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Person Filing: Adelina M Willes
Address (if not protected): 6451 W Bell Rd Apt 2117
City, State, Zip Code: Glendale AZ 85308
Telephone: 480-681-2799
Email Address: sawerz@protonmail.com
Lawyer's Bar Number: N/A pro se

Representing ☐ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

**SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY**

State of Arizona
Name of Plaintiff or Petitioner

Case Number: Cr-20190053977-00

Title: Notice of Appeal

Adelina M Willes (pro se)
Name of Defendant or Respondent

Arizona Superior Court

to be redirected to the Arizona Supreme Court Of Appeals

Arlena Minerva; Willes

Petitioner

Notice of Appeal Regarding:

CR-2019005397

Petition to overturn Guilty

Verdict With Prejudice.

Based on prosecutorial

Misconduct. Violation of the

Brady Act. Motions in limine

To prevent me from

Submitting evidence in my

Defense proving my

Innocence and the court

Preventing me from

Obtaining expert and

Character witnesses on my

Behalf and Jury tampering.

Respondents: Geoffrey Fish, Tracey Gleason, Mark White, Frankie Grimsen, Robert Swinford, Rick Tosto et al (all names listed in this Appeal).

- Petitioner seeks Appeal on First, Fifth, Sixth, 8th amendment violations and Brady act violations to be sought and speedily expedited in the Supreme Court Of Appeals with further instruction by the Supreme Court of Appeals to: Judge Geoffrey Fish, Judge Patricia Starr and Prosecutors: Frankie Grimsen, Tracey Gleason, Victim right Advocate: Robert Swinford, and Court ordered and appointed by Judge Geoffrey Fish: Rick Tosto (though I made it plain many times I terminated Rick Tosto's services in writing), I was forced to go into trial with an attorney whom denied me my right to submit exculpatory evidence and my right to obtain character and expert witnesses on my behalf, that may have had a different outcome had the Brady act had not been violated by prosecutors: Tracey Gleason and Frankie Grimsen and court ordered appointed Defense attorney: Rick Tosto. My objection to Rick Tosto as my attorney and wishing to stand as my own counsel until I could find suitable counsel is duly noted on public record, which was also clearly violated by Judge Geoffrey Fish.

Case Law:

- Napue v Illinois. 360 U.S 264 (1959), was a United States Supreme Court case in which the Court held that the knowing use of false testimony by a prosecutor in a criminal case violates the due process Clause of the Fourteenth amendment to the United States Constitution. Even if the testimony affects only the credibility of

the witness and does not directly relate to the innocence or guilt of the defendant.

- Brady v Maryland, 373 U.S. 83 (1963), was a landmark United States Supreme Court case that established that the prosecution must turn over all evidence that might exonerate the defendant (exculpatory evidence) to the defense.[1]:4 The prosecution failed to do so for Brady, and he was convicted. Brady challenged his conviction, arguing it had been contrary to the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- Petition for appealing the Jury's Guilty Verdict on 6/9/2021 in regards to Case Number: CR-2019005397-001 DT With Prejudice .
- Prosecutors Frankie Grimsen and Tracey Gleason used and abused my [REDACTED] [REDACTED] identity to inflict punitive and harsh retaliation on me and to prove this as fact. My [REDACTED] stated for the record, through victims right advocate; Robert Swinford, that [REDACTED] wanted this over and that I did not deserve prison or jail and that [REDACTED] wanted to maintain contact with me.
- My [REDACTED] also stated this during May 10th and May15th, when the prosecution wanted to take the two counts of felony two down to two counts of felony sixes. Yet instead of listening to my [REDACTED] wishes and desires to be reunited with me, the prosecution went ahead with a sham and

farce of a trial. At sentencing, on the 26th my [REDACTED] expressed yet again [REDACTED] overwhelming desire to be reunited with me. The prosecution threatened that if my [REDACTED] was to come back to live with me that I would have to contact probation services and they would be in contact with adult protection services.

- The prosecution stacked the jury with law enforcement and medical professionals and even used an alternate juror. Juror number 8 who worked directly with Witnesses Dr. Mullah, Dr Collyer and Dr. Hayes. Dr. Hayes was on the witness list to testify but it seems he could not be coached to commit perjury as the rest of the prosecution's witnesses that were coached to commit perjury on the witness stand, against my character as a loving mother who has my son's best interest at heart. This shows how the prosecution was overreaching to convict an innocent mother based on hearsay and lies.
- * Frankie Grimsen and Tracey Gleason tampered with the witnesses' original testimonies and I have the audio discovery to prove it. I also have audio of Detective Christine Britt as well, stating to Dr. Kristy Rae Ingebo she would work with DCS to sever my parental rights. She was in 100 percent agreement with Dr. Ingebo who exacerbated my [REDACTED] Medical Condition which she herself admitted on Glendale police report to misdiagnosing for the sole purpose of pursuing criminal charges on me. This is why DCS stated from the very beginning their intent were to severe my parental rights on September 18th,

2018.

- On April 13th, 2021, Frankie Grimsen and Tracey Gleason introduced a motion of " New Bad Acts " as motion in limine with the sole intent of preventing me from filing my exculpatory evidence into court and the Defense counsel forcibly appointed unto me did not object to this motion and neither did he ensure that my exculpatory evidence would be filed in accordance to due process of law to build an appropriate defense against the prosecution's fabrications that proves my innocence beyond a shadow of any doubt. Court ordered appointed defense attorney Rick Tosto, held ex parte hearings with the prosecution waiving my right to a speedy trial. Knowing full well I would object. They all waived my appearance knowing I would object and threw out two of my court dockets addressing the prosecution's lack of process exceeding the 270 day time frame for a complex case. In violation of 18 U.S. Code & 3161.
- Detective Christine Britt, prosecutors Frankie Grimsman and Tracey Gleason, maliciously defamed my character and then created new fabricated "Bad Acts" to cause unfair prejudice in the eyes of the jury by creating new alleged crimes out of thin air against me based on hearsay and not facts and certainly without any foundation of truth whatsoever as I also was denied my right to obtain expert and character witnesses based on these two motions filed by the prosecution to keep

the truth from being submitted as facts upon the record proving my innocence.

- *I have proof that it was Dr. Kafle who placed [REDACTED] on a NO FOOD AND DRINK ORDER for 6 WEEKS without even so much as walking into the room to evaluate [REDACTED]. Also on Discovery Audio How Dr. Kristy Ingebo admitted to immediately making herself the primary care physician for [REDACTED] when she was notified [REDACTED] was admitted to Phoenix Children's Hospital on September 6th, 2018.*
- The Criminal Justice system was abusive and used to criminalize me, when I have zero criminal history not so much a parking ticket on my record. My [REDACTED] [REDACTED] was missed diagnosed in December 2016 by removal of my s [REDACTED] [REDACTED] and in Jan 2018 was again misdiagnosed in all the ER visits in between these dates.
- Knowingly and willfully using false testimony by a prosecutor in a criminal case violates the due process Clause of the Fourteenth amendment to the United States Constitution.
- Frankie Grimsen and Tracey Gleason instructed the jury that it was their duty as jurors to give me a guilty verdict. The prosecutors had the nerve to say during

opening and closing statements and during the course of trial that it was not about love but about control. When all the witnesses stated I showed concern and love for [REDACTED] So where is my intent to harm [REDACTED] as the state prosecutors alleged that there were? There is and was NONE! To Frankie Grimsen and Tracey Gleason it was not about protecting my [REDACTED] wishes and desires to be reunited with me but to further inflict emotional anguish on my [REDACTED] and I by using [REDACTED] to do it . Even going over top of the victim rights advocates recommendations to allow my [REDACTED] to decide AS AN ADULT at [REDACTED] discretion violating his rights as an adult and his ADA rights through [REDACTED] advocate to be reunited with me. To the prosecution, it was never about protecting [REDACTED] wishes and desires to be reunited with I [REDACTED] loving mother, it was about control, about winning another case and in doing so inflicting even more harm on [REDACTED] life and mine in the process of winning a “ case “ based on fabrications, hearsay and lies. My [REDACTED] identity was stolen and abused as a shadow victim for the state to control and inflict punitive harm on my [REDACTED] [REDACTED] and my life.

- The prosecution set up the following conditions that if my [REDACTED] was to come back to live with me that I would have to contact probation services and they would be in contact with adult protection services. Also, the prosecution made conditions of hardship during a sentence of ten years probation with a court-ordered payment of \$119.00 dollars a month. Furthermore, the prosecution wants a third rule 11 evaluation to be done by August 23rd, after the fact I

passed two court ordered evaluations with flying colors. I was told by the probation officer assigned to me, if I should decline the evaluation it may affect my early release of probation.

- My [REDACTED] made [REDACTED] desires and wishes known to be reunited with me and for this to be over. Yet, the prosecutors refused to face the truth of my innocence. Despite my [REDACTED] protestations and [REDACTED] wishes and desires being ignored by prosecutors Tracey Gleason and Frankie Grimsen and Judge Geoffrey Fish.
- Judge Fish was given a motion mid-trial by court ordered defense attorney Rick Tosto for a Rule 10 dismissing case with prejudice for insufficient evidence by the prosecution and not to proceed with trial based on that fact. The motion was not even taken into consideration by Judge Fish. I asked that a motion be filed for overturning the guilty verdict on the basis of denial of my exculpatory evidence and on the basis of insufficient evidence, witness tampering and jury tampering by the prosecution.

It was proven during trial that my [REDACTED] was in NO IMMINENT DANGER, no acute distress. Banner's Thunderbird Hospital discharge instructions were read by Banner social worker Patty Thomson and she could not continue with her false testimony on the stand because she read that [REDACTED] was in no acute distress and in no imminent danger. Common sense: why would [REDACTED] be

allowed to go home with me and placed on a normal food diet if [REDACTED] was in any imminent danger? As the prosecution falsely has claimed. Medical documentation that was read before the court yet not submitted as evidence proves otherwise. [REDACTED] was in no acute distress, no imminent danger. See provided Medical documentation that was read by Patty Thompson yet was denied as evidence deemed as not submissible in court docket as evidence. The Court Ordered defense Attorney did not put in as evidence on my behalf yet had lying social worker Patty Thomson read it aloud on the last day of testimonies on June 9th, 2021 before the Jury this was read and should have caused the case to be dismissed on the spot. (See Exhibit A No imminent Danger).

- After only two hours of deliberation the stacked jury reached the verdict of guilty on both counts (two Felony 2 With Intent). It was supposed to be with intent, but the preliminary instructions were changed three times and the jurors were given two different sets of jury instructions. I have three because the prosecution tried to do a bait and switch saying they wanted to lower the charges. (Exhibit B three sets of Preliminary instructions proving Jury tampering).
- Exhibit C all discovery audios proving I was framed for made up crimes I did not commit. The second charge was copy and pasted verbatim from the first charge and made it two counts.

- The prosecution never produced any medical documentation in their opening and closing statements. They presented their whole case against me, By Grandstanding every fact presented by hearsay and by creating unfair prejudice in the eyes of the public and jury. Stating in their closing presentation that [REDACTED] looked like a “ Nazi Concentration Camp Survivor “ .When it was by doctor Kafles ordered [REDACTED] to be placed on no food and drink order for Six Weeks.
- To Create unjust prejudice and horror in the eyes of the Public and Jury the prosecution even instructed their witnesses to state [REDACTED] looked like a concentration camp survivor to create unfair prejudice and horror in the eyes of the jurors. Yet, these same witnesses under oath stated how loving and attentive I was to [REDACTED] and how much they could tell I loved [REDACTED] and complimented my level of concern for [REDACTED]. Yet, it was made out to be as if I did not understand the severity of [REDACTED] condition that went misdiagnosed and undetected because of the misdiagnosis of [REDACTED] current condition of [REDACTED] by PCH doctors. I heard the diagnosis of [REDACTED] for the first time, just four days before [REDACTED] was egregiously stripped from my safe and loving care!
- Under oath, the same witnesses were coached to go back on their testimony that [REDACTED] was not in any imminent danger. In order to win their case the prosecution instructed them to go back on what they had said on the audio

discovery to lie to 11 jurors. Yet still they stated I was a loving and caring mother who was very attentive and concerned in regards to [REDACTED] needs.

Relief Sought:

1. Voiding all orders regarding probation at sentencing from Judge Geoffrey Fish.
For violating his sworn Oath to defend and protect the United States Constitution.
He allowed the violation of my civil rights and my constitutional rights time and time again. For this cause and all facts presented on the record, should the guilty verdict be overturned.
2. Reversal of Guilty Verdict regarding case number CR2019-005397-001 with prejudice. For prosecution's lack of due process and ex parte communications, witness tampering and jury tampering and withholding originating police report from Phoenix Police Department to open a case out of Jurisdiction in Glendale. Lack of Geographic Jurisdiction and lack of any foundation of truth to try above referenced case number. The real crime occurred when the original police report from Phoenix Police Department was purposely omitted to conduct an investigation outside of Phoenix where the so called crime was to have alleged to have occurred. The Real Crime is that the State did not like that the Phoenix Police Department closed the investigation based on the truth there was no need to investigate the matter further. The prosecution did not like that fact so

Glendale was called in to do their own independent investigation apart from Phoenix PD jurisdiction, despite the fact the truth was not a feeding tube I had removed. Phoenix Pd even was so kind as to document the fact that it wasn't a feeding tube which was removed. Officers Brown and Johnson were the only ones there on the day of September 9th, 2018. Yet their report was buried as never to see the light of day. It was documented by Glendale police they could not find the originating police report from Phoenix PD stating that no further investigation was needed so the report was closed by the Phoenix Police department.

3. This fraudulent investigation also affected my family court case as well, in which the lie that I removed from a feeding line from [REDACTED] was the basis of severing my parental rights from the beginning. Because no one would accept the truth that the feeding line was placed in [REDACTED] two days after I was banned from Phoenix Children's hospital away from [REDACTED] when [REDACTED] needed me the very most.
4. The State took their power and abused it from the beginning. They abused their Judicial power and wasted taxpayers money and their unlimited resources to come against an innocent mother with a previous non existent criminal history no priors of felonies, no misdemeanors and not even a parking ticket on record which goes to show how wrong this was from the very beginning and how wrong

it was for [REDACTED] to been stripped from my loving care in the first place. The originating report was not honored and I would not have had my parental rights severed as a mother by DCS, Juvenile Court Judge Bernard Owens, The assistant AG Debbie Oelze, the DA's office and criminal court wasted their unlimited resources based on the lies of a lying Doctor. Dr. Kristy Rae Ingebo who misdiagnosed [REDACTED], Her handwritten notes and her misdiagnoses of [REDACTED] [REDACTED] is reason and motive enough behind her desire to see and have me prosecuted and convicted for no just cause. So the real crime was committed by her lying on an innocent mother and using social worker Olivia Douma to report the timeline of abuse all the way back to when [REDACTED] [REDACTED] The real crime was that the DA's office over-rode the authority of Phoenix Pd on the matter of the truth that no abuse whatsoever occurred. Also Detective Christine Britt was hand selected to build a fabricated case against me either by the Phoenix Children's hospital or by the DA's office or both.

5. At sentencing, character letters were written to Judge Goeffrey Fish in regards to my loving character as a mother from personal friends and family who knows me personally and can vouch for my character as a mother and who are also willing to give this court character witness if necessary. Seeing their right to witness on my behalf was denied during trial as my right to submit exculpatory evidence was denied during trial their voices should be heard.

- Through and by Victim rights advocate Robert Swinford: on July 26th, 2021 My [REDACTED] Made it plain what his wishes are ' That [REDACTED] loves me dearly and that I do not deserve prison or jail and that he still wants to maintain contact with me. My [REDACTED] wishes are to be honored. Without further retaliation on either [REDACTED] or myself if my [REDACTED] should choose to come back to live with me. That should be [REDACTED] choice and the prosecution made threats on [REDACTED] safety if [REDACTED] should decide to make that choice the choice and desire [REDACTED] has made in longstanding: to be reunited with me. (please review the probation stipulations) .

For this cause I am petitioning this court for relief. To overturn the guilty verdict based on the facts upon the record that proves I am innocent beyond a shadow of a doubt, my adult son wishes to be reunited with me honored, my good name cleared and for any restitution damages this Court deems appropriate.

Respectfully Submitted on this day 8-9-2021

Arlena M Willes

Arlena M. Willes (pro-se)

IN RE THE MATTER OF:

STATE OF ARIZONA

v.

**ARLENA M. WILLES
CR2019-005397-001**

**PRELIMINARY JURY
INSTRUCTIONS**

HONORABLE Geoffrey Fish



PUBLIC HEALTH ADVISEMENT

This Court takes into account the Centers for Disease Control and Prevention ("CDC") and local infectious disease authority guidelines for social distancing and use of facemasks in public. Social distancing or staying at least six feet away from other people, and the use of face masks or coverings that cover your nose and mouth have been recommended to avoid transmitting and contracting COVID-19.

We urge you to respect others and engage in all jury activities while social distancing as much as possible. We have marked locations for you to use that will help you maintain appropriate social distancing. You have been provided with a mask for your use during your jury experience or are using your own mask. Please wear it at all times while in the courthouse. There are sanitizing wipes and hand sanitizer in the jury assembly area, the courtrooms, and jury rooms. Of course, we also encourage you to wash your hands throughout the day. We have adopted extra cleaning and disinfecting procedures in all court buildings that are done throughout the day. Your cooperation with social distancing, wearing your mask, using hand sanitizer, and washing your hands will help maintain a safer environment for everyone.

We have attempted to provide you the safest experience possible so that you may focus on your duty as a juror and not be distracted by health concerns.

If you have any questions or concerns, please let any of my staff or me know.

IMPORTANCE OF JURY SERVICE

Jury service is an important part of our system of justice, with a long and distinguished tradition in American law. From the beginning, American law has viewed the jury system as an effective means of drawing on the collective wisdom, experience, and fact-finding abilities of persons such as yourselves. While it may be an occasional inconvenience, or worse, jury service is an important responsibility for you, one, which I am sure, you will take seriously.

DUTY OF JURORS

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations.

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

You will hear the evidence, decide the facts, and then apply the law I will give to you to those facts. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not.

You must not take anything I may say or do during the trial as indicating any opinion about the facts. You, and you alone, are the judges of the facts.

EVIDENCE

You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received into evidence as exhibits, and any evidence stipulated to by the parties or that you are instructed to consider.

You may hear reference to exhibits that are not admitted and are not asked to be admitted. These exhibits are not admitted as evidence, but the information from them that is testified to by witnesses is evidence that you may consider.

You will decide the credibility of the witnesses and weight to be given to any evidence presented in the case, whether it is direct evidence or circumstantial evidence.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

EVIDENCE, STATEMENTS OF LAWYERS AND RULINGS

As I mentioned earlier, it is your job to decide from the evidence what the facts are. Here are six rules on what is and what is not evidence:

1. Evidence to be considered: You are to determine the facts only from the testimony of witnesses and from exhibits received in evidence.
2. Lawyers' statements: Ordinarily, statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law.
3. Questions to a witness: By itself, a question is not evidence. A question can only be used to give meaning to a witness's answer.
4. Objections to questions: If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not try to guess the reason why the lawyer objected in the first place.

5. Rejected evidence: At times during the trial, testimony or exhibits will be offered as evidence but I might not allow them to become evidence. Since they never become evidence, you must not consider them.

6. Stricken evidence: At times I may order some evidence to be stricken from the record. Then it is no longer evidence and you must not consider it for any purpose.

RULINGS OF THE COURT

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility of the witnesses or the weight you should give to any evidence that has been admitted.

BENCH CONFERENCES AND RECESSES

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be. Please do not be concerned with what we are discussing at any bench conference we may have. Please respect the privacy of those participating in the bench conference in order to maintain the fairness of the trial.

PRESUMPTION OF INNOCENCE/REASONABLE DOUBT

✱ The State has charged the defendant with certain crimes. These charges are not evidence against the defendant. You must not think the defendant is guilty just because the defendant has been charged with certain crimes. The defendant has pled "not guilty". The defendant's plea of "not guilty" means that the State must prove every part of each charge beyond a reasonable doubt.

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. This means that the Defendant is not required to prove innocence or to produce any evidence.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty. If, on the other hand, you think there is a real possibility that she is not guilty, you must give her the benefit of the doubt and find her not guilty.

In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment. Punishment is left to the judge.

STATEMENTS OF DEFENDANT

If there is testimony in this case about what a defendant said to a law enforcement officer, you must not consider any such statements unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement to a law enforcement officer was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats or by any direct or implied promise, however slight. You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

CONSTITUTIONAL RIGHT NOT TO TESTIFY

A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

CREDIBILITY OF WITNESSES

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of

the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Witnesses may be wearing masks while testifying and this should not be considered in your determination of the witness' credibility.

Consider all of the evidence in light of reason, common sense, and experience.

TESTIMONY OF LAW ENFORCEMENT OFFICERS

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

EXPERT WITNESS - *credibility does not mean believability.*

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

EXCLUSION OF WITNESSES

The Rule of Exclusion of Witnesses is in effect and will be observed by all witnesses until the trial is over and a result announced. This means that all witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the courtroom assistant unless other arrangements have been made with the attorney who has called them. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time, as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they accidentally enter.

The only exception to this rule are that each side is allowed to designate one investigator to sit through the trial. Any alleged victim is also allowed to sit through the trial even though the victim may testify at trial.

NO TRANSCRIPT AVAILABLE TO JURY; TAKING NOTES

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. The court encourages you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you miss hearing or seeing other testimony. You may use your notes during your deliberations at the end of the trial. Until then, keep your notes to yourself. During recesses in the trial, you may leave your notes on your seat. Your notes are confidential and my courtroom assistant will guard them. No one will be allowed to read your notes. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors. After you have rendered your verdict, the courtroom assistant will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times, and working on the computer at times. What I am doing may have nothing to do with what you will be concerned with at this trial.

ADMONITION

I am now going to say a few words about your conduct as jurors. I am going to give you some dos and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio or the Internet for information. If you have a question or need additional information, submit your request **in writing** and I will discuss it with the attorneys.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. This prohibition about not discussing the case includes using e-mail, Facebook, MySpace, Twitter, Instagram, instant messaging, Blackberry messaging, tablets and i-Pads, mobile phones of all sorts (Androids, Razors, i-Phones, etc.), all internet search engines (Google, Yahoo, Chrome, etc.) or any other form of

electronic communication for any purpose whatsoever, if it relates in any way to this case. This includes, but is not limited to, blogging about the case or your experience as a juror on this case, discussing the evidence, the lawyers, the parties, the court, your deliberations, your reactions to testimony or exhibits or any aspect of the case or your courtroom experience with anyone whatsoever, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source. *AN PUBLIC RECORD HAS BEEN SEALED.*

If you have cell phones, laptops or other communication devices, please turn them off and do not turn them on while in the courtroom. You may use them only during breaks, so long as you do not use them to communicate about any matter having to do with the case. You are not permitted to take notes with laptops, Blackberries, tape recorders or any other electronic device. You are only permitted to take notes on the notepad provided by the court. Devices that can take pictures are prohibited and may not be used for any purpose.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses or media representatives (if any) about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, if you passed an attorney in the hall and asked what good restaurants there are downtown, somebody from a distance may think you are talking about the case. So, again, please avoid even the appearance of improper conduct.

The lawyers and parties have been given the same instruction about not speaking with jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You may not discuss the evidence among yourselves until you retire to deliberate on your verdict. Therefore, during breaks and recesses whether you are assembled in the jury room or not, you must not discuss any aspect of the case with each other until the case is submitted to you for your deliberations at the

end of the trial. Again, if you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys.

During the trial, you are not to engage in any conduct that impairs or interferes with your ability to hear and understand the court proceedings.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Please advise me in writing immediately if you believe that any juror has violated any provision of this admonition.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

JURY QUESTIONS

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the courtroom assistant. If your question is for a witness who is about to leave the witness stand, please signal the courtroom assistant or me before the witness leaves the stand. Once the witness is excused, there will not be an opportunity to ask that witness anymore questions. Therefore, if you have any questions for that witness, you must let me know that you have questions before the witness is excused.

You are to submit the question independently, and you are not to discuss the question among yourselves before submitting it. The purpose of a question is to clarify the evidence that has been presented. It is not to explore theories of your own. Additionally, please review your question before giving it to the Court to review because the witness may have answered your question after you wrote the question.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I

do to the questions asked by the lawyers. If a particular question is not asked, please do not guess why or what the answer might have been.

ORDER OF TRIAL

Criminal trials generally proceed in the following order:

First, the prosecuting attorney will make an opening statement giving a preview of the case. The defendant's attorney may make an opening statement outlining the defense case immediately after the prosecutor's statement, or it may be postponed until after the State's case has been presented. What is said in opening statements is not evidence. Nor is it an argument. The purpose of an opening statement is to help you prepare for anticipated evidence.

Second, the State will present its evidence. After the State finishes the presentation of its evidence, the defendant may present evidence. If the defendant does produce evidence, the State may present additional, or rebuttal, evidence. With each witness, there is a direct examination, a cross-examination by the opposing side, and, finally, redirect examination. I will then ask if the jurors have any questions for the witness. This usually ends the testimony of that witness.

Third, after all the evidence is in, I will read and give you copies of the final instructions, the rules of law you must follow in reaching your verdict.

Fourth, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open and close the argument since the State has the burden of proof. Just as in opening statements, what is said in closing arguments is not evidence.

Fifth, you will deliberate in the jury room about the evidence and rules of law in an effort to reach the verdict. If you unanimously agree upon the verdict, it will be read in court with you and the parties present.

Finally, you will be discharged and released from the Admonition.

MEDIA COVERAGE

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

PRESENCE OF A DEPUTY

Deputies are assigned to courtrooms by the sheriff's office. A deputy's presence in this courtroom should not be considered by you for any purpose, influence your view of the evidence, or impact your deliberations in anyway.

SCHEDULING DURING TRIAL

There are some additional specific matters that pertain specifically to this trial.

You all have received a calendar of trial days. The trial is expected to last no later than June 15, 2021, and hopefully will end sooner than that. We will all do our best to move the case along, but delays frequently occur. These won't be anyone's fault, so please don't hold them against the parties. Delays usually occur because the attorneys and I often need to resolve certain legal matters before these matters may be presented to you in court or because I am busy with matters in other cases.

The usual hours of trial will be from 10:00 a.m. to noon and 1:30 p.m. to 4:30 p.m. We will not be in trial on Fridays, as the Court has other matters that it must hear on those days. If there will be other days besides Fridays that we will not be in trial, we will let you know as soon as possible.

We will take a short recess every mid-afternoon and occasional stretch breaks in place. Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time as indicated on your trial calendar. If you need another trial calendar, please inform my courtroom assistant.

At the beginning of each day of trial, please assemble in the designated jury waiting area of the lobby on the 7th floor. One of my staff members will come to get you. Please do not come into the courtroom or into the back hallway until my staff comes to get you. We want to make sure that none of the jurors see or hear something that they are not supposed to see or hear.

ALTERNATE JURORS

The law provides for a jury of 8 persons in a case such as this. We have more than this number of jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

At the end of the case, one or more alternate jurors will be determined by lot in a drawing held in open court. So, at this time, we do not know if there will be any alternates, or who the alternate or alternates will be. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

THE CHARGED OFFENSES

To assist you in considering the evidence that will be presented during the trial, I will now tell you about the crimes with which the defendant is charged.

The defendant is charged with two (2) counts of "Child Abuse". The crime of "Child Abuse" requires proof of the following:

1. The defendant, under circumstances likely to produce death or serious physical injury,
2. intentionally or knowingly,
3. caused or permitted the person or health of the child to be injured, while having the care or custody of the child; *or*
caused or permitted the child to be placed in a situation where the person or health of the child was endangered, while having the care or custody of the child.

The defendant has pled "not guilty" to the charges. The State must prove each element of each charged crime beyond a reasonable doubt. I will give you more details and definitions about the alleged crimes in the final jury instructions.

CONCLUSION TO PRELIMINARY INSTRUCTIONS

The rules of law I have charged you with in the past few minutes are preliminary only. At the end of the case I will read to you and give you a copy of the final instructions of law. In deciding the case you must be guided by the final instructions.

IN RE THE MATTER OF:

STATE OF ARIZONA

V.

**ARLENA M. WILLES
CR2019-005397-001**

**FINAL JURY
INSTRUCTIONS**

HONORABLE GEOFFREY FISH

(#1) Duty of Jury

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence", I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

(#2) Indictment/Information Is Not Evidence

The State has charged the defendant with certain crimes. A charge is not evidence against the defendant. You must not think a defendant is guilty just because of a charge. The defendant has pled "not guilty." This plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.

(#3) Presumption of Innocence

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the defendant is innocent.

(#4(a)) Burden of Proof

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This means the State must prove each element of each

charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty. If, on the other hand, you think there is a real possibility that she is not guilty, you must give him the benefit of the doubt and find her not guilty.

(#5) Jury Not To Consider Penalty

You must decide whether a defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt, punishment is left to the judge.

(#8) Evidence To Be Considered

You are to determine what the facts in the case are from the evidence produced in court. If an objection to a question was sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit was offered into evidence and an objection to it was sustained, you must not consider that exhibit as evidence. If testimony was ordered stricken from the record, you must not consider that testimony for any purpose.

(#9) Defendant Need Not Produce Evidence

The State must prove guilt beyond a reasonable doubt based on the evidence. The defendant is not required to produce evidence of any kind. The defendant's decision not to produce any evidence is not evidence of guilt.

(#10) Lawyers' Comments Are Not Evidence

In their opening statements, the lawyers talked to you about the law and the evidence. In a few minutes, the lawyers will give their closing arguments and will talk about the law and the evidence. What the lawyers said or say is not evidence, but it may help you to understand the law and the evidence.

(#11) Stipulations

The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist and are part of the evidence. You are to treat a stipulation as any other evidence. You are free to accept it or reject it, in whole or in part, just as any other evidence.

(#13) Redacted Exhibits

Some of the exhibits that have been admitted into evidence have had portions deleted from them for legal reasons. Do not concern yourselves with the reasons why some portions of the exhibits have been deleted. Do not speculate upon what the deleted portions might, or might not, reveal.

(#14) Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

(#15) Credibility of Witnesses

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Witnesses may have worn masks while testifying and this should not be considered in your determination of the witness' credibility.

Consider all the evidence in the light of reason, common sense, and experience.

(#16) Testimony of Law Enforcement Officers

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

(#17) Expert Testimony

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

(#18(b)) Defendant's Testimony

You must evaluate the defendant's testimony the same as any witness' testimony.

(#19) Voluntariness of Defendant's Statements

You must not consider any statements made by the defendant to a law enforcement officer unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats, or by any direct or implied promise, however slight.

You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

(#24) Other Acts

Evidence of other acts has been presented. You may consider [this act][these acts] only if you find that the State has proved by clear and convincing evidence that the defendant committed [this act][these acts]. You may only consider [this act][these acts] to establish the defendant's [motive], [opportunity], [intent], [preparation], [plan], [knowledge], [identity], [absence of mistake or accident]. You must not consider [this act][these acts] to determine the defendant's character or character trait, or to determine that the defendant acted in conformity with the defendant's character or character trait and therefore committed the charged offense.

Rulings of the Court

Admission of evidence in court is governed by rules of law. I have applied those rules during the trial and resolved any issues concerning the admission of evidence.

If an objection to a question was sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit was offered into evidence and an objection to it was sustained, you must not consider that exhibit as evidence. If testimony was ordered stricken from the record, you must not consider that testimony for any purpose. If evidence was admitted for a limited purpose, you shall consider that evidence only for that limited purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

(#30) Separate Counts

Each count charges a separate and distinct offense. You must decide each count separately on the evidence with the law applicable to it, uninfluenced by your decision on any other count. You may find that the State has proved beyond a reasonable doubt, all, some, or none of the charged offenses. Your finding for each count must be stated in a separate verdict.

The Charged Offenses

will now tell you about the crimes with which the defendant is charged.

Count 1: Child Abuse – To Wit: Failure to Thrive

The crime of "Child Abuse" requires proof of the following:

1. The defendant, under circumstances likely to produce death or serious physical injury,
2. intentionally or knowingly,
3. caused or permitted the person or health of the child to be injured, while having the care or custody of the child; **or**
caused or permitted the child to be placed in a situation where the person or health of the child was endangered, while having the care or custody of the child.

Count 2: Child Abuse – To Wit: Obstructed Medical Care

The crime of "Child Abuse" requires proof of the following:

1. The defendant, under circumstances likely to produce death or serious physical injury,
2. intentionally or knowingly,
3. caused or permitted the person or health of the child to be injured, while having the care or custody of the child; **or**
caused or permitted the child to be placed in a situation where the person or health of the child was endangered, while having the care or custody of the child.

Definitions

"Intentionally" or "with the intent to" means that a person's objective is to cause that result or to engage in that conduct.

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

"Knowingly" or "knew" means that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

"Child" means an individual who is under eighteen years of age.

"Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child.

"Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

"Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss of protracted impairment of the function of any bodily organ or limb.

(#58) Jury Foreperson

The case will soon be submitted to you for decision. When you go to the jury room you will choose a foreperson.

The role of jury foreperson is important, but please remember that the foreperson's opinion about the case is not more important than that of the other jurors. The opinions of each juror count equally.

The jury foreperson's responsibilities include the following:

1. Make sure every member of the jury is present during all discussions and deliberations.
2. Make sure that the deliberations are conducted respectfully and that all issues are fully discussed. The discussions should be open and free so that every juror may participate.
3. All jurors should be allowed to state their views about the case and what they think the verdict should be and why.
4. All members must agree unanimously on any verdict. Therefore, the foreperson should count the votes to ensure that every juror has voted.
5. If you reach verdicts, fill out the verdict forms and then sign the form on behalf of the jury.
6. If the jury reaches a verdict, the foreperson will inform the bailiff. When the jury returns to the courtroom, the foreperson will bring the signed or unsigned verdict forms as well as any question forms that may have been used.
7. When you return to the courtroom, the court will ask the foreperson whether the jury has reached any verdict. The foreperson will respond "yes" or "no." The foreperson is not expected to read any verdict to the court; that will be done by the clerk.

Closing Instruction

In just a few minutes, you will hear closing arguments in this case. After that, the case will be submitted to you for decision.

I suggest that you discuss and then set your deliberation schedule. You are in charge of your schedule and may set and vary it by agreement and the approval of the Court. After you have decided on a schedule, please advise the bailiff.

You will be deliberating in the courtroom instead of the jury room to maintain proper social distancing. You are to discuss the case and deliberate only when all jurors are together in the courtroom. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you during the trial remains in effect when all of you are not in the courtroom deliberating. While deliberating, you should continue to maintain six feet for social distancing that has been used throughout trial. You are required to wear your masks while deliberating. You will be provided with equipment to review evidence, if necessary. You may not use any other equipment in the courtroom during your deliberations. You may use the tables and chairs in the courtroom and the jury box but you may not use or any of the desks used by the courtroom assistant/bailiff, clerk, court reporter, judge, or witness. You may use the phone at the bailiff/courtroom assistant desk to contact the bailiff/courtroom assistant.

After setting your schedule, I suggest that you next review the written jury instructions and verdict form. It may be helpful for you to discuss the instructions and verdict form to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure, and definitions.

Should any of you, or the jury as a whole, have a question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we will provide you. Your question or message must be communicated to me in writing and must be signed by you or the Foreperson.

I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible.

Remember that you are not to tell anyone, including me, how you stand, numerically or otherwise, until after you have reached a verdict or have been discharged.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

All eight of you must agree on each verdict. You must be unanimous. Once all eight agree on a verdict, only the Foreperson need sign the verdict form on the line marked "Jury Foreperson."

You will be given two forms of verdict. The verdict forms read as follows and there is no significance to the order in which the options of "guilty," and "not guilty," are listed on the verdict forms:

NOTE: This is a sample verdict form – an official verdict form will be given to you by the bailiff in the jury room.

Verdict – Count 1: Child Abuse – To Wit: Failure to Thrive

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, Arlena M. Willes, on the charge of "Child Abuse" as follows (check only one):

_____ Not Guilty

_____ Guilty

Signed: _____

Jury Foreperson (Juror # _____)

Jury Foreperson (please print name): _____

NOTE: This is a sample verdict form – an official verdict form will be given to you by the bailiff in the jury room.

Verdict – Count 2: Child Abuse – To Wit: Obstructed Medical Care

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, Arlena M. Willes, on the charge of "Child Abuse" as follows (check only one):

_____ Not Guilty

_____ Guilty

Signed: _____

Jury Foreperson (Juror # _____)

Jury Foreperson (please print name): _____

IN RE THE MATTER OF:

STATE OF ARIZONA

v.

**ARLENA M. WILLES
CR2019-005397-001**

**FINAL JURY
INSTRUCTIONS**

HONORABLE GEOFFREY FISH

Duty of Jury

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence", I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

Indictment/Information Is Not Evidence

The State has charged the defendant with certain crimes. A charge is not evidence against the defendant. You must not think a defendant is guilty just because of a charge. The defendant has pled "not guilty." This plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.

Presumption of Innocence

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the defendant is innocent.

Burden of Proof

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This means the State must prove each element of each

charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty. If, on the other hand, you think there is a real possibility that she is not guilty, you must give him the benefit of the doubt and find her not guilty.

Jury Not To Consider Penalty

You must decide whether a defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt, punishment is left to the judge.

Evidence To Be Considered

You are to determine what the facts in the case are from the evidence produced in court. If an objection to a question was sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit was offered into evidence and an objection to it was sustained, you must not consider that exhibit as evidence. If testimony was ordered stricken from the record, you must not consider that testimony for any purpose.

Defendant Need Not Produce Evidence

The State must prove guilt beyond a reasonable doubt based on the evidence. The defendant is not required to produce evidence of any kind. The defendant's decision not to produce any evidence is not evidence of guilt.

Lawyers' Comments Are Not Evidence

In their opening statements, the lawyers talked to you about the law and the evidence. In a few minutes, the lawyers will give their closing arguments and will talk about the law and the evidence. What the lawyers said or say is not evidence, but it may help you to understand the law and the evidence.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

Credibility of Witnesses

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Witnesses may have worn masks while testifying and this should not be considered in your determination of the witness' credibility.

Consider all the evidence in the light of reason, common sense, and experience.

Testimony of Law Enforcement Officers

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

Expert Testimony

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

Defendant's Testimony

You must evaluate the defendant's testimony the same as any witness' testimony.

Rulings of the Court

Admission of evidence in court is governed by rules of law. I have applied those rules during the trial and resolved any issues concerning the admission of evidence.

If an objection to a question was sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit was offered into evidence and an objection to it was sustained, you must not consider that exhibit as evidence. If testimony was ordered stricken from the record, you must not consider that testimony for any purpose. If evidence was admitted for a limited purpose, you shall consider that evidence only for that limited purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me

of the credibility or weight you should give to any evidence that has been admitted.

Separate Counts

Each count charges a separate and distinct offense. You must decide each count separately on the evidence with the law applicable to it, uninfluenced by your decision on any other count. You may find that the State has proved beyond a reasonable doubt, all, some, or none of the charged offenses. Your finding for each count must be stated in a separate verdict.

The Charged Offenses

I will now tell you about the crimes with which the defendant is charged.

Count 1: Child Abuse – To Wit: Failure to Thrive

The crime of “Child Abuse” requires proof of the following:

1. The defendant, under circumstances likely to produce death or serious physical injury,
2. intentionally or knowingly,
3. caused or permitted the person or health of the child to be injured, while having the care or custody of the child; **or**
caused or permitted the child to be placed in a situation where the person or health of the child was endangered, while having the care or custody of the child.

Count 2: Child Abuse – To Wit: Obstructed Medical Care

The crime of “Child Abuse” requires proof of the following:

1. The defendant, under circumstances likely to produce death or serious physical injury,
2. intentionally or knowingly,
3. caused or permitted the person or health of the child to be injured, while having the care or custody of the child; **or**
caused or permitted the child to be placed in a situation where the person or health of the child was endangered, while having the care or custody of the child.

Definitions

"Intentionally" or "with the intent to" means that a person's objective is to cause that result or to engage in that conduct.

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

"Knowingly" or "knew" means that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

"Child" means an individual who is under eighteen years of age.

"Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child.

"Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

"Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss of protracted impairment of the function of any bodily organ or limb.

Jury Foreperson

The case will soon be submitted to you for decision. When you go to the jury room you will choose a foreperson.

The role of jury foreperson is important, but please remember that the foreperson's opinion about the case is not more important than that of the other jurors. The opinions of each juror count equally.

The jury foreperson's responsibilities include the following:

1. Make sure every member of the jury is present during all discussions and deliberations.
2. Make sure that the deliberations are conducted respectfully and that all issues are fully discussed. The discussions should be open and free so that every juror may participate.
3. All jurors should be allowed to state their views about the case and what they think the verdict should be and why.
4. All members must agree unanimously on any verdict. Therefore, the foreperson should count the votes to ensure that every juror has voted.
5. If you reach verdicts, fill out the verdict forms and then sign the form on behalf of the jury.
6. If the jury reaches a verdict, the foreperson will inform the bailiff. When the jury returns to the courtroom, the foreperson will bring the signed or unsigned verdict forms as well as any question forms that may have been used.
7. When you return to the courtroom, the court will ask the foreperson whether the jury has reached any verdict. The foreperson will respond "yes" or "no." The foreperson is not expected to read any verdict to the court; that will be done by the clerk.

Closing Instruction

In just a few minutes, you will hear closing arguments in this case. After that, the case will be submitted to you for decision.

I suggest that you discuss and then set your deliberation schedule. You are in charge of your schedule and may set and vary it by agreement and the approval of the Court. After you have decided on a schedule, please advise the bailiff.

You will be deliberating in the courtroom instead of the jury room to maintain proper social distancing. You are to discuss the case and deliberate only when all jurors are together in the courtroom. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you during the trial remains in effect when all of you are not in the courtroom deliberating. While deliberating, you should continue to maintain six feet for social distancing that has been used throughout trial. You are required to wear your masks while deliberating. You will be provided with equipment to review evidence, if necessary. You may not use any other equipment in the courtroom during your deliberations. You may use the tables and chairs in the courtroom and the jury box but you may not use or any of the desks used by the courtroom assistant/bailiff, clerk, court reporter, judge, or witness. You may use the phone at the bailiff/courtroom assistant desk to contact the bailiff/courtroom assistant.

After setting your schedule, I suggest that you next review the written jury instructions and verdict form. It may be helpful for you to discuss the instructions and verdict form to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure, and definitions.

Should any of you, or the jury as a whole, have a question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we will provide you. Your question or message must be communicated to me in writing and must be signed by you or the Foreperson.

I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible.

Remember that you are not to tell anyone, including me, how you stand, numerically or otherwise, until after you have reached a verdict or have been discharged.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

All eight of you must agree on each verdict. You must be unanimous. Once all eight agree on a verdict, only the Foreperson need sign the verdict form on the line marked "Jury Foreperson."

You will be given two forms of verdict. The verdict forms read as follows and there is no significance to the order in which the options of "guilty," and "not guilty," are listed on the verdict forms:

NOTE: This is a sample verdict form – an official verdict form will be given to you by the bailiff in the jury room.

Verdict – Count 1: Child Abuse – To Wit: Failure to Thrive

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, Arlena M. Willes, on the charge of "Child Abuse" as follows (check only one):

_____ Not Guilty

_____ Guilty

Signed: _____

Jury Foreperson (Juror # _____)

Jury Foreperson (please print name): _____

NOTE: This is a sample verdict form – an official verdict form will be given to you by the bailiff in the jury room.

Verdict – Count 2: Child Abuse – To Wit: Obstructed Medical Care

We the jury, duly empanelled and sworn in the above entitled action, and upon our oaths, do find the Defendant, Arlena M. Willes, on the charge of "Child Abuse" as follows (check only one):

_____ Not Guilty

_____ Guilty

Signed: _____

Jury Foreperson (Juror # _____)

Jury Foreperson (please print name): _____