

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 9/30/19
AMY M. WOOD,
CLERK
BY: RB

STATE OF ARIZONA,)	Court of Appeals
)	Division One
Appellee,)	No. 1 CA-CR 15-0302
)	
v.)	Maricopa County
)	Superior Court
JODI ANN ARIAS,)	No. CR2008-031021-001
)	
Appellant.)	
)	
)	

ORDER GRANTING MOTION TO DESIGNATE ISSUES FOR ORAL ARGUMENT

The court, including Presiding Judge Jennifer B. Campbell and Judges Kenton D. Jones and Michael J. Brown participating, has received appellant's motion to designate issues for oral argument. After consideration,

IT IS ORDERED granting appellant's motion. The court has determined that counsel should be prepared at oral argument to address, inter alia, the following:

1. What Arizona Supreme Court cases most accurately describe the standard of review for addressing prosecutorial misconduct?
2. If this court concludes that serious, intentional prosecutorial misconduct permeated the trial, is Arias entitled to a new trial? Would double jeopardy attach?
3. What factors are relevant in deciding whether Arias was denied a fair trial based upon prosecutorial misconduct? To what extent does ongoing publicity throughout the trial affect that determination?

4. If Arias was denied a fair trial, is prejudice presumed under the third prong of the test outlined in *State v. Escalante*, 245 Ariz. 135 (2018)?
5. Was Arias deprived of her ability to present her defense to the jury?
6. Assuming prosecutorial misconduct occurred, has the State met its burden of showing, beyond a reasonable doubt, that such alleged misconduct resulted in nothing more than harmless error (that the guilty verdict was surely unattributable to the prosecutorial misconduct)?
7. Assuming prosecutorial misconduct occurred, has Arias met her burden of showing fundamental, prejudicial error (that a reasonable jury could have found her not guilty but for the prosecutorial misconduct)?
8. What authority supports reversing a conviction based upon prosecutorial misconduct in the face of overwhelming evidence of guilt?
9. Conversely, what authority supports affirming a conviction when there has been pervasive intentional prosecutorial misconduct?
10. If overwhelming evidence of guilt insulates a verdict from reversal regardless of the extent of the prosecutor's misconduct, how can/should a court hold prosecutors to their ethical obligations under the rules of professional responsibility?
11. What steps, if any, might a court take to constrain a prosecutor's conduct inside the courtroom during proceedings? Does a court have any authority to control the conduct of attorneys when they are outside the courtroom if it impacts the proceeding taking place inside the courtroom?
12. Should publicity outside the courtroom be considered when determining if there was a circus-like atmosphere surrounding the trial? Can activities publicity occurring outside the courtroom warrant a reversal?

Counsel should be prepared to answer any question listed above. The court will allow the parties to address the issues in the order they believe most persuasive to their case.