforts to maintain a relationship with child but finding “a [noncustodial] parent’s performance must be measured in light of what would be expected of an individual in circumstances in which the parent under examination finds himself”) (internal quotations omitted).

For example, would a reasonably prudent person in Jason’s situation have made the same choice to comply with his criminal attorney’s advice to take no action to have contact with his child until the criminal case ended due to Mother’s role in facilitating the Incident, Mother’s unequivocal desire for revenge, the Incident creating the circumstances preventing Jason from pursuing contact with his son, and Mother being the prosecution’s key factual witness against Jason? The answer is yes. A reasonably prudent person would have complied with the advice of criminal counsel and waited to contact the child until after an acquittal.

To ensure the fundamental nature of parental rights and that the just

cause language has meaning, this Court should also have lower courts consider the following factors: (1) petitioning party's unclean hands, bad acts, documented revenge, and/or unreasonable barriers created to prevent or limit contact between the child and noncustodial parent; (2) circumstances before, during, and after the Termination Petition is filed; (3) reasonableness/good faith of the noncustodial parent's conduct; (4) circumstances outside of the parties' control; and (5) legal barriers preventing the noncustodial parent from having contact with their children, including incarceration and court orders restricting contact with the custodial parent and/or the children.

As additional guidance, other states have identified the following examples of possible "just cause" for failure to maintain contact with a child to either rebut or defeat abandonment: (1) a parent who is a victim of domestic violence, Alaska Stat. [§ 47.10.013\(b\)](#); (2) a parent who is participating in substance abuse treatment, *In re H.D.*, [246 Cal. Rptr. 3d 802](#) (Cal. Ct. App. 2019) (reversing termination of mother's parental rights on abandonment where mother sought to regain custody of children after participating in addiction treatment for 14 months and mother's failure to communicate with children during treatment was not due to mother's intent

to abandon children); (3) evidence of hostility between parents, *Doe I v. Doe* (2023-36), [544 P.3d 148](#), 153 (Idaho Ct. App. 2024) (finding “[e]vidence of hostilities between parents may be evidence of just cause and may mitigate against a parent’s failure to take advantage of all possible legal avenues of reconnection”); (4) “the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevented the parent from making contact with the child[,]” Minn. Stat. Ann. § [260C.301](#), Subd. 2(a)(1) (West. 2024); (5) “circumstances that are, at least in part, beyond the control of the parent[,]” *Gabriella H. v. Ricardo R.*, [855 N.W.2d 368](#), 373 (Neb. 2014); and (6) a noncustodial parent “showing that [they] lack[ed] responsibility for the destruction of the parent-child relationship[,]” *In re Adoption of J.J.B.*, [894 P.2d 994](#), 1005 (N.M. 1995).

Due to the frequency of termination of parental rights on the abandonment ground under [A.R.S. § 8-533\(B\)\(1\)](#), this Court should clarify what, if anything, amounts to just cause under [A.R.S. § 8-531\(1\)](#), and provide lower courts and practitioners guidelines to ensure a parent’s fundamental rights to parent, children’s right to have both parents in their lives, and that the “just cause” language is not meaningless. This case highlights an extreme

situation that, viewed by a reasonably prudent person in Jason's situation, should not have result in the permanent termination of Jason's parental rights. Specifically, Mother's unclean hands – including but not limited to her role in engineering the Incident that resulted in Jason's first-degree murder charges – should not and cannot be ignored when assessing abandonment. Mother's actions before, during, and after the Incident – including stealing Jason's cell phone, revenge-based internet searches, contacting William, being on an active call with William during the Incident, providing statements that were diametrically opposed to Jason's self-defense theory and that a jury rejected – were just as, if not more, harmful than the mother's actions in preventing father from exercising his court-ordered parenting time in *Calvin B.*, [232 Ariz. at 293-94](#) ¶1.

CONCLUSION

For the foregoing reasons, Jason respectfully asks this Court to vacate the memorandum decision and reverse the termination of his parental rights on the abandonment ground. He also requests that this Court clarify the just cause language in [A.R.S. § 8-531\(1\)](#) and set forth guidelines for lower courts when applying a just cause argument. In the alternative, he requests this

Court remand the case to the juvenile court to reconsider it in light of the new guidelines this Court sets forth.

Respectfully submitted this 12th day of September 2024.

Sherri McGuire Lawson
Maricopa County Legal Defender

/s/ Jamie R. Heller
Jamie R. Heller
Deputy Legal Defender

Attorneys for Appellant, Jason M.