



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Statement of Relevant Facts**

3 On March 8, 2018, a grand jury indicted Adonis Encinas-Velarde (Adonis) on numerous  
4 criminal charges, including (1) count of first-degree murder in which Kinsey Beebe (Kinsey) is  
5 the alleged victim and (4) counts of kidnapping and (4) counts of aggravated assault in which  
6 Kinsey, Amalia Amaral (Amalia), and Amalia's children, D.M. and T.P. are the alleged victims.  
7 These crimes were alleged to have occurred on February 28, 2018. *Grand Jury Transcript, Exhibit*  
8 *1*, pp. 12-14, 68-69.

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10 During the grand jury proceeding, the prosecutor instructed grand jurors on (10) separate  
11 statutes: (1) first-degree (felony) murder; (2) kidnapping; (3) accomplice liability; (4) second-  
12 degree murder; (5) aggravated assault; (6) drive-by shooting; (7) assisting a gang; (8)  
13 endangerment; (9) disorderly conduct with a weapon; and (10) misconduct involving weapons. *Id.*  
14 pp. 6-21.

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16 Detective Todd Martinet (Martinet) testified before the Grand Jury about the circumstances  
17 surrounding the charges. *Id.* at 21. According to Martinet's testimony, Adonis entered Amalia's  
18 bedroom on the night of February 28, 2018 and questioned Kinsey about the whereabouts of a  
19 missing handgun. *Id.* at 26-27, 54. During his testimony to the Grand Jury, Martinet claims that  
20 Kinsey, Amalia and her two children were being restrained in Amalia's bedroom. *See Id.* at 26,  
21 lines 21-23 ("... Adonis came into Amalia's room where Kinsey was now sitting on the bed with  
22 Amalia and her two boys."); *Id.* at 37, lines 13-14 ("[Adonis] said he went into Amalia's room  
23 where she, Kinsey, and the kids were located."); *Id.* at 54, lines 12-13 ("Amalia, Kinsey, and the  
24 two children were in Amalia's room together."); *Id.*, lines 16-20 (responding when asked by a  
25 grand juror who was being "held" in the room, Martinet stated, "the four of them, the two adult  
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1 females and the children, were in the room together . . . ”). Adonis allegedly possessed a handgun  
2 when he entered Amalia’s room, though there are conflicting accounts. *Id.* at 27, 38. Abraham  
3 Puentes-Ortiz (Abraham) entered the room a short time later, closed the door behind him, and  
4 stood by the door. *Id.* at 26-27. After a short period of time, Kinsey told the group she was leaving  
5 and left the room. *Id.* at 54-55. Amalia then told Adonis and Abraham to get out of her room, after  
6 which Adonis and Abraham left the room. *Id.* at 27-28.

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8         Martinet based his testimony off his own interview with Adonis and other law enforcement  
9 interviews with Amalia, D.M., and T.P. shortly after the alleged events occurred. However, these  
10 interviews indicate that D.M. and T.P. were, in fact, *not* inside the bedroom at the time of the  
11 alleged kidnappings and aggravated assaults. For example, Amalia states in her interview: “I told  
12 [Adonis] to get out of there and that’s when . . . it was just [Adonis] and [Kinsey] in my room at  
13 first and they went back to the back room. And then Kinsey came back again . . . she sat on the  
14 bed and then Adonis came again. I think this is when he cocked [the gun] back at her. Cause’ they  
15 came in my room twice. First, it was Kinsey and then it was Adonis. And then the second time it  
16 was Kinsey, Adonis, and the friend, Smokey.” *Audio Recording: Interview with Amalia Amaral,*  
17 *Exhibit 2* at 3:27. “I say you guys need to get the [expletive] out of my room. And [Adonis and  
18 Abraham] both took off. And that’s when I put my boys in my room . . . .” *Id.* at 5:24. During  
19 another interview, Amalia states “[t]he friend came knocking on the door and he opened it and he  
20 shut it right after him. My boys were still in the living room. It was us four in the room.” *Audio*  
21 *Recording: Interview with T.P., Exhibit 3* at 8:03-8:17. Furthermore, during Martinet’s interview  
22 of Adonis, Adonis specifically states “her kids wasn’t in the bedroom when I racked [the gun].”  
23 *Video Recording: Excerpt of Interview with Adonis Encinas-Velarde, Exhibit 4.*<sup>1</sup>

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<sup>1</sup> Excerpt is taken from 2:44:00 of State’s original video file.

1 Law enforcement also interviewed D.M. During this interview, D.M. indicates that after  
2 Adonis and Abraham left his mother's bedroom, "[his] mom told [him and his brother] to go into  
3 the room" where they began watching T.V. and eventually heard three gunshots. *Audio Recording:*  
4 *Interview with D.M., Exhibit 5* at 23:00-24:15. When asked where he was at 9 p.m., D.M. answers  
5 that at "9 o'clock me and my brother were in the living room on the couches . . . and then [Adonis].  
6 . . . went into my mom's room. First, Kinsey came and went into my mom's room. They were  
7 talking . . . then [Adonis] came in and started arguing, came out, got his friend and then friend left,  
8 came back and then we were still in here. They left into the room after Kinsey went to go pack her  
9 stuff so my mom told us to go into the room . . ." *Id.* at 25:51-26:53. At some point the officer  
10 conducting the interview even clarifies, "so it's about 9 o'clock and you guys were just watching  
11 T.V. . . . in the living room . . . now, when you're watching T.V., you had said [Adonis], [Adonis's]  
12 friend, and Kinsey were all in [Amelia's] room at that time while you guys were watching T.V.?"  
13 *Id.* at 28:00-28:23. D.M. responded affirmatively to the officer's questions and even claims to have  
14 heard what was going on in Amelia's bedroom while he and his brother were watching T.V. in the  
15 living room. *Id.* at 28:25-28:45. D.M. tells the officer that he and his brother went into his mother's  
16 bedroom after Adonis, Abraham, and Kinsey left her room because his mother "said to because it  
17 was not safe." He also recounts that his mother "locked the door" behind them. *Id.* at 30:00-30:50.

20 Martinet also testified to the Grand Jury that "Amalia stated she felt she could not leave  
21 her room." *Grand Jury Transcript, Exhibit 1*, p. 27. Martinet testified further that "[Amalia] said  
22 she was afraid of what Adonis or Abraham would do if she tried to leave and thought that they  
23 would kill her and her kids if she tried." *Id.* When a juror asked "they couldn't leave?" Martinet  
24 responded, "So Amalia said she felt that they could not leave . . ." *Id.* at 54.  
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1           However, in her interview, Amalia simply agreed that she was “scared” when asked by law  
2 enforcement. *Audio Recording: Interview with Amalia Amaral, Exhibit 2* at 9:14. Similarly, during  
3 T.P.’s interview, the officer converses with Amalia:

4           Officer: I mean, were you scared like he was going to do something, like, and you  
5 felt like if you were to get up and try to leave like you couldn’t?

6           Amalia: I would’ve...yeah, cause they were...like one was right here and the other  
7 was right –

8           Officer: Just totally blocking the door.

9 *Audio Recording: Interview with T.P., Exhibit 3* at 8:20. When discussing the fear that harm may  
10 come to her or her children if she attempted to interfere with Adonis and Abraham, Amalia states,  
11 “I didn’t think...I didn’t know and think that [something bad] was going to happen that night.” *Id.*  
12 at 8:50. She even makes several statements characterizing Adonis in a positive light and revealing  
13 the trust she had in him. *See Id.* at 18:17 (“I kinda feel like [Adonis] wasn’t gonna come after me  
14 and my kids.”); *See also Id.* at 9:30 (“[a]nd I kinda feel with Adonis deep down he kinda knew  
15 what he was doing, he knew . . . I wasn’t the one, you know, to do anything to because I was  
16 helping him, you know?”). Amalia also discusses how her son went to go play with Adonis that  
17 night, stating, “[b]ecause that’s how Adonis was. He played with my boys. He was always laughing  
18 and everything . . . .” *Audio Recording: Interview with Amalia Amaral, Exhibit 2* at 11:15.

## 19           **II.     Law and Argument**

20           Rule 12.9 of the Arizona Rules of Criminal Procedure states that a grand jury proceeding  
21 may be challenged for a new finding of probable cause upon motion “alleging that the defendant  
22 was denied a substantial procedural right . . . .” The primary function of a grand jury is to determine  
23 whether probable cause exists to believe that a crime has been committed and that it was committed  
24 by those accused. *State v. Baumann*, 125 Ariz. 404, 408 (1983). The duties imposed on the  
25 prosecutor, those of fair play and impartiality, are meant to ensure that the determinations made  
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1 by the grand jury are informed, objective, and just. *Crimmins v. Superior Court*, 137 Ariz. 39, 41  
2 (1983).

3 Due process requires the use of an unbiased grand jury and a fair and impartial presentation  
4 of the evidence. *Id.*; *State v. Emery*, 131 Ariz. 493 (1982). An indictment based on misleading (or  
5 false) testimony amounts to a denial of substantive due process. *Nelson v. Royston*, 137 Ariz. 272  
6 (App. 1983). Due process also requires that the prosecutor read all relevant statutes to the grand  
7 jury. *O'Meara v. Gottsfield*, 174 Ariz. 576, 578 (1993). Furthermore, the State is obligated to  
8 present clearly exculpatory evidence. *State v. Coconino Co. Sup. Ct., Div. II*, 139 Ariz. 422, 425  
9 (1984). Clearly exculpatory evidence is "evidence of such weight that it would deter the grand jury  
10 from finding the existence of probable cause." *Id.*

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12 ***A. Adonis was denied his substantive due process rights when Detective Martinet***  
13 ***incorrectly testified that D.M. and T.P. were in Amalia's bedroom during the alleged***  
14 ***kidnapping and aggravated assault.***

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16 In his testimony to the Grand Jury, Martinet incorrectly stated, numerous times, that both  
17 D.M. and T.P. were in Amalia's bedroom when the alleged kidnapping occurred. When a grand  
18 jury is not presented with accurate, material facts, the defendant is denied his right to due process.  
19 *Herrell v. Sargeant*, 189 Ariz. 627, 630 (1997). In *Herrell*, the defendant challenged an indictment  
20 for aggravated assault, claiming that the grand jury was not presented with material facts regarding  
21 a defense to the charge. *Id.* at 629. The court found that facts favorable to the defendant and  
22 supported by documentary evidence should have been considered by the grand jury in weighing  
23 the question of probable cause. *Id.* at 631. Because the grand jury was not presented "with an  
24 accurate picture of the substantive facts," the court found the defendant was denied his right to due  
25 process. *Id.*  
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1 Here, the grand jury was not presented with an accurate picture of material facts. In fact,  
2 the grand jury was presented with erroneous testimony. Specifically, Martinet's testimony  
3 conflicts with the audio recordings of the witness interviews. Martinet incorrectly placed the two  
4 children in Amalia's bedroom at the time the alleged offenses occurred. However, the interviews  
5 establish that both children were *not* in the room with Amalia and Kinsey. In fact, D.M.'s interview  
6 reveals that he and T.P. were in the living room watching TV when the events occurred, not in  
7 Amalia's bedroom. *Audio Recording: Interview with D.M., Exhibit 5* at 28:10. D.M. even recounts  
8 watching Abraham standing outside Amalia's room before Abraham entered. *Id.* at 29:55, 43:57.  
9 D.M. then watched as Kinsey, Adonis, and Abraham left the room, all from a perspective outside  
10 of Amalia's bedroom. *Id.* at 29:55. Furthermore, despite Martinet's testimony that Adonis said the  
11 kids were in Amalia's bedroom, Adonis clearly states in his interview that the kids were not  
12 present. *Video Recording: Excerpt of Interview with Adonis Encinas-Velarde, Exhibit 4.*

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15 When considering the kidnapping and aggravated assault charges with D.M. and T.P. as  
16 the listed victims, the Grand Jury based their decision on the testimony that the two children were  
17 in the room. Had the Grand Jury been informed the children were in a separate room when Adonis  
18 allegedly displayed a weapon, it is unlikely the jury would have found probable cause that the  
19 children were "restrained" as defined in A.R.S. § 13-1301(2)<sup>2</sup> or put in "reasonable apprehension  
20 of imminent physical injury" through the use of a "deadly weapon" as proscribed by A.R.S. § 13-  
21 1204(A)(2).

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26 <sup>2</sup> "Restrained" means to restrict a person's movements without consent, without legal authority, and in a manner which  
interferes substantially with such person's liberty, by either moving such person from one place to another or by  
confining such person." Ariz. Rev. Stat. § 13-1301(2).

1       **B. Adonis was denied a fair and impartial presentation of evidence when the State**  
2       **misrepresented Amalia's testimony and excluded exculpatory statements.**

3       During the grand jury presentation, Martinet incorrectly told jurors that Amalia "said she  
4 was afraid of what Adonis or Abraham would do if she tried to leave and thought that they would  
5 kill her and her kids if she tried [to leave]." *Grand Jury Transcript, Exhibit 1*, p. 27. He also  
6 incorrectly states that "Amalia said she felt that they could not leave . . . ." *Id.* at 54. Such  
7 statements support the State's claim that Amalia was a victim of kidnapping and aggravated  
8 assault. Yet Amalia did not make any statement with such terms. At best, Amalia merely responded  
9 in an affirmative manner to statements made by the interviewing officer trying to prompt a specific  
10 reaction. *See Audio Recording: Interview with T.P., Exhibit 3* at 8:20. Moreover, Amalia made  
11 multiple statements to the effect that she did not believe Adonis would harm her or her children.  
12 *Id.* at 9:30, 18:17; *Audio Recording: Interview with Amalia Amaral, Exhibit 2* at 11:15.

13       The State was obligated to provide the Grand Jury with accurate testimony and clearly  
14 exculpatory evidence as it could have affected the finding of probable cause for the kidnapping  
15 and aggravated assault counts with Amelia and Kinsey as the alleged victims. *See Coconino Co.*  
16 *Sup. Ct.*, 139 Ariz. at 425. Instead, Martinet's testimony inaccurately represented Amalia's mental  
17 state by suggesting that she was more afraid than she likely was. Because the Grand Jury was  
18 provided with misleading information, their determination was not informed, objective, or just.  
19 *See Crimmins*, 137 Ariz. at 41.

20       **C. Adonis was denied his substantive due process rights when the prosecutor failed to**  
21       **properly instruct the Grand Jury.**

22       Due process requires that the prosecutor read all relevant statutes to the grand jury.  
23 *O'Meara v. Gottsfield*, 174 Ariz. 576, 578 (1993). Unlawful imprisonment is often a lesser-  
24 included offense of kidnapping. A person commits unlawful imprisonment "by knowingly  
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1 restraining another person.” A.R.S. § 13-1303. Had Martinet testified accurately, jurors may have  
2 found that Adonis did not have the specific intent required under the kidnapping statute, but,  
3 instead, only acted “knowingly” as is required under the unlawful imprisonment statute.  
4 Furthermore, had jurors been instructed on the attempt statute pursuant to A.R.S. § 13-1001, it’s  
5 possible they would have determined Adonis’s alleged acts better fit an attempted crime.

6 Finally, Division 1 of the Arizona Court of Appeals, has held that “[a] kidnapping remains  
7 an ongoing crime for only so long as the defendant maintains control of the victim, restraining the  
8 victim’s freedom.” *State v. Scott*, 243 Ariz. 183 (App. 2017). In *State v. Scott*, the victim escaped  
9 from the bedroom to the living room. According to the court, the victim’s freedom of movement  
10 during that period showed that the defendant did not continue to restrain her. *Id.* Additionally, the  
11 appellate court in *Dominguez v. Foster* held that in certain circumstances during a grand jury  
12 proceeding, due process requires the State to give expanded definitions of statutes based on case  
13 law. 243 Ariz. 499, ¶ 10 (App. 2018). Here, given the testimony provided to the Grand Jury (i.e.,  
14 Kinsey said she was going to leave the room and left the room and Amalia asked Abraham and  
15 Adonis to leave the room and they did), jurors would have benefited from having an instruction  
16 related to the *Scott* case read to them. Furthermore, under *Dominguez*, such an instruction was  
17 required.  
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### 19 **III. Conclusion**

20 Adonis was denied a substantial procedural right as a result of three significant errors  
21 committed during the grand jury presentation. First, during the grand jury proceeding, Martinet  
22 testified that two alleged victims were present in Amalia’s bedroom during the (4) kidnapping  
23 counts and (4) of the aggravated assault counts. However, the witness interviews clearly show this  
24 was not the case. The two alleged victims in question were not present. Second, the State failed to  
25 provide a fair and impartial presentation of evidence when it misrepresented and excluded some  
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1 of Amalia's statements. Third, given the evidence, the State failed to instruct jurors on the  
2 applicable law. As such, the Grand Jury was unable to make an informed, objective, and just  
3 determination of probable cause. Had the Grand Jury been presented with accurate testimony,  
4 exculpatory evidence, and proper instructions on relevant statutes, there would likely not have  
5 been a determination of probable cause on any count of kidnapping or aggravated assault with  
6 Kinsey, Amelia, D.M., and T.P. as alleged victims. Further, because there would be no predicate  
7 offense for felony murder, there would likely not have been a determination of probable cause on  
8 the first-degree murder count. Accordingly, the defendant respectfully requests that the matter be  
9 remanded for a re-determination of probable cause.  
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18 A copy of the foregoing  
19 delivered this 18<sup>th</sup> day of May,  
20 2018, to:

21 Honorable Judge Nichols  
22 Division 5 of the Superior Court

23 Coconino County Attorney  
24 Attn: Ammon Barker

25 Adonis Encinas-Velarde  
26 CCDF

By: 

