ARIZONA SUPREME COURT

STATE OF ARIZONA, Appellee, v. JOHN LOGAN BROWN Appellant/Petitioner.	No. CR-24-0143-PR Arizona Court of Appeals No. 2 CA-CR 2023-0138 Pima County Superior Court No. CR 20220381001

BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION OF ARIZONA & ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF APPELLANT/PETITIONER

American Civil Liberties Union Foundation of Arizona

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STATEMENT OF INTEREST OF AMICI CURIAE

The American Civil Liberties Union of Arizona (ACLU of Arizona) is a state-wide nonprofit, nonpartisan organization with over 20,000 members in Arizona and the state affiliate of the national American Civil Liberties Union. The ACLU of Arizona is dedicated to protecting the civil rights and civil liberties of all, including the rights of those accused of crimes. The ACLU of Arizona frequently files amicus curiae briefs in Arizona courts on a wide range of civil liberties and civil rights issues and has appeared as amicus curiae in this court to address important criminal legal issues.

Arizona Attorneys for Criminal Justice (AACJ), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training, and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

INTRODUCTION

The state and federal constitutions independently require that a criminal defendant receive a fundamentally fair trial, including a meaningful opportunity to present a complete defense. *R.S. v. Thompson in and for Maricopa County*, 251 Ariz. 111, 117 ¶ 13 (2021); *California v. Trombetta*, 467 U.S. 479, 485 (1986). The trial court denied Mr. Brown these rights when it denied his request to instruct the jury on justification. The Court of Appeals compounded this injustice when it affirmed the trial court's error, holding that Mr. Brown was not entitled to a justification defense instruction where he attempted to keep an unwanted guest from forcefully entering his private bedroom after he locked his door and told the intruder to stay out. The government asks this Court to adopt a holding that could have been lifted from the pages of vampire lore: that once invited into your home, a guest has carte blanche to go anywhere and do anything. Such a rule radically departs from this state's public policy as articulated in our justification defense statutes and should be rejected by this Court. As argued below, the Court of Appeals decision (1) ignores the real-world privacy protections cohabitating people reasonably expect their roommates to respect; (2) fails to consider binding and persuasive caselaw from this Court; (3) misconstrues the plain language of the justification defense statutes, undermining the legislative intent and public policy behind them; (4) grossly misreads U.S. Supreme Court precedent; and (5) will negatively impact an

increasing number of Arizonans. This Court should reverse the Court of Appeals' decision below and grant Mr. Brown a new trial with a meaningful opportunity to raise the justification defenses to which he is clearly entitled.

ARGUMENT

I. Even as an Invitee of Mr. Brown's Wife, M.H. was not Authorized to Enter Mr. Brown's Private Bedroom, Especially After Mr. Brown Locked the Door and Told M.H. to Stay Out.

This Court has long recognized that an invitee may only enter those parts of a premises into which he has been invited and must use those areas in a manner authorized by the invitation. *See Southwest Cotton Co. v. Pope*, 25 Ariz. 364, 378 (1923). When an invitee goes beyond the "area of invitation" he becomes a trespasser. *See Nicoletti v. Westcor, Inc.*, 131 Ariz. 140, 142-43 (1982). Similarly, when an invitee engages in explicitly or implicitly unpermitted activities, he becomes a trespasser. *Shiellis v. Kolt*, 148 Ariz. 424 (1986) (adopting *Nicoletti*'s unpermitted activity holding). Here, the Court of Appeals and the government describe M.H. as an invitee[1] without defining the scope of his invitation or the

[1] Arizona is one of the few states that has retained the distinctions between invitees, licensees, and trespassers. *Shannon v. Butler Home, Inc.*, 102 Ariz. 312 (1967). In Arizona, an invitee is one who is explicitly or implicitly invited onto a property for business purposes, while a social guest is a licensee. *Robles v. Severyn*, 19 Ariz. App. 61 (1973) ("In this jurisdiction a social guest is not an invitee but merely a licensee despite the fact that he is on the premises pursuant to an invitation from one in possession"). Yet neither the parties nor the Court of Appeals acknowledge these distinctions. As such, the Court of Appeals' conclusion that Mr. Brown was not entitled to the justification presumptions exceptions of A.R.S. § 13-419(A)-(B) may

permitted activities he could engage in. Instead, they advance a new rule: once someone is invited into a home, they have carte blanche go wherever they like and engage in any activity even when they are explicitly instructed otherwise by a co-tenant. Such a rule ignores the record in this case and would lead to absurd results. Indeed, under this new rule, once your roommate invites someone into your home, that person could barge in on you in the bathroom, even if you instructed no one to enter, closed the door, and locked it.

Such a rule, which elevates the initial invitation of one co-tenant over any other co-tenant's later rescinding or limiting of that invitation turns on its head the U.S. Supreme Court's acknowledgment, cited favorably below, that there is "no common understanding that one co-tenant generally has the right or authority to prevail over the express wishes of another…." *State v. Brown*, No. 2 CA-CR 2023-0138, 2024WL2263468, *¶ 19 (App. May 17, 2024) (citing *Georgia v. Randolph*, 547 U.S. 103, 114 (2006)). Here, rather than recognizing that Mr. Brown shared mutual authority with his wife to both invite or rescind an invitation to guests, the Court of Appeals rests its opinion on the fact that Mr. Brown's wife had not "asked [M.H.] to leave before the incident." *Id.* at ¶ 19.

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mistakenly rely on the exceptions found in A.R.S § 13-419(C)(1), which explicitly include an "invitee," but do not include a licensee, like M.H., who was a mere social guest.

Similarly, the government's argument that Mr. Brown "had no authority to remove [M.H.] from the condo," Appellee's Supp. Brief at 5, misses the mark. Mr. Brown's entitlement to the justification defenses and presumptions does not depend on his authority to remove M.H. from the condo, but on his authority to demand that both M.H. and his wife stay out of his private, locked bedroom while he was inside and his right to the sanctity of his private space. Such a situation differs mightily from the scenario described in the concurring opinion in *Fernandez v. California*, upon which the government relies. *Id.* at 15 (*citing* 571 U.S. 292, 308 (2014) (Scalia, J., concurring). There, the Court found that a previous objection to a police search lost its force once the objecting co-tenant was no longer physically present following his arrest. 571 U.S. at 294.

Mr. Brown had his own, separate bedroom when he moved back in with his wife. RT 3/28/23, 122-23. As Mr. Brown explained, "we had separate rooms because we couldn't afford, you know, two separate rents," *Id*. at 164. As such, the authority Mr. Brown's wife had to invite guests over did not extend into Mr. Brown's private room. *See Georgia v. Randolph*, 547 U.S. 103, 106 (2006) (the Fourth Amendment "recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares … authority over *the area in common* with a co-occupant…." (emphasis added)).

Assuming *arguendo* that Mr. Brown's wife had the authority to allow guests

to enter Mr. Brown's private bedroom, that authority terminated once Mr. Brown locked himself inside of his bedroom and expressly told his wife and M.H. to stay out. RT 3/28/23, 128, 172. Rather than abiding by these clear directions to stay out, M.H. barged into Mr. Brown's room after the lock was picked. This form of entry is that of a trespasser, not an invitee. M.H.'s forced entry into Mr. Brown's locked, private room satisfies the criminal trespass statute's requirement that he "knowingly entert[ed]" a property despite a "reasonable request to leave." A.R.S. §§ 13-1502, 13-1504. Any reasonable person in M.H.'s position would have known he was not authorized to enter a private, locked room after being told to stay out. *Cf. Randolph*, 547 U.S. at 112 (explaining "there will be instances in which even a person clearly belonging on premises as an occupant may lack any perceived authority to [allow an invitee access to particular private spaces]").

Finally, this Court's prior analysis of the justification defense found in A.R.S. § 13-411 and the legislative intent and the public policy behind it, further support a holding that Mr. Brown is entitled to the justification defenses. *State v. Korzep*, 165 Ariz. 490 (1990) ("*Korzep III*"). In *Korzep III*, this Court rejected the Court of Appeals decision that the statute "does not apply when one resident uses deadly force to prevent the commission of a crime by another resident of the same household." *Id.* at 492. In vacating the opinion below, this Court looked to the text of A.R.S. § 13-411, which like A.R.S. §§ 13-407 and 13-418, uses the phrase "another person."

This Court concluded that the use of "another" in the justification statute "means a different or distinct person, and includes a resident of the same household as well as an intruder or invitee." *Korzep III*, 165 Ariz. at 493.

Critical to this Court's decision in *Korzep III*, was a review of the legislative declaration of policy. In 2006, the legislature adopted A.R.S. §§ 13-418 and 13-419. 2006 Ariz. Sess. Laws Ch. 199, § 4, 627–28. The act that included these statutes repealed the legislative declaration of policy that was passed with § 13-411 in 1983, replacing it with a new declaration:

> The legislature is alarmed by the increasing number of injuries and fatalities caused to victims of domestic violence. *A person should be entitled to safe and peaceful enjoyment within the home even from residents of the same household*. It is the intent of the legislature that all citizens, law enforcement personnel and the state courts be given notice that the justification in use of force provided in section 13-411, Arizona Revised Statutes, is applicable to all victims of domestic violence as defined by section 36-3001, Arizona Revised Statutes, whether such domestic violence occurs in a private or public place and whether or not the victim and the perpetrator of domestic violence are residents of the same home.

2006 Ariz. Sess. Laws Ch. 199, § 5, 628–29 (emphasis added).

The references to "enjoyment within the home" and "residents of the same household," seem to be an explicit adoption of this Court's reasoning in *Korzep III*: justification defenses can apply when force is threatened or used against co-residents and their guests.

II. The Court of Appeals Misreads the "Unlawfully or Forcefully Entering" Language of A.R.S. §§ 13-418 and 13-419 by Conflating the Terms and Ignoring the Use of the Disjunctive.

Arizona law is clear that "a person is justified in using physical force against another person if the person reasonably believes himself to be in imminent peril of serious physical injury and the person against whom the physical force is used was in the process of unlawfully *or* forcefully entering, or had unlawfully *or* forcefully entered, a residential structure." A.R.S. § 13-418(A) (cleaned up for relevance) (emphasis added). Moreover, "[a] person is presumed to reasonably believe that the use of physical force is immediately necessary … if the person knows or has reason to believe that the person against whom physical force is used is unlawfully *or* forcefully entering or has unlawfully *or* forcefully entered and is present in the person's residential structure." A.R.S. § 13-419(A) (cleaned up for relevance) (emphasis added).

Despite both laws' use of the disjunctive "or" justifying the use of force when another person is *either* unlawfully entering *or* forcefully entering a residential structure, the Court of Appeals conflates these two scenarios. In its opinion below, the court summarily concludes that Mr. Brown "could not have reasonably believed M.H. was 'unlawfully or forcefully entering'" without analyzing the difference between an unlawful entry and a forceful entry. Here, even if the Court of Appeals is correct that there could be no *unlawful* entry because Mr. Brown's wife invited

M.H. into the home, the record supports Mr. Brown's reasonable belief that M.H. was *forcefully* entering Mr. Brown's private, locked bedroom after explicitly being told to stay out. Such actions entitle Mr. Brown to the justification defenses he requested, and this Court should remand for a new trial.

III. Mr. Brown's Private Bedroom Qualifies as a Residential Structure for Purposes of the Justification Defense Statutes

In its Supplemental Brief, the government concedes a bedroom constitutes part of a "residential structure," but argues that Mr. Brown's bedroom is "subsume[d]" into the larger home, concluding therefore that Mr. Brown is not entitled to raise a justification defense. Appellee's Supp. Br. At 5. To reach this conclusion, however, the government relies solely on authority interpreting burglary statutes (plus a single case reviewing an assault that occurred in an attached garage). None of this authority addresses the issue here: whether Mr. Brown is entitled to justification defenses to keep an unwanted guest from forcibly entering his private bedroom after he locked his door and told the intruder to stay out.

As the government notes in its Answering Brief in the Court of Appeals, the concern with treating individual rooms within a single home as separate "residential structures" under the burglary statute is that a criminal defendant could be exposed to multiple convictions for the same offense simply by stepping into separate rooms of the same home, raising potential double jeopardy issues. But such a concern is

not implicated here. In fact, in this context, it is the government's limited reading of "residential structures" that raises constitutional concerns.

As this Court explained, "[t]he Double Jeopardy Clause protects against multiple punishments for the same offense." *State v. Jurden*, 239 Ariz. 526, 530 ¶10 (2016) (*citing State v. Eagle*, 196 Ariz. 188, 190 ¶ 6 (2000)). Under the Double Jeopardy Clause, "if multiple violations of the same statute are based on the same conduct, there can be only one conviction if there is a single offense." *Id.* (*citing State v. Powers*, 200 Ariz. 123, 125 ¶ 5 (App. 2001)). Here, holding that a private, locked bedroom is a separate residential structure entitling Mr. Brown to raise a justification defense does not implicate Double Jeopardy Clause concerns. Rather, under the facts of this case, the lower court's holding to the contrary violated Mr. Brown's right to present a complete defense by stripping him of his right to raise the justification defenses where an intruder who was told to stay out of Mr. Brown's private, locked bedroom instead forcefully entered it.

Moreover, hypotheticals offered by the government in its Supplemental Brief ignore two critical distinctions relevant here. Appellee's Supp. Brief at 12. First, Mr. Brown was physically present and expressly told M.H to stay out of his room, a fact that is of constitutional significance as explained more fully below. *See Randolph*, 547 U.S. at 114 (holding that a "*physically present* co-occupant's stated refusal to permit entry prevails" over that of another co-occupant. (emphasis added)). Second,

Mr. Brown is an adult, not a child living with parents who almost certainly have the authority to override their child's wishes about where guests may go within the home. *Id.* ("Unless the people living together fall within some recognized hierarchy, like a household of parent and child … there is no societal understanding of superior and inferior, a fact reflected in a standard formulation of domestic property law, that '[e]ach cotenant ... has the right to use and enjoy the entire property as if he or she were the sole owner, limited only by the same right in the other cotenants'").

IV. Supreme Court Precedent, Including *Georgia v. Randolph*, Support Mr. Brown's Argument That He is entitled to Justification Defenses.

The Court of Appeals misguidedly relies on *Georgia v. Randolph* to support its novel rule that once someone is invited into a home, they have carte blanche to go wherever they want and engage in any activity they want, including breaking into locked, private rooms. *State v. Brown*, No. 2 CA-CR 2023-0138, 2024WL2263468, *¶ 19 (App. May 17, 2024) (*citing* 547 U.S. at 114). Yet rather than supporting the decision below, Fourth Amendment cases like *Randolph* provide persuasive support for Mr. Brown's argument that he is entitled to justification defenses.

In *Randolph*, police arrived at the home of Scott Randolph and his wife, Janet, following a domestic dispute. 547 U.S. at 106-07. Janet told the police her husband was a cocaine user, claimed there were items of drug evidence in the home, and gave the police permission to search the home. *Id.* at 107. Scott Randolph, however,

unequivocally refused to allow the police into his home and later moved to suppress the evidence seized by police "as products of a warrantless search of his house unauthorized by his wife's consent over his express refusal." *Id.* While the Supreme Court noted that there is "no common understanding that one co-tenant generally has the right or authority to prevail over the express wishes of another, whether the issue is the color of curtains or invitations to outsiders," the Court held that "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." *Id.* at 106, 114.

Randolph is clear: while physically present, Mr. Brown's express demand that M.H. stay out of his private, locked bedroom prevails over his wife's general invitation to allow M.H. into their shared home. As the Supreme Court explained, "it is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out.'" *Id.* at 113. There, as here, where Mr. Brown locked his door and told M.H. to stay out, "no sensible person would go inside under those conditions." *Id.*

V. The Court of Appeals Ruling Will Negatively Impact an Increasingly Large Number of Arizonans

The Court of Appeals holding, which diminishes the rights of people who cohabitate, will negatively impact an increasing number of Arizonans. It will also have a particularly pernicious effect on Arizonans with lower income, like Mr.

Brown. *See* RT 3/28/23, 164. Between 2010 and 2022, Arizona rents increased by 71.8%, the highest among all states compared in the 2024 study by Arizona State University.[2] In 2022, the Arizona Department of Housing estimated an existing shortage of 270,000 homes in the state.[3] As a result of economic fallout from the COVID-19 pandemic, shared housing and doubling up—"sharing a home with others when a home of their own is out of reach"—increased among poor and low-income Americans.[4]

The opinion below, therefore, would exacerbate the detrimental effects of our state's housing crisis and undermine Arizona's public policy that guarantees all Arizonans, including those who cohabitate out of choice or financial necessity, to safe and peaceful enjoyment within the home. Although the Court of Appeals' holding does not facially discriminate against the poor, its effect reflects what Anatole France conveyed when he wrote that "[t]he law, in its majestic equality, forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal their bread."[5] A refusal to grant a cohabiting tenant the right to exclude an unwanted

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[2] Arizona Rsch. Ctr. for Hous. Equity and Sustainability, State of Hous. in Arizona (2024) 17.

[3] Arizona Dep't of Housing, Fiscal Year 2022 Annual Report 3, https://housing.az.gov/sites/default/files/ADOH_FY2022_Annual_Report.pdf.

[4] Molly K. Richard, et al., *Quantifying Doubled-Up Homelessness: Presenting a New Measure Using U.S. Census Microdata*, Housing Policy Debate 2 (2022); Conor Dougherty, *Pandemic's Toll on Housing: Falling Behind, Doubling Up*, THE NEW YORK TIMES (Feb. 6, 2021), https://www.nytimes.com/2021/02/06/business/economy/housing-insecurity.html.

[5] *The Red Lily*, Anatole France, 1894.

guest from his locked, private bedroom is a refusal to grant people without financial resources defensive property rights into the small spaces they can afford.

CONCLUSION

The opinion below ignores Mr. Brown's reasonable belief that force was necessary when M.H. trespassed into a private bedroom by forcing open the door after Mr. Brown told him to stay out. The Court of Appeals likewise barreled past the important use of the disjunctive "or" in both A.R.S. §§ 13-418(A) and 13-419(A). Had the lower court attended to this crucial conjunction, it would have had to admit that Mr. Brown was entitled to the justification defenses where M.H. had forcefully entered Mr. Brown's locked, private bedroom. Finally, the Court of Appeals ignores Fourth Amendment precedent which recognizes our widely held social expectations that establish a physically present co-tenant can bar a non-tenant from entry. Not only does the opinion below establish an absurd and unsafe standard for people who cohabitate, if allowed to stand, it will have a disproportionately negative impact on Arizonans of lower financial means. For Mr. Brown, the trial court's error amounted to a deprivation of his constitutional right to present a complete defense. For these reasons, amici urge this Court to reverse.

Respectfully submitted this 10th day of February, 2025

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