IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LOUIE THOMAS MACHADO,
Petitioner.

No. 2 CA-CR 2016-0355-PR
Filed February 17, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20063933
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Robert A. Kerry, Tucson
Counsel for Petitioner

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Vásquez concurred and Chief Judge Eckerstrom dissented.

H O W A R D, Presiding Judge:

¶1 Louie Machado petitions this court for review of the trial court's order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb this ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Machado was convicted after a jury trial of the lesser-included offense of manslaughter.[1] The trial court sentenced him to an aggravated eighteen-year prison term, and we affirmed his conviction and sentence on appeal, concluding the trial court had given proper jury instructions on the presumption of innocence and the state's burden of proof. *State v. Machado,* No. 2 CA-CR 2013-0080, ¶¶ 28, 92 (Ariz. App. Mar. 12, 2015) (mem. decision). We rejected Machado's argument that the court had erred by refusing to give his requested third-party culpability jury instruction. *Id.* ¶¶ 26-27. Machado argued that the instruction became necessary after the state confused the jury by arguing in its rebuttal argument that the jury should hold Machado "to the same scrutiny that [it holds the state's] evidence" to prove his assertion that another person was responsible for the victim's death. *See id*. ¶ 29.

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[1]We reversed Machado's conviction of second-degree murder following his first jury trial and remanded for a new trial. *State v. Machado*, 224 Ariz. 343, ¶ 1, 230 P.3d 1158, 1163-64 (App. 2010), *aff'd*, 226 Ariz. 281, ¶ 26, 246 P.3d 632, 637 (2011).

¶3 Because trial counsel did not object during the state's rebuttal or request additional instructions, we reviewed the court's failure to give the instruction sua sponte for fundamental, prejudicial error. *Id.* We concluded Machado did not establish that any error had occurred, *id.* ¶ 30, and noted that our supreme court has found that "[n]o Arizona case has required a third-party culpability instruction," *State v. Parker*, 231 Ariz. 391, ¶ 55, 296 P.3d 54, 68 (2013). We further noted that Machado had not "point[ed] to any decision since *Parker* in which an Arizona court concluded the failure to give a third-party culpability instruction was error, let alone fundamental error." *Machado*, No. 2 CA-CR 2013-0080, ¶ 30.

¶4 Machado thereafter filed a petition for post-conviction relief raising several claims of ineffective assistance of trial counsel, which the trial court summarily denied. On review, Machado asserts trial counsel was ineffective in failing to request a clarifying instruction after the state provided the jury with "an incorrect standard of law which shifted the burden of proof from the state to the defendant" on third-party culpability. He also maintains he is entitled to an evidentiary hearing. Although Machado acknowledges that a third-party culpability instruction is "generally unnecessary," he nonetheless asserts that because the state committed legal error by incorrectly telling the jury he should be held to the same standard as the state to prove third-party culpability, the instruction was required. He maintains that, because trial counsel failed to request a clarifying instruction, this court reviewed for fundamental, rather than harmless error on appeal, thereby prejudicing him. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 18-20, 115 P.3d 601, 607 (2005). He further argues that because it cannot be said that the state's misstatement "did not contribute to the verdict . . . the verdict would have been reversed on a review based on the harmless error standard." *See State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993) ("Error . . . is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict.").

¶5 To present a colorable claim of ineffective assistance of counsel, Machado was required to show both that counsel's performance was deficient under prevailing professional norms and

that the deficient performance prejudiced him. *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington,* 466 U.S. 668, 687-88 (1984). In its ruling, the trial court correctly found that Machado had failed to establish prejudice, his argument that a different standard of review on appeal would have changed the outcome was "merely speculative," and the outcome would have been the same even if a new trial had been granted. *See State v. Salazar*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985) (failure to satisfy either prong of *Strickland* test fatal to ineffective assistance of counsel claim); s*ee also Strickland*, 466 U.S. at 697 (recognizing ineffective assistance claims may be resolved "on the ground of lack of sufficient prejudice").

¶6 During closing argument, defense counsel characterized the state's closing argument as "surmise and guesswork," and reiterated to the jury that the state had not met its burden of proving Machado's guilt beyond a reasonable doubt. In rebuttal, the state referred to the "instructions" provided to the jury and argued that Machado's third-party allegations were based on "supposition . . . assumptions . . . [and] false conclusions," reminding the jury that Machado had "told [twenty] people he was either there or that he did it," while the third-party "didn't do that." The state then asserted that "this room stands for something," to wit, "for the State being able to prove beyond a reasonable doubt," while also holding the defendant "to the same scrutiny as you hold [the state's] evidence."

¶7 Viewed in the context of the closing arguments as a whole, the prosecutor was asking the jury to apply the "same scrutiny" in judging the credibility of the witnesses and evidence when assessing Machado's third-party culpability argument. The state was not suggesting that the jury hold Machado to a standard of proof beyond a reasonable doubt, the standard which it had just clearly stated applied to the state. Thus, the state did not attempt to shift the burden of proof.

¶8 Further, because the judge and both attorneys had previously explained the state's burden of proof to the jury, and in light of the other jury instructions, all of which defense counsel

knew the jury would also receive in written form, he likely did not object because he did not perceive the state's comment as a problem. *Cf. State v. Newell*, 212 Ariz. 389, ¶ 68, 132 P.3d 833, 847 (2006) (recognizing "as a part of the standard jury instructions, the [trial] court instruct[s] the jury that anything said in closing arguments [i]s not evidence" and presuming "the jurors follow[] the court's instructions"). In addressing the sufficiency of counsel's performance, there is "[a] strong presumption" that counsel "provided effective assistance," *State v. Febles*, 210 Ariz. 589, ¶ 20, 115 P.3d 629, 636 (App. 2005), which the defendant must overcome by demonstrating that counsel's conduct did not comport with prevailing professional norms, *see State v. Herrera*, 183 Ariz. 642, 647, 905 P.2d 1377, 1382 (App. 1995). "To overcome th[e] presumption," a petitioner is "required to show counsel's decisions were not tactical in nature, but were instead the result of 'ineptitude, inexperience or lack of preparation.'" *State v. Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d 98, 101 (App. 2013), *quoting State v. Goswick*, 142 Ariz. 582, 586, 691 P.2d 673, 677 (1984).

¶9 Not only has Machado failed to present arguments establishing that counsel's conduct fell below prevailing professional norms, but he has not provided any affidavits or other evidence to support such an argument. *See* Ariz. R. Crim. P. 32.5 ("Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it."). Nor does it appear from the record before us that the jurors asked any questions during deliberations, which suggests the prosecutor's comment did not confuse them.

¶10 Finally, a defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," and "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *State v. Nash*, 143 Ariz. 392, 398, 694 P.2d 222, 228 (1985), *quoting Strickland*, 466 U.S. at 694; *see also State v. Lee*, 142 Ariz. 210, 214, 869 P.2d 153, 157 (1984) ("A 'reasonable probability' is less than 'more likely than not' but more than a mere possibility."). Even if counsel had requested a clarifying instruction here, the substance of any such instruction was adequately covered by the instructions that

were given. As we determined on appeal, the jury was instructed on Machado's presumed innocence, the state's burden to prove Machado's guilt beyond a reasonable doubt as to each element of the offense, and the definition of reasonable doubt. *Machado*, No. 2 CA-CR 2013-0080, ¶ 28. Those instructions also covered the substance of Machado's requested third-party culpability instruction. *See State v. Rodriguez*, 192 Ariz. 58, ¶ 16, 961 P.2d 1006, 1009 (1998) (court not required to give requested jury instruction when other instructions adequately cover its substance). And as we noted above, we assume juries follow their instructions. *See Newell*, 212 Ariz. 389, ¶ 68, 132 P.3d at 847.

¶11 Because the jury was properly instructed on the presumption of innocence and the state's burden of proof beyond a reasonable doubt, Machado cannot show that the state's ambiguous comment, which was at worst equivocal concerning the burden of proof, misled the jury. Therefore, no prejudice or reversible error occurred. Furthermore, Machado has failed to show that, had his attorney objected, a clarifying instruction would have been given due to the state's ambiguous statement or that the result of his case could have been different.

¶12 For all of these reasons, we conclude the trial court did not abuse its discretion by denying Machado's claim of ineffective assistance related to the third-party culpability instruction. *See Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d at 68. Accordingly, we grant review but deny relief.

E C K E R S T R O M, Chief Judge, dissenting:

¶13 In rebuttal summation, the prosecutor made the following assertion:

> If [the defendant's argument that J.H. committed the murder] is offensive—it's okay to be offended because this room stands for something. It stands for the State being able to prove beyond a reasonable doubt, but it also stands for

> holding the evidence that they don't have to present but they did, it stands for the proposition that you will hold them to the same scrutiny that you hold my evidence.

The most logical understanding of these words is clear: that the state bears the burden of proving its case beyond a reasonable doubt, and when the defense chooses to present its own evidence that another person has committed the offense, the defense carries the same burden as the state. Whatever the prosecutor's intentions in uttering these words, this is how a jury would reasonably understand them.

¶14 For several reasons, I cannot agree with the majority that, in the context of the respective summations, these words conveyed something more innocuous, such as a benign exhortation to consider the weaknesses of the defense evidence. I agree with the majority that context must always inform the meaning of words and sentences. *See State v. Payne*, 233 Ariz. 484, ¶ 128, 314 P.3d 1239, 1269 (2013) (prosecutor's comments must be "[t]aken in context"); *see also State v. Palmer*, 229 Ariz. 64, ¶ 24, 270 P.3d 891, 898 (App. 2012) (Eckerstrom, J., dissenting). But the pertinent sentence itself is the most important context for the words. The phrase "*same* scrutiny that you hold my evidence" plainly asks the jury to consider the defendant's third-party culpability evidence in the same way as the state's evidence. (Emphasis added.) And there is only one species of such scrutiny mentioned in the sentence itself: the state's burden of proving its case "beyond a reasonable doubt." Not only is that burden the only one to which a comparison is linguistically plausible in the sentence itself; it is also the most recently mentioned one in the state's argument.

¶15 In understanding the meaning of language, phrases which draw such comparisons are understood to address the most proximate relevant referent. *See* Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 152 (2012) (clauses refer to nearest reasonable referent). For example, a restaurant patron at a crowded table who states, "I'll have the same thing," is understood by the waiter as referring to the same meal as the immediately

preceding order, not another order made in the prior five minutes. Similarly here, the nearest referent of the comparison "the same scrutiny" was the state's evidentiary standard of proof beyond a reasonable doubt.

¶16 At minimum, by urging the jurors to consider the defendant's evidence of third-party culpability with the "same scrutiny" as the state's evidence, the prosecutor invited the jurors to be equally discerning critics of both parties' evidence. To the extent such an argument focuses exclusively on the traditional tools by which a juror considers any evidence, such argument would not be improper. However, this type of comment, in the absence of clarification, can be easily misunderstood by a jury. This is because the standard of proof imposed upon a party is integral to how a jury will consider or scrutinize the evidence. *See Santosky v. Kramer*, 455 U.S. 745, 757 (1982) (recognizing importance of standard of proof in analyzing evidence presented). As a practical matter, evidence adequate to create a reasonable possibility of innocence need not be as reliable, as persuasive, or as complete as evidence adequate to prove guilt beyond a reasonable doubt. Nor does witness credibility need to be as strong to create a reasonable doubt.

¶17 Certainly, prosecutors are entitled to vigorously challenge the credibility, reliability, persuasiveness, and completeness of evidence presented by the defense. But a prosecutor risks misdirecting a jury by suggesting, without clarification of the correct burdens of proof, that defense evidence must be as persuasive as the state's. For this reason, the prosecutor's demand that the jury apply the "same scrutiny" would have been problematic even if the prosecutor had not expressly referred to his burden of proof in the same sentence. Thus, even if we accept the majority's suggestion, at odds with the text of the offending sentence, that the prosecutor was only "asking the jury to apply the 'same scrutiny' in judging the credibility of the witnesses and evidence when assessing Machado's third-party culpability argument," *supra* ¶ 7, the prosecutor's comments remain potentially confusing to the jury.

¶18 The majority's interpretation, that the paragraph in question does not involve burden-shifting, also fails to offer satisfying explanations for numerous questions. First, why did the prosecutor discuss the state's burden of proof at all in that sentence, when the burden was applicable only to the state? Why did the prosecutor use the words "same" and "scrutiny" together if not to refer to the very same standard of proof he had just mentioned? Perhaps most importantly, why did the prosecutor suggest the defendant's decision to present evidence was a triggering event that made certain legal propositions apply which otherwise would not?[2] And why would the prosecutor state it was "offensive" for a defendant to present inculpatory evidence regarding a person not on trial except to imply that Machado's evidence in this case failed to meet the standard of proof required to incriminate someone in a court of law?

¶19 The majority's interpretation puts very different words in the prosecutor's mouth. In essence, the majority dismisses the remarks as a trivial and redundant reminder to jurors, as the triers of fact, to weigh the evidence. But, given the direct appeal to the jury's emotions (that they should be "offended") and the potentially devastating effect of the remarks on the defense case if the jury understood them as subjecting the defense case to an elevated standard of proof, I cannot agree that the comments can be reasonably understood as a pointless rejoinder. Nor can I agree with the logic offered to support that interpretation.

¶20 The majority begs the question at issue when it posits that the prosecutor must not have intended to mislead the jury because, at other times, he had spoken accurately on other legal topics. *See supra* ¶¶ 6-7. Few summations in any criminal case focus

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[2]In previous appellate opinions addressing this very case, both this court and our state's supreme court have emphasized that a defendant takes on no additional evidentiary burden in presenting a third-party culpability defense. *See State v. Machado*, 224 Ariz. 343, ¶¶ 14, 17, 31-32, 230 P.3d 1158, 1167-68, 1171 (App. 2010), *aff'd*, 226 Ariz. 281, ¶ 16, 246 P.3d 632, 635 (2011).

on matters other than the comparative strength of the parties' respective theories. Thus, it little advances our understanding of the offending comments to observe that the prosecutor's argument was otherwise unobjectionable and focused on the strengths of his own evidence and the weaknesses of the defendant's.

¶21 Similarly, the majority engages in circular reasoning when it asserts that the defense attorney's failure to object demonstrates that the prosecutor's remarks were unobjectionable. *Supra* ¶ 8. If an attorney's failure to act itself demonstrates the propriety of that failure, then no claim of ineffective assistance could ever be viable. And, although we normally presume an attorney's actions are strategic rather than deficient, *see State v. Kolmann*, 239 Ariz. 157, ¶ 10, 367 P.3d 61, 64 (2016), I can conjure no strategic reason for failing to object here.

¶22 The majority observes that the defendant failed to offer an affidavit from either trial counsel or another criminal practitioner in support of his claim of ineffective assistance. *Supra* ¶ 9. But this criticism is misplaced for several reasons. First, an attorney's effectiveness is measured by an objective standard of prevailing professional norms applied to the circumstances of the particular case. *Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d at 64, *citing Strickland v. Washington,* 466 U.S. 668, 687-88 (1984). But our supreme court has held that expert testimony is "merely [a] guide[]" as to what is objectively reasonable conduct. *See State v. Nash*, 143 Ariz. 392, 397-98, 694 P.2d 222, 227-28 (1985). Second, it is the state, not the defendant, that has the motivation to provide an affidavit of trial counsel if trial counsel can offer a strategic reason for the alleged ineffective assistance. *See* Ariz. R. Crim. P. 32.6 (allowing state's reply to include "[a]ffidavits, records or other evidence available to the state contradicting the allegations of the petition"). While Rule 32.5 also permits defendants to attach "currently available" evidence to a petition, courts have recognized the reality that defendants face evidentiary limitations in the post-conviction context, *cf. State v. Krum*, 183 Ariz. 288, 295, 903 P.2d 596, 603 (1995) (discussing limits imposed by victims' rights), and no authority exists for the proposition that petitioners must extract admissions of malpractice

from their former attorneys or provide other expert testimony to raise a colorable claim. Third, the majority overlooks that

> [o]ne of the purposes of a Rule 32 proceeding "is to furnish an evidentiary forum for the establishment of facts underlying a claim for relief, when such facts have not previously been established of record." . . . When doubts exist, "a hearing should be held to allow the defendant to raise the relevant issues, to resolve the matter, and to make a record for review."

State v. Watton, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990) (citations omitted).

¶23 Notably, the trial court declined to address whether defense counsel had been deficient in failing to object to the challenged statements. Accordingly, rather than deciding this question in the first instance, as the majority does, this court should allow Machado an evidentiary hearing in order to develop the facts related to his attorney's actual perceptions and motivations during the retrial—in short, "to determine issues of material fact." Ariz. R. Crim. P. 32.8(a). Given the nature and magnitude of the burden-shifting error he has identified, his Rule 32 petition certainly makes a threshold showing of "factors that demonstrate that the attorney's representation fell below the prevailing objective standards." *State v. Borbon*, 146 Ariz. 392, 399, 706 P.2d 718, 725 (1985).

¶24 Although the trial court and my colleagues find no prejudice on the record here, that prejudice is evident from the circumstances of this case. In fact, the deficiency and prejudice analyses are intertwined. The state's case against Machado rested largely on his own statements that he had been with the victim when she was killed. Two witnesses also claimed that Machado had admitted killing the victim, though one of those witnesses, Machado's mother, ultimately recanted. The evidence of guilt was sufficient but certainly not overwhelming and depended on the

credibility of the witnesses to his alleged admissions that he had killed the victim.

¶25 The core of Machado's defense was his claim that J.H. was the victim's killer. In support of that claim, Machado offered evidence of arguably similar weight to the evidence against him. He presented evidence that J.H. had threatened to shoot the victim shortly before her murder because she had become involved in a dispute with his then-girlfriend; J.H. had access to an antique revolver of the type that killed the victim; J.H. had offered multiple, inconsistent, and unsubstantiated alibis for the night of the murder; he had threatened to shoot another women while brandishing a similar looking gun; he had repeatedly forced other women into his car at gunpoint; and, after the murder in this case, he said that he had killed before and would kill again.

¶26 When measured against the standard of proof beyond a reasonable doubt, this evidence of J.H.'s guilt might have been wanting. It was, however, weighty evidence when offered to demonstrate a mere reasonable possibility that J.H. had committed the offense; in short, it was more than sufficient evidence to create a reasonable doubt about Machado's own guilt. *See* Rev. Ariz. Jury Instr. ("RAJI") Stand. Crim. 54 ("If you have a reasonable doubt whether the defendant committed the alleged crime because the crime may have been committed by a third party, you *must* find the defendant not guilty.") (emphasis added). Accordingly, when the prosecutor effectively shifted the burden and suggested to the jury that such third-party evidence must be held to the same standard of proof, these remarks struck at the jugular of the defense case.

¶27 Because there was no objection from counsel or clarification from the trial court, this was the last word the jury heard on the topic; it had no reason to believe the prosecutor, the representative of the State of Arizona, had misstated the applicable law. *Cf. State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989) (prosecutor's statements carry "the weight and prestige of the County Attorney's office"); *Carrero-Vasquez v. State*, 63 A.3d 647, 652 (Md. Ct. Spec. App. 2013) (prosecutor's misstatement about

standard of proof during rebuttal carried special force as "last explanation" heard by jury).

¶28 Nor can I agree that the reasonable doubt instruction remedied the improper argument. This is because the prosecutor's comments suggested that when the defendant takes on the role of prosecutor by presenting his own evidence of a third party's guilt, his evidence must endure the "same scrutiny." The improper argument could thus have been misunderstood by the jury as a logical corollary to, rather than a contradiction of, the reasonable doubt instruction provided by the court. Notably, that instruction was read to the jury before the state's summation and not repeated.

¶29 The resulting prejudice is apparent from what followed, even without dispositive jury questions illustrating some confusion. The jury deliberated for a full day on Friday, January 25, 2013, but failed to return a verdict. After resuming deliberations the following Monday, the jury acquitted Machado of second-degree murder. The manslaughter verdict of guilt that the jury also returned at that time—much like the second-degree murder verdict returned in Machado's first trial, where first-degree murder was still at issue—suggests the jury reached a compromise verdict. Each time a jury has considered this case, the jury has acquitted Machado of one offense and found him guilty of a lesser.

¶30 To be entitled to an evidentiary hearing on an issue, a petitioner need only assert a colorable claim, meaning a claim which, if the allegations are accepted as true, probably would have changed the outcome of the proceeding. *See Kolmann*, 239 Ariz. 157, ¶¶ 8-10, 367 P.3d at 64; *see also State v. McCall*, 160 Ariz. 119, 129, 770 P.2d 1165, 1175 (1989). For the reasons stated, it is highly probable that the jury understood the remarks as requiring Machado to meet a prosecutorial burden of proof in presenting the evidence of J.H.'s guilt. Under the circumstances of this case, it was objectively unreasonable for defense counsel not to object. Had this error been identified and corrected at trial, it likely would have changed the verdict. Yet even if the objection had not been sustained, the outcome of the appeal likely would have been different because it would have been assessed under a harmless-error standard of

appellate review. *See State v. Valverde*, 220 Ariz. 582, ¶ 11, 208 P.3d 233, 236 (2009) (emphasizing state carries burden in harmless-error review to show "the guilty verdict actually rendered in this trial was surely unattributable to the error"), *quoting State v. Anthony*, 218 Ariz. 439, ¶ 39, 189 P.3d 366, 373 (2008).

¶31 Notably, the same trial court that concluded Machado could not hope for a better outcome on retrial also had precluded several substantial items of evidence that could be admissible in another trial. For example, the court had precluded a statement by J.H. that he was with the victim when she died.[3] It is therefore a reasonable possibility that a new trial, with the jury considering the third-party culpability evidence under the correct standard of proof, would produce a more favorable verdict for Machado. Contrary to the trial court's determination, this is not mere "speculation." Because I would find the trial court abused its discretion in summarily dismissing Machado's Rule 32 petition due to a lack of prejudice, I respectfully dissent from the majority's decision.

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[3]If Machado were to provide the foundational information we found lacking in *State v. Machado*, No. 2 CA-CR 2013-0080, ¶ 72 (Ariz. App. Mar. 12, 2015) (mem. decision), then this statement should be admissible as one against penal interest pursuant to Rule 804(b)(3), Ariz. R. Evid., for its probative value and incriminating character cannot be questioned under the circumstances of this case. J.H. was a suspect in in the victim's murder, and our supreme court has already determined that an anonymous telephone call possibly made by J.H. was admissible evidence against him under this rule. *Machado*, 226 Ariz. 281, ¶¶ 18-23, 246 P.3d at 635-36. Moreover, the state introduced many similar out-of-court statements to convict Machado, and any asymmetric treatment of the evidence—albeit treatment that is allowed by Rule 801(d)(2)(A), Ariz. R. Evid.—would be highly questionable under *Chambers v. Mississipi*, which prohibits the mechanistic application of hearsay rules to defeat the ends of justice. 410 U.S. 284, 302 (1973).