

**Arizona Supreme Court**  
**Criminal Death Penalty Appeal**

**CR-17-0201-AP**

**STATE OF ARIZONA v PRESTON ALTON STRONG**

**Appellate Case Information**

Case Filed: 11-May-2017  
Case Closed:

**Dept/Composition**

**En Banc**  
Hon. Robert Brutinel  
Hon. Ann A. Scott Timmer  
Hon. Clint Bolick  
Hon. John R Lopez  
Hon. James P Beene  
Hon. William G Montgomery  
Hon. John Pelander

**Side 1. STATE OF ARIZONA, Appellee**

(Litigant Group) STATE OF ARIZONA

- State of Arizona

**Attorneys for: Appellee**

Kristin K. Mayes, Esq. (AZ Bar No. 022584)  
Jeffrey L Sparks, Esq. (AZ Bar No. 27536)  
Dominic Emil Draye, Esq. (AZ Bar No. 33012)  
Laura P Chiasson, Esq. (AZ Bar No. 19025)

**Side 2. PRESTON ALTON STRONG, Appellant**

(Litigant Group) PRESTON ALTON STRONG

- Preston Alton Strong

**Attorneys for: Appellant**

Julie Hall, Esq. (AZ Bar No. 17252)  
Harriette P Levitt, Esq. (AZ Bar No. 7077)

**CASE STATUS**

Aug 11, 2017....Record Complete

May 11, 2017....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
YUM CR201400685					
YUM S1400CR201400685	First Degree Murder	Death	Maria Elena Cruz, Trial	JURY	

**211 PROCEEDING ENTRIES**

- 11-May-2017 FILED: (Letter) Notice of Filing of Appeal (Clerk, YCSC) (Judgment filed in YCSC 5/5/2017)
- 15-May-2017 FILED in Superior Court: Notice of Appeal
- 16-May-2017 FILED: Notice of Appearance (Lacey Stover Gard for Appellee State); Certificate of Service (Appellee State)
- 16-May-2017 FILED: Reporter's Transcript - 8/6/14 - Case Management Conference (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Reporter's Transcript - 9/24/14 - Case Management Conference (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Reporter's Transcript - 3/25/15 - Case Management Conference (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Reporter's Transcript - 1/31/17 - Jury Trial Day 14 2:00 p.m. to 4:00 p.m. (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Notice of Filing (Elizabeth Hengstebeck)
- 16-May-2017 FILED: Reporter's Transcript - 4/6/15 - Motion to Remand for Grand Jury (Laurie Cooper)
- 16-May-2017 FILED: Reporter's Transcript - 4/29/15 - Case Management Conference (Laurie Cooper)
- 16-May-2017 FILED: Reporter's Transcript - 10/4/2016 - Case Management Conference (Laurie Cooper)
- 16-May-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
- 16-May-2017 FILED: Notice of Appeal from Superior Court (Clerk, YCSC) (Judgment filed in YCSC 5/5/2017)
- 17-May-2017 FILED: Notification to Court Reporters Notice of Appeal Filed (Clerk, YCSC)
- 22-May-2017 FILED: Reporter's Transcript - 2/3/17 - Jury Trial Day 16 (Elizabeth Hengstebeck)
- 22-May-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)

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18. 23-May-2017 FILED: Amended Notification to Court Reporters Notice of Appeal Filed (Clerk, YCSC)
19. 30-May-2017 FILED: Reporter's Transcript - 2/24/17 - Jury Trial Day 24 (Elizabeth Hengstebeck)
20. 30-May-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
21. 30-May-2017 FILED: Reporter's Transcript - 3/2/17 - Jury Trial Day 27 (Elizabeth Hengstebeck)
22. 30-May-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
23. 31-May-2017 FILED: Reporter's Transcript - 1/26/17 - Jury Trial Day 11 (Laurie Cooper)
24. 31-May-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
25. 1-Jun-2017 FILED: Reporter's Transcript - 3/24/17 - Jury Trial Day 36 (Elizabeth Hengstebeck)
26. 1-Jun-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
27. 5-Jun-2017 FILED: Reporter's Transcript - 3/13/17 - Jury Trial Day 31 (Elizabeth Hengstebeck)
28. 5-Jun-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
29. 6-Jun-2017 FILED: Motion for Extension of Time to File Transcripts (Katherine R. Pitotti)
30. 8-Jun-2017 Katherine R. Pitotti, Court Reporter, having filed a first request for extension of time to file transcripts,  
  
IT IS ORDERED granting Katherine R. Pitotti, Court Reporter, a first extension of time to and including July 27, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
31. 12-Jun-2017 FILED: Reporter's Transcript - 2/27/17 - Jury Trial Day 25 (Elizabeth Hengstebeck)
32. 12-Jun-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
33. 12-Jun-2017 FILED: Motion for Extension of Time to File Transcripts (Jacqueline M Perkins)
34. 12-Jun-2017 FILED: Motion for Extension of Time to File Transcripts (Elizabeth Hengstebeck)
35. 13-Jun-2017 FILED: Motion for Extension of Time to File Transcripts (Julie K. Knowlton)
36. 14-Jun-2017 Jacqueline M. Perkins, Court Reporter, having filed a first request for extension of time to file transcripts,  
  
IT IS ORDERED granting Jacqueline M. Perkins, Court Reporter, a first extension of time to and including August 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
37. 14-Jun-2017 Elizabeth Hengstebeck, Court Reporter, having filed a first request for extension of time to file transcripts,  
  
IT IS ORDERED granting Elizabeth Hengstebeck, Court Reporter, a first extension of time to and including August 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
38. 14-Jun-2017 Julie K. Knowlton, Court Reporter, having filed a first request for extension of time to file transcripts,  
  
IT IS ORDERED granting Julie K. Knowlton, Court Reporter, a first extension of time to and including August 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
39. 14-Jun-2017 FILED: Reporter's Transcript - 3/6/2017 - Jury Trial Day 28 (Elizabeth Hengstebeck)
40. 14-Jun-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
41. 14-Jun-2017 FILED: Motion for Extension of Time to File Transcripts (Adam W. Gage)
42. 15-Jun-2017 Adam W. Gage, Court Reporter, having filed a first request for extension of time to file transcripts,  
  
IT IS ORDERED granting Adam W. Gage, Court Reporter, a first extension of time to and including August 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
43. 19-Jun-2017 FILED: Request for Extension of Time (Laurie L. Cooper)

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44. 20-Jun-2017 Laurie L. Cooper, Court Reporter, having filed a first request for extension of time to file transcripts,  
IT IS ORDERED granting Laurie L. Cooper, Court Reporter, a first extension of time to and including August 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Janet Johnson, Clerk)
45. 20-Jun-2017 FILED: Reporter's Transcript - 1/30/2017 - Jury Trial Day 13 (Michele E. Balmer)
46. 28-Jun-2017 FILED: Reporter's Transcript - 2/28/2017 - Jury Trial Day 26 (Laurie Cooper)
47. 28-Jun-2017 FILED: Notice of Service of Transcript (Laurie Cooper)
48. 29-Jun-2017 FILED: Reporter's Transcript - 6/14/2016 - Status Conference (Katherine Pittoti)
49. 29-Jun-2017 FILED: Reporter's Transcript - 8/19/2016 - Motion Hearing/Evidentiary Hearing (Katherine Pittoti)
50. 29-Jun-2017 FILED: Reporter's Transcript - 12/13/2016 - Motion Hearing (Katherine Pittoti)
51. 29-Jun-2017 FILED: Notice of Service of Transcript (Katherine Pittoti)
52. 29-Jun-2017 FILED: Record from YumaCSC: Instruments and MEs (electronic)  
Contains SEALED Documents
53. 3-Jul-2017 FILED: Reporter's Transcript - 1/31/17 - Jury Trial Day 14 (Katherine Pittoti)
54. 3-Jul-2017 FILED: Reporter's Transcript - 12/14/15 - Motion Hearing (Katherine Pittoti)
55. 3-Jul-2017 FILED: Reporter's Transcript - 1/17/17 - Jury Trial Day 6 (Katherine Pittoti)
56. 3-Jul-2017 FILED: Notice of Service of Transcript (Katherine Pittoti)
57. 3-Jul-2017 FILED: Reporter's Transcript - 1/19/17 - Jury Trial Day 7 (Katherine Pittoti)
58. 3-Jul-2017 FILED: Reporter's Transcript - 2/9/17 - Jury Trial Day 19 (Katherine Pittoti)
59. 3-Jul-2017 FILED: Notice of Service of Transcripts (Katherine Pittoti)
60. 7-Jul-2017 FILED: Reporter's Transcript - 1/5/17 - Jury Trial Day 2 (Elizabeth Hengstebeck)
61. 7-Jul-2017 FILED: Notice of Service of Transcripts (Elizabeth Hengstebeck)
62. 10-Jul-2017 FILED: Reporter's Transcript - 3/10/17 - Jury Trial Day 30 (Elizabeth Hengstebeck)
63. 10-Jul-2017 FILED: Notice of Service of Transcripts (Elizabeth Hengstebeck)
64. 10-Jul-2017 FILED: Reporter's Transcript - 2/14/17 - Jury Trial Day 22 (Katherine Pittoti)
65. 10-Jul-2017 FILED: Reporter's Transcript - 3/7/17 - Jury Trial Day 29 (Katherine Pittoti)
66. 10-Jul-2017 FILED: Reporter's Transcript - 3/14/17 - Jury Trial Day 32 (Katherine Pittoti)
67. 10-Jul-2017 FILED: Notice of Service of Transcripts (Katherine Pittoti)
68. 12-Jul-2017 FILED: Reporter's Transcript - 3/31/17 - Jury Trial Day 39 (Laurie Cooper)
69. 12-Jul-2017 FILED: Reporter's Transcript - 4/10/17 - Jury Trial Day 40 (Laurie Cooper)
70. 12-Jul-2017 FILED: Reporter's Transcript - 4/11/17 - Jury Trial Day 41 (Laurie Cooper)
71. 12-Jul-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
72. 21-Jul-2017 FILED: Reporter's Transcript - 1/3/17 - Jury Trial Day 1 (Julie K. Knowlton); Notice of Service of Transcript
73. 21-Jul-2017 FILED: Reporter's Transcript - 1/9/17 - Jury Trial Day 3 (Julie K. Knowlton)
74. 21-Jul-2017 FILED: Reporter's Transcript - 1/12/17 - Jury Trial Day 4 (Julie K. Knowlton)
75. 21-Jul-2017 FILED: Reporter's Transcript - 1/20/17 - Jury Trial Day 8 (Afternoon Proceedings) (Julie K. Knowlton)

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76. 24-Jul-2017 FILED: Record from YCSC:
- Box 1: List; HD: 8/18/16 Exh Nos. 138-157 (RTs)
  - Box 2: Env No. 1 – HD: 12/14/15 Def Exh Nos. 1-2, Pltf Exh No. 2
  - Env No. 2 – HD: 8/18/16 Pltf Exh Nos. 1-17
  - Env No. 3 – HD: 8/18/16 Def Exh Nos. 1-3
  - Env No. 4 – HD: 8/19/16 (SEALED) Exh No. 2
  - HD: 8/18/16 Exh Nos. 158-173 (RTs), 175-215
  - Box 3:
    - Env No. 1 – HD: 1/3/17 Exh Nos. 1(A), 6, 17, 31
    - Env No. 2 – HD: 1/3/17 Exh Nos. 2, 5-11, 15-20, 23-29, 32-46, 48-54, 63-107, 112-148, 157-170, 185-206
    - Env No. 3 – HD: 1/3/17 Exh Nos. 208, 210-213, 215-217, 219, 221-222, 225-231, 235-246, 251-257, 266-274, 284-315, 322-330, 343-346, 351-352, 356-358
    - Env No. 4 – HD: 1/3/17 Exh Nos. 365-367, 373-376, 384-385, 388-393, 398-400, 402-419, 425A, 427, 440-445, 447-464, 466-468, 471
    - Env No. 5 – HD: 1/3/17 Exh Nos. 473, 475, 477, 479, 481-482, 484, 486, 499
    - Env No. 6 – HD: 1/3/17 Exh Nos. 500, 524, 529-530, 548-552, 557-567, 571, 583, 632, 633, 675, 679, 681, 692, 702-703, 788
    - Env. No. 7 – HD: 1/3/17 Exh Nos. 834, 836(CD), 838-843, 845-846, 850, 853, 856-857, 859, 863-864, 867-872, 876-877, 882-884, 886-890, 895-914, 916-917, 919-924, 927
    - Env No. 8 – HD: 1/3/17 Exh Nos. 928, 934, 944-952, 954, 960-961, 966-972, 975-977
  - Box 4:
    - HD: 1/3/17 Exh No. 793
  - Box 5:
    - HD: 1/3/17 Exh No. 795
  - Box 6:
    - HD: 1/3/17 Exh No. 925
  - Box 7:
    - HD: 1/3/17 Exh No. 929
  - Box 8:
    - HD: 1/3/17 Exh Nos. 794, 796-799, 811-813, 815, 816, 816(A), 817, 820-822, 926
  - Env 1 – HD: 1/31/17 Pltf Exh Nos. 1-39
  - Env 2 – HD: 1/31/17 Def Exh Nos. 1-3
77. 26-Jul-2017 FILED: Reporter's Transcript - 4/13/17 - Jury Trial Day 42 (Laurie Cooper)
78. 26-Jul-2017 FILED: Reporter's Transcript - 4/14/17 - Jury Trial Day 43 (Laurie Cooper)
79. 26-Jul-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
80. 26-Jul-2017 FILED: Reporter's Transcript - 6/30/17 - Motion for New Trial/Motion to Vacate Judgment (Katherine Pitotti)
81. 26-Jul-2017 FILED: Notice of Service of Transcripts (Katherine Pitotti)
82. 31-Jul-2017 FILED: Reporter's Transcript - 1/23/17 - Jury Trial Day 9 (Julie K. Knowlton); Notice of Service of Transcript
83. 31-Jul-2017 FILED: Reporter's Transcript - 3/28/17 - Jury Trial Day 37 (Julie K. Knowlton)
84. 31-Jul-2017 FILED: Reporter's Transcript - 4/18/17 - Jury Trial Day 45 (Julie K. Knowlton)
85. 31-Jul-2017 FILED: Reporter's Transcript - 4/28/17 - Jury Trial Day 48 (Afternoon Proceedings) (Julie K. Knowlton)

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86. 1-Aug-2017 FILED: Reporter's Transcript - 1/31/17 - Jury Trial Day 14 (Afternoon Proceedings) (Elizabeth Hengstebeck)
87. 1-Aug-2017 FILED: Notice of Service of Transcripts (Elizabeth Hengstebeck)
88. 2-Aug-2017 FILED: Reporter's Transcript - 1/7/15 - Case Management Conference (Julie K. Knowlton); Notice of Service of Transcript (Julie K. Knowlton)
89. 2-Aug-2017 FILED: Reporter's Transcript - 07/29/2015 - Motion to Withdraw and Referral to Conflict Administrator for Reassignment of Counsel (Julie K. Knowlton)
90. 2-Aug-2017 FILED: Reporter's Transcript - 01/26/2016 - Case Management Conference (Julie K. Knowlton)
91. 2-Aug-2017 FILED: Reporter's Transcript - 01/31/2017 - Jury Trial Day 14 (Morning Proceedings) (Julie K. Knowlton)
92. 4-Aug-2017 FILED: Reporter's Transcript - 6/26/2014 - Arraignment; Notice of Service (Jacqueline M Perkins)
93. 4-Aug-2017 FILED: Reporter's Transcript - 8/20/2014 - Status Conference (Jacqueline M Perkins)
94. 4-Aug-2017 FILED: Reporter's Transcript - 2/11/2015 - Case Management Conference (Jacqueline M Perkins)
95. 4-Aug-2017 FILED: Reporter's Transcript - 8/19/2015 - Case Management Conference (Jacqueline M Perkins)
96. 4-Aug-2017 FILED: Reporter's Transcript - 08/26/2015 Status Conference (Jacqueline M Perkins)
97. 4-Aug-2017 FILED: Reporter's Transcript - 09/29/2015 Defendant's Motion for Change of Judge for Cause (Jacqueline M Perkins)
98. 4-Aug-2017 FILED: Reporter's Transcript - 08/18/2016 - Evidentiary Hearing (Jacqueline M Perkins)
99. 4-Aug-2017 FILED: Notice of Service of Transcripts (Jacqueline M Perkins)
100. 4-Aug-2017 FILED: Reporter's Transcript - 08/19/2016 - Motions Hearing (Jacqueline M Perkins)
101. 4-Aug-2017 FILED: Reporter's Transcripts - 08/19/2016 - Motions - Partial of Defendant's Motion for Sanctions Sealed by the Court (Jacqueline M Perkins)
102. 4-Aug-2017 FILED: Notice of Service of Transcripts (Jacqueline M Perkins)
103. 4-Aug-2017 FILED: Order re: Sealing of Transcript
104. 4-Aug-2017 FILED: Reporter's Transcript - 01/24/2017 - Jury Trial - Day 10 - Transcript pages 11- 43 sealed by order of the court (Jacqueline M Perkins)
105. 4-Aug-2017 FILED: Reporter's Transcript - 01/27/2017 - Jury Trial - Day 12 (Jacqueline M Perkins)
106. 4-Aug-2017 FILED: Notice of Service of Transcripts (Jacqueline M Perkins)
107. 4-Aug-2017 FILED: Order re: Sealing of Transcript (Jacqueline M Perkins)
108. 4-Aug-2017 FILED: Reporter's Transcript - 02/02/2017 - Jury Trial - Day 15 (Jacqueline M Perkins); Notice of Service (Jacqueline M Perkins)
109. 4-Aug-2017 FILED: Reporter's Transcript - 02/06/2017 - Jury Trial - Day 17 (Jacqueline M Perkins)
110. 4-Aug-2017 FILED: Reporter's Transcript - 02/10/2017 - Jury Trial - Day 20 (Jacqueline M Perkins)
111. 4-Aug-2017 FILED: Reporter's Transcript - 02/13/2017 - Jury Trial - Day 21 (Jacqueline M Perkins)
112. 4-Aug-2017 FILED: Reporter's Transcript - 02/23/2017 - Jury Trial - Day 23 (Jacqueline M Perkins)
113. 4-Aug-2017 FILED: Reporter's Transcript - 03/20/2017 - Jury Trial - Day 33 (Jacqueline M Perkins)
114. 4-Aug-2017 FILED: Reporter's Transcript - 03/30/2017 - Jury Trial - Day 38 (Jacqueline M Perkins)
115. 4-Aug-2017 FILED: Notice of Service of Transcripts (Jacqueline M Perkins)
116. 8-Aug-2017 FILED: Second Request for Extension of Time fo File Transcripts (Laurie Cooper)
117. 9-Aug-2017 Laurie Cooper, Court Reporter, having filed a second request for extension of time to file transcripts,  
  
IT IS ORDERED granting Laurie Cooper, Court Reporter, a second extension of time to and including September 11, 2017, in which to file Reporter's Transcripts in the above-entitled matter. (Hon. John R Lopez IV)

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118. 10-Aug-2017 FILED: Reporter's Transcript - 04/17/2017 - Jury Trial - Day 44 (Laurie Cooper)
119. 9-Aug-2017 FILED: Amended Notification to Court Reporters Notice of Appeal Filed (Clerk, YCSC)
120. 10-Aug-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
121. 11-Aug-2017 FILED: Reporter's Transcript - 11/05/2014 - Case Management Conference (Adam W. Gage); Notice of Service - 08/11/2017 (Adam W. Gage)
122. 11-Aug-2017 FILED: Reporter's Transcript - 11/23/2015 - Motion Hearing (Adam W. Gage)
123. 11-Aug-2017 FILED: Reporter's Transcript - 01/13/2017 - Jury Trial - Day 5 (Adam W. Gage)
124. 11-Aug-2017 FILED: Reporter's Transcript - 01/20/2017 - Jury Trial Day 8 - Order to Show Cause Hearing (Adam W. Gage)
125. 11-Aug-2017 FILED: Reporter's Transcript - 02/07/2017 - Jury Trial - Day 18 (Adam W. Gage); Notice of Service - 08/11/2017 - Adam W. Gage
126. 11-Aug-2017 FILED: Reporter's Transcript - 03/07/2017 - Jury Trial - Day 29 (Adam W. Gage)
127. 11-Aug-2017 FILED: Reporter's Transcript - 03/21/2017 - Jury Trial - Day 34 (Adam W. Gage)
128. 11-Aug-2017 FILED: Reporter's Transcript - 03/23/2017 - Jury Trial - Day 35 (Adam W. Gage)
129. 11-Aug-2017 FILED: Reporter's Transcript - 04/28/2017 - Jury Trial - Day 48 Morning Session (Adam W. Gage); Notice of Service - 08/11/2017 (Adam W. Gage)
130. 11-Aug-2017 FILED: Reporter's Transcript - 05/01/2017 - Jury Trial - Day 49 (Adam W. Gage)
131. 11-Aug-2017 FILED: Reporter's Transcript - 05/04/2017 - Jury Trial - Day 50 (Adam W. Gage)
132. 11-Aug-2017 FILED: Reporter's Transcript - 05/05/2017 - Jury Trial - Day 51 (Adam W. Gage)
133. 11-Aug-2017 FILED: Reporter's Transcript - 02/07/2017 - Jury Trial Day 18 Excerpt - Testimony of Megan Renee Cassidy (Adam W. Gage); Notice of Service - 08/11/2017 - (Adam W. Gage)
134. 11-Aug-2017 FILED: Reporter's Transcript - 04/24/2017 - Jury Trial - Day 46 (Laurie Cooper)
135. 11-Aug-2017 FILED: Reporter's Transcript - 04/25/2017 - Jury Trial - Day 47 (Laurie Cooper)
- RECORD COMPLETE
136. 11-Aug-2017 FILED: Notice of Service of Transcripts (Laurie Cooper)
137. 5-Sep-2017 FILED: Notice of Appointment of Counsel
138. 13-Sep-2017 FILED: Reporter's Transcript - 3/25/2015 - Case Management Conference (Elizabeth Hengstebeck)
139. 13-Sep-2017 FILED: Notice of Service of Transcript (Elizabeth Hengstebeck)
140. 13-Sep-2017 FILED: Notice of Appearance (Attorney Harriette P. Levitt for Appellant Strong); Certificate of Service (Appellant Strong)
141. 13-Sep-2017 FILED: (Copy of) YCSC Notice of Appointment of Counsel (Appellant Strong)
142. 25-Sep-2017 FILED: Reporter's Transcript - 2/2/2017 - Jury Trial Day 15 (Adam W. Gage); Certificate of Service (Adam W. Gage)
143. 3-Oct-2017 The Clerk of the Court has determined that the record on appeal is complete. Therefore,  
  
IT IS ORDERED that Appellant's Opening Brief shall be filed no later than January 2, 2018. The Answering Brief shall be filed no later than sixty (60) days after service of the Opening Brief. The Reply Brief shall be filed no later than thirty (30) days after service of the Answering Brief. (Hon. Clint Bolick)
144. 31-Oct-2017 FILED: Supplemental Record from YumaCSC: Instruments and MEs (electronic)  
  
Contains SEALED Documents
145. 4-Dec-2017 FILED: Notice of Appearance (Attorney Laura Chaisson for Appellee State); Certificate of Service (Appellee State)
146. 6-Dec-2017 FILED: Motion to Extend Deadline to File Opening Brief; Certificate of Service (Appellant Strong)

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147. 7-Dec-2017 A "Motion to Extend Deadline to File Opening Brief" (Appellant Strong) having been filed on December 6, 2017,  
IT IS ORDERED granting a first extension of time to file the petition for review on or before March 5, 2018. (Janet Johnson, Clerk)
148. 27-Feb-2018 FILED: Second Motion to Extend Deadline for Filing Opening Brief; Certificate of Service (Appellant Strong)
149. 28-Feb-2018 A "Second Motion to Extend Deadline for Filing Opening Brief" (Appellant Strong) having been filed on February 27, 2018,  
IT IS ORDERED granting a second extension of time to file the opening brief on or before May 4, 2018. (Hon. John Pelander)
150. 26-Apr-2018 FILED: Notice of Incomplete Record and Motion to Expand Record on Appeal; Certificate of Service (Appellant Strong)
151. 26-Apr-2018 FILED: Third Motion to Extend Deadline for Filing Opening Brief; Certificate of Service (Appellant Strong)
152. 1-May-2018 Appellant has filed a Third Motion to Extend Deadline to File Opening Brief, and a Motion to Expand Record on Appeal. The minute entries in question have been located in the supplemental record sent from the superior court. Therefore,  
IT IS ORDERED that the Motion to Expand Record on Appeal is denied as moot.  
IT IS FURTHER ORDERED granting a third extension to file the Opening Brief to and including July 5, 2018. (Hon. Robert M. Brutinel)
153. 5-Jul-2018 FILED: Fourth Motion to Extend Deadline to File Opening Brief; Certificate of Service (Appellant Strong)
154. 6-Jul-2018 A "Fourth Motion to Extend Deadline to File Opening Brief" (Appellant Strong) having been filed on July 5, 2018,  
IT IS ORDERED granting a fourth extension of time to file the Opening Brief on or before September 3, 2018. (Hon. John R Lopez IV)
155. 29-Aug-2018 FILED: Fifth Motion to Extend Deadline for Filing Opening Brief; Certificate of Service (Appellant Strong)
156. 31-Aug-2018 A "Fifth Motion to Extend Deadline for Filing Opening Brief" (Appellant Strong) having been filed on August 29, 2018,  
IT IS ORDERED granting a fifth extension of time to file the opening brief on or before November 5, 2018. No further extensions of time shall be granted absent extraordinary circumstances. (Hon. John R Lopez IV)
157. 2-Nov-2018 FILED: Sixth Motion to Extend Deadline to File Opening Brief; Certificate of Service (Appellant Strong)
158. 2-Nov-2018 FILED: Response to Sixth Motion to Extend Deadline to File Opening Brief; Certificate of Service (Appellee State)
159. 5-Nov-2018 A "Sixth Motion to Extend Deadline to File Opening Brief" (Appellant Strong) and a response to the motion having been filed on November 2, 2018,  
IT IS ORDERED granting a sixth extension of time to file the opening brief on or before January 4, 2019. No further extensions of time shall be granted. (Hon. John R Lopez IV)
160. 3-Jan-2019 FILED: Appellant's Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Strong)
161. 14-Feb-2019 FILED: Motion for Extension of Time to File Answering Brief; Certificate of Service (Appellee Strong)
162. 14-Feb-2019 A "Motion for Extension of Time to File Answering Brief" (Appellee Strong) having been filed on February 14, 2019,  
IT IS ORDERED granting a first extension of time to file the answering brief on or before April 3, 2019. (Janet Johnson, Clerk)
163. 28-Mar-2019 FILED: Motion to Supplement the Record and Motion for Extension of Time to File Answering Brief; Certificate of Service (Appellee State)
164. 29-Mar-2019 On March 28, 2019, Appellee State filed a "Motion to Supplement the Record and Motion for Extension of Time to File Answering Brief." After consideration,  
IT IS ORDERED granting the motion to supplement the record.  
IT IS FURTHER ORDERED that no later than April 22, 2019, the Clerk of the Yuma County Superior Court shall electronically transmit, if possible, with an index of record, to the Clerk of this Court trial exhibits 957, 958, and 959 admitted into the record in Yuma County Superior Court No. CR201400685 on March 28, 2017.  
IT IS FURTHER ORDERED granting the second motion to file the answering brief on or before May 22, 2019. (Hon. Clint Bolick)

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165. 12-Apr-2019 FILED: Supplemented YumCSC e-Record with Revised Index of Record
166. 17-Apr-2019 FILED: Supplemental Record from YumCSC: Exhibit Nos. 957, 958, 959
167. 22-May-2019 FILED: Appellee's Answering Brief; Certificate of Service; Certificate of Compliance (Appellee State)
168. 22-May-2019 FILED: Motion to Exceed Word Limit; Certificate of Service (Appellee State)
169. 23-May-2019 A "Motion to Exceed Word Limit" (Appellee State) having been filed with a 28,369 word count Answering Brief and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count/pagination,
- IT IS ORDERED granting Appellee State's request to exceed the twenty-eight thousand word count stated in Rule 31.14(a), Arizona Rules of Criminal Procedure by 369 words.
- IT IS FURTHER ORDERED that Appellee State's Answering Brief shall be filed as of May 22, 2019. (Janet Johnson, Clerk)
170. 17-Jun-2019 FILED: Motion to Extend Deadline for Filing Reply Brief; Certificate of Service (Appellant Strong)
171. 18-Jun-2019 A "Motion to Extend Deadline to File Reply Brief" (Appellant Strong) having been filed on June 17, 2019,
- IT IS ORDERED granting an extension of time to file the reply brief on or before July 22, 2019. (Janet Johnson, Clerk)
172. 22-Jul-2019 FILED: Appellant's Reply Brief; Certificate of Service; Certificate of Compliance (Appellant Strong)
173. 23-Oct-2019 FILED: Motion to Withdraw (Attorney Harriette P. Levitt); Certificate of Service (Appellant Strong)
- (Denied as Untimely Per ASC Order Filed 10/24/2019; See Dkt No. 174)
174. 24-Oct-2019 FILED: Response to Motion to Withdraw; Certificate of Service (Appellee State)
175. 24-Oct-2019 Upon considering the Motion to Withdraw and the Response to Motion to Withdraw,
- IT IS ORDERED that the Motion to Withdraw is denied as untimely. (Hon. Clint Bolick)
176. 31-Oct-2019 On the Court's own motion,
- IT IS ORDERED that the above-entitled and numbered matter will be argued to the Court in due course. Counsel shall be advised of the date and time of oral argument at such time as the hearing date is determined.
- IT IS FURTHER ORDERED amending the caption as reflected above. This caption shall be used on all further documents filed in this appeal. (Janet Johnson, Clerk)
177. 4-Mar-2020 NOTICE OF ORAL ARGUMENT: Set for Tuesday May 5, 2020 at 11:00 A.M. [twenty-five minutes (25) per side]
178. 5-Mar-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Laura Chiasson will argue) (Appellee State)
179. 11-Mar-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Harriette P. Lewitt will argue) (Appellant Strong)
180. 9-Apr-2020 Justice Gould is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,
- IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court is designated to sit on the case until it is finally determined (Hon. Robert Brutinel)
181. 22-Apr-2020 SENT: Letter to Parties RE: Videoconference Oral Arguments
182. 27-Apr-2020 On the Court's own motion,
- IT IS ORDERED the Oral Argument currently set for Tuesday, May 5, 2020 at 11:00 a.m., has been rescheduled to 10:15 a.m.
- IT IS FURTHER ORDERED the oral argument shall be conducted via videoconference. Counsel without access to video capability may participate via audioconference. (Hon. Robert Brutinel)
183. 5-May-2020 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Laura Chiasson and Harriette P. Levitt)
184. 11-May-2020 FILED: Notice of Supplemental Authority; Certificate of Service (Appellant Strong)
185. 12-May-2020 FILED: Notice; Certificate of Service (Appellee State)



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186. 26-May-2020 The Court en banc<sup>1</sup> has considered the briefs and arguments of the parties; the trial court's minute entries, transcripts, and orders; and the relevant statutes and case law in this matter. The Court rules as follows.

In June 2014, Preston Alton Strong was indicted for the 2005 murders of six Yuma residents ("La Mesa Murders"). In April 2017, the jury found Strong guilty of six counts of first degree murder, and it subsequently imposed a death sentence on each count. This appeal followed. Here, we address Strong's claim that juror misconduct, and a juror's knowledge of a prior murder conviction, deprived him of his constitutional right to a fair trial.

Following a 2012 trial, Strong was convicted for the 2007 murder of a Yuma doctor, Dr. Gill ("Gill Murder"). In the present case, Strong moved to preclude evidence about the Gill Murder, and the State responded that it did not intend to use such evidence in the guilt phase. Strong also moved for a change of venue based, in part, on his assertion that "all potential jurors will be aware of the [Gill Murder case]." The trial court denied the venue motion, noting that "[t]here are many procedures that the Court can utilize to ensure that the defendant has his case heard by a fair and impartial jury," including "the summoning of a large panel of prospective jurors, juror questionnaires, and individual questioning of prospective jurors who state they have knowledge of this case and/or the [Gill Murder] case."

The State later filed a motion to admit evidence regarding the Gill Murder in its case-in-chief. The trial court precluded the evidence, finding that its probative value was substantially outweighed by its prejudicial nature: "The fact that the defendant committed another murder may lead the jury to convict him of the instant offenses on the basis that he is a habitual criminal rather than on the basis of the State's evidence."<sup>2</sup>

Jury selection took place in January 2017. The prospective jurors completed written questionnaires that included the following questions: "Have you seen, heard or read anything about this case?"; "Have you heard anyone express an opinion about this case?"; and "Is there anything that would make it difficult for you to be a fair and impartial juror or to render a verdict in this case?" Additionally, prospective jurors were brought into the courtroom in groups and asked: "Have any of you seen or heard any coverage or any information regarding the facts of this case, whether it be in the media, social media, or out in the community otherwise, or in any other way heard about this case?"

In response to these questions, and upon further individual questioning, several prospective jurors stated that they had read or heard Strong had murdered a doctor or had a prior murder conviction. The parties and trial court agreed "that anybody who already knows about the [Gill Murder] case is going to be excused even if they say they can put it out of their mind." The court excused nineteen jurors on this basis. Additionally, during trial, the court excused a seated juror after the juror acquired information about the Gill Murder despite the juror's assertion that she would not let it influence her decision.

Juror 47 was one of those who raised their hand when her group was asked about media coverage. When questioned separately, Juror 47 said she had heard about the La Mesa Murders when they occurred in 2005, and recently in news reports that Strong was accused of the La Mesa Murders. The questioning included this exchange:

THE COURT: Have you heard in the past or recently or at any point anything regarding the defendant in this case specifically?  
JUROR 47: No.  
THE COURT: Never heard the name before?  
JUROR 47: Not till I was on the jury duty, you know.

Ultimately, Juror 47 was selected for the jury in this case.

After trial and sentencing, Strong filed a Rule 24.1 motion for new trial on the grounds that Juror 47 did not reveal during voir dire that she knew about his conviction for the Gill Murder. Strong also filed a Rule 24.2 motion to vacate judgment based on juror misconduct and deprivation of his right to a fair trial, and he requested an evidentiary hearing. The motions were supported by the defense investigator's written summary of his interview of Juror 47. According to the summary, Juror 47 stated that she learned of the Gill Murder at the time it happened and heard about the conviction when it occurred, as they were widely reported in the media. Juror 47 further stated that questioning during voir dire did not ask about knowledge of the defendant's other criminal case, and her knowledge of Strong's prior conviction did not influence her decision at trial.

The trial court heard argument on the motions and subsequently denied the motion for new trial, finding it untimely. The court also denied the motion to vacate judgment, without conducting an evidentiary hearing, finding that Strong "ha[d] shown neither juror misconduct nor that the jury's guilty verdict was influenced by any knowledge of the [Gill Murder] conviction." Order Re: Motion to Vacate Judgment. Before the court ruled on the motions but after argument, Strong filed a supplement to the motion to vacate judgment and requested an evidentiary hearing pursuant to *Godoy v. Spearman*, 861 F.3d 956 (9th Cir. 2017), on the juror misconduct claim. The record does not indicate whether the court considered Strong's supplement to the motion.

When "faced with allegations of improper contact between a juror and an outside party, courts apply a settled two-step framework" based on *Mattox v. United States*, 146 U.S. 140 (1892), and *Remmer v. United States*, 347 U.S. 227 (1954) (*Remmer I*). *Godoy*, 861 F.3d at 959. The same analytical framework should be applied to the circumstances and allegations presented in this case, involving information about Strong's conviction for the Gill Murder that was not properly admitted during the guilt phase of the trial.

At step one, the trial court determines whether the alleged information known to the juror was "possibly prejudicial." *Id.* at 966–67 (quoting *Mattox*, 146 U.S. at 150). To meet this "low threshold," the defendant must present evidence that has a "tendency to be injurious to the defendant," *id.* at 966 (citation omitted) (internal quotation marks omitted), and is "sufficiently improper as to raise a credible risk of affecting the outcome of the case," *id.* at 967. "[T]he defendant's burden at step one to show a possibility of prejudice is not onerous." *Id.* at 968. "The defendant need only demonstrate a credible risk, and the presumption [of prejudice] may arise even when '[w]e do not know from th[e] record . . . what actually transpired, or whether the incidents that may have occurred were harmful or harmless.'" *Id.* (quoting *Remmer I*, 347 U.S. at 229).

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occurred were harmful or harmless. Id. (quoting Remmer I, 347 U.S. at 229).

Once the defendant shows a juror has received evidence not admitted during the trial or phase of trial that is possibly prejudicial, the presumption of prejudice attaches, and in step two, the burden shifts to the state to prove that knowledge of the information was harmless. Id. "Harmlessness in this context means 'that there is no reasonable possibility that the [external information] influence[d] the verdict.'" Id. (quoting *Caliendo v. Warden of Cal. Men's Colony*, 365 F.3d 691, 697 (2004)). If the state does not show harmlessness, the conviction is unconstitutional, and the court must grant the defendant a new trial. Id. at 959, 969; see *Remmer v. United States*, 350 U.S. 377, 382 (1956) (*Remmer II*). If the prejudicial effect of the external information is unclear from the existing record, the trial court must hold an evidentiary hearing to determine the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial. *Godoy*, 861 F.3d at 959 (citing *Remmer I*, 347 U.S. at 229–30); see *State v. Miller*, 178 Ariz. 555, 557 (1994) (finding the trial court abused its discretion by failing to hold an evidentiary hearing when there was a "substantial risk of prejudice" due to jurors' receipt of external information).

In this case, because Strong established the presumption of prejudice, but it is unclear from the existing record whether he, in fact, suffered prejudice, Strong is entitled to an evidentiary hearing. Therefore,

IT IS ORDERED staying the appeal in CR-17-0201-AP.

IT IS FURTHER ORDERED remanding with instructions to the trial court to hold an evidentiary hearing to determine the circumstances of Juror 47's alleged misconduct and knowledge of the Gill Murder and prior conviction, and whether or not it was harmless. Noting that the trial judge no longer serves on the Superior Court, the case shall be assigned to a regular serving non-pro tem judge of the Yuma County Superior Court.

IT IS FURTHER ORDERED vacating the trial court's decision denying "Juror Misconduct (Claim #5)" in the Order Re: Motion to Vacate Judgment and remanding the matter to the court for reconsideration after the evidentiary hearing. (Hon. Robert Brutinel)

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| 187. | 8-Jan-2021  | FILED: Reporter's Transcript - 01/04/2021 - Evidentiary Hearing (Katherine Pitotti)  |
| 188. | 8-Jan-2021  | FILED: Notice of Service of Transcript (Katherine Pitotti)   |
| 189. | 13-Jan-2021 | FILED: Reporter's Transcript - 12/07/2020 - Evidentiary Hearing (Elizabeth Hengstebeck)  |
| 190. | 13-Jan-2021 | FILED: Reporter's Transcript - 12/14/2020 - Evidentiary Hearing (Elizabeth Hengstebeck)  |
| 191. | 13-Jan-2021 | FILED: Notice of Service of Transcript in the Superior Court (Elizabeth Hengstebeck)   |
| 192. | 14-Feb-2021 | FILED: Reporter's Transcript - 02/08/2021 - Oral Arguments Re Juror Misconduct; Notice of Service of Transcript (Adam W. Gage)   |
| 193. | 14-May-2021 | <p>The Superior Court having filed an Order Re: Alleged Juror Misconduct and Order denying the Motion for Reconsideration after evidentiary hearings and oral argument,</p> <p>IT IS ORDERED lifting the stay of the appeal imposed by this Court's order dated May 26, 2020.</p> <p>IT IS FURTHER ORDERED that no later than May 28, 2021, the Clerk of the Superior Court shall transmit to this Court a supplemental record on appeal including all pleadings, orders, documents, and exhibits filed after April 2, 2019. The clerk shall provide a copy of the supplemental record to counsel. See Rule 24.2(d), Ariz. R. Crim. P. ("In a capital case, if the court denies the motion [to vacate judgment], it must order the clerk to file a notice of appeal from that denial."). (Hon. John R. Lopez IV, Duty Justice)</p> |
| 194. | 24-May-2021 | FILED: Notice of Status and Motion to Revest Jurisdiction; Certificate of Service (Appellant Strong)   |
| 195. | 25-May-2021 | FILED: Supplemented Electronic Instruments and ME from YumCSC in CR201400685   |
| 196. | 26-May-2021 | FILED: Supplemental Record Record from YumCSC:<br><br>Manila Envelope - List of Exhibits HD 12-07-2020; Contains Exhibits 1-3  |
| 197. | 1-Jun-2021  | <p>Upon considering the Notice of Status and Motion to Revest Jurisdiction,</p> <p>IT IS ORDERED granting the motion and revesting jurisdiction in this Court. (Hon James P. Beene)</p>  |

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198. 7-Jun-2021 On the Court's own motion,
- IT IS ORDERED that no later than June 29, 2021, Appellant may file a supplemental opening brief regarding Issue 4 "Whether juror misconduct deprived Appellant of his constitutional right to a fair trial," including any challenge to the superior court's Order Re: Alleged Juror Misconduct filed April 9, 2021.
- IT IS FURTHER ORDERED that the State may file a supplemental answering brief no later than July 20, 2021. A supplemental reply brief, if any, shall be filed no later than July 30, 2021. The supplemental opening and answering briefs shall not exceed twenty pages. The supplemental reply brief shall not exceed ten pages. (Hon. James P. Beene)
199. 9-Jun-2021 FILED: Motion to Extend Deadline for Filing Supplemental Brief; Certificate of Service (Appellant Strong)
200. 9-Jun-2021 On June 9, 2021, Appellant Strong filed a "Motion to Extend Deadline for Filing Supplemental Brief." Upon consideration,
- IT IS ORDERED granting the motion.
- IT IS FURTHER ORDERED Appellant may file a supplemental opening brief no later than July 20, 2021.
- IT IS FURTHER ORDERED that the State may file a supplemental answering brief no later than August 10, 2021. A supplemental reply brief, if any, shall be filed no later than August 20, 2021. (Hon James P. Beene)
201. 20-Jul-2021 FILED: Appellant's Supplemental Brief; Certificate of Service; Certificate of Compliance (Appellant Strong)
202. 10-Aug-2021 FILED: Appellee's Supplemental Answering Brief; Certificate of Service; Certificate of Compliance (Appellee Strong)
203. 23-Aug-2021 FILED: Appellant's Supplemental Reply Brief; Certificate of Service (Appellant Strong)
204. 31-Jan-2023 FILED: Motion: Special Hearing (Appellant Strong, Pro Se)
205. 8-Feb-2023 On May 5, 2020, following oral argument, this matter was submitted for decision. On May 26, 2020, the Court issued a decision order that: (1) stayed the appeal; (2) remanded with instructions to the trial court to hold an evidentiary hearing to determine the circumstances of a juror's alleged misconduct and knowledge of the Gill Murder and prior conviction, and whether or not it was harmless; and (3) vacated the superior court's decision denying Appellant Preston Strong's ("Appellant") juror misconduct claim (Claim #5 in Appellant's Motion to Vacate Judgment) and remanded the matter to the superior court for reconsideration after the evidentiary hearing.
- On June 1, 2021, after completion of the evidentiary hearing in the superior court, this Court ordered that jurisdiction was revested in this Court. On June 7, 2021, the Court ordered Appellant and the Appellee State of Arizona ("State"), to file supplemental briefs "regarding Issue 4 'Whether juror misconduct deprived Appellant of his constitutional right to a fair trial,' including any challenge to the superior court's Order Re: Alleged Juror Misconduct filed April 9, 2021." The supplemental briefing concluded on August 23, 2021.
- Subsequently, on January 31, 2023, while this matter is pending final decision, Appellant filed a handwritten document pro se titled Motion: Special Hearing. In the motion Appellant advised the Court that his appointed attorney, Ms. Harriette P. Levitt, retired from the practice of law in December 2021. This Court had previously received no such notice from Ms. Levitt.
- Appellant states that he filed the motion "to inform the Courts of prosecutorial misconduct and malicious prosecution that needs to be heard by the courts." Appellant contends "there [is] evidence he provided his legal team prior, during, and after his trial that went ignored. Even after it was verified." Appellant requests that this Court set a "special hearing" to hear his evidence while the case is pending on direct appeal.
- At the Court's direction, court staff contacted Ms. Levitt to confirm the information regarding her retirement conveyed to the Court by Appellant. Court staff was advised by Ms. Levitt that the information conveyed by Appellant is accurate — Ms. Levitt retired from the practice of law in December 2021 and is registered with the Arizona State Bar on retired status.
- Upon consideration, and GOOD CAUSE APPEARING, on the Court's own motion,
- IT IS ORDERED that Harriette P. Levitt is withdrawn as appointed counsel for Appellant.
- IT IS FURTHER ORDERED that the Yuma County Superior Court shall appoint substitute counsel for Appellant on this matter.
- IT IS FURTHER ORDERED that the Yuma County Superior Court's appointment order shall order counsel to meet with Appellant within 30 days of appointment and notify this Court whether Appellant wishes to proceed with or withdraw the Motion: Special Hearing.
- IT IS FURTHER ORDERED that the Court will consider Appellant's motion, as necessary, after counsel notifies this Court of Appellant's wishes. (Hon. Ann A. Scott Timmer)

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206. 10-Apr-2023 FILED: (Copy of) Notice of Appointment of Counsel (Julie Hall Attorney of Record); Certificate of Service (Office of the Conflict Administrator)
207. 10-May-2023 FILED: Status Report; Certificate of Service (Appellant Strong)
208. 10-May-2023 FILED: (Copy) Notice of Appointment of Counsel (Appellant Strong)
209. 11-May-2023 On February 8, 2023, this Court issued an order that, in part, ordered the Yuma County Superior Court to appoint substitute counsel for Appellant in this matter. The order also directed the superior court to order that substitute counsel meet with Appellant within 30 days of appointment and notify this Court whether Appellant wishes to proceed with or withdraw his Motion: Special Hearing.
- On April 10, 2023, the Yuma County Superior Court appointed Julie Hall to represent Appellant in this matter.
- On May 10, 2023, Appellant, through counsel, filed a Status Report with this Court advising that she has met with Mr. Strong twice and has been working to collect the case file from prior trial and appellate counsel but has not yet collected the entire file, which she "must be familiar with the substantive facts [ ] in addition to the[] procedural history" to "effectively discuss this matter and provide competent advice to Mr. Strong." Ms. Hall also advises this Court that she has begun the necessary review of the currently available files but requires additional time to complete the review.
- Appellant's Status Report then requests that the Court provide "an additional 90 days to update the Court regarding Mr. Strong's desire to proceed with his Motion: Special Hearing."
- Upon consideration, and GOOD CAUSE APPEARING,
- IT IS ORDERED that the request for an additional 90 days to update the Court regarding Mr. Strong's desire to proceed with his Motion: Special Hearing is denied in part and granted in part.
- IT IS FURTHER ORDERED that on or before July 14, 2023, Appellant shall advise that the Motion: Special Hearing is withdrawn if counsel determines the allegations raised by Mr. Strong do not warrant being raised on direct appeal or shall file a Second Supplemental Opening Brief that presents Mr. Strong's claims of prosecutorial misconduct and malicious prosecution for the Court's consideration in this matter.
- IT IS FURTHER ORDERED that on or before August 25, 2023, if Appellant files a timely Second Supplemental Opening Brief, Appellee State of Arizona may file a Second Supplemental Answering Brief.
- IT IS FURTHER ORDERED that on or before September 15, 2023, if Appellee files a timely Second Supplemental Answering Brief, Appellant may file a Second Supplemental Reply Brief.
- IT IS FURTHER ORDERED that the supplemental opening and answering briefs shall not exceed 20 pages and the supplemental reply brief shall not exceed 10 pages.
- IT IS FURTHER ORDERED that upon expiration of the above filing deadlines, the Court will consider the matter and issue an appropriate order in due course.
- Counsel are instructed to prioritize this matter. No further extensions of time will be granted. (Hon. John R. Lopez IV)
210. 14-Jul-2023 FILED: Notice re: Special Hearing; Certificate of Service (Appellant Strong)

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211. 19-Jul-2023 On January 31, 2023, while this matter is pending final decision, Appellant filed a pro se handwritten document titled Motion: Special Hearing. In the motion Appellant advised the Court that his appointed attorney, Ms. Harriette P. Levitt, retired from the practice of law in December 2021. This Court had previously received no such notice from Ms. Levitt.
- Appellant stated that he filed the motion “to inform the Courts of prosecutorial misconduct and malicious prosecution that needs to be heard by the courts.” Appellant contended “there [is] evidence he provided his legal team prior, during, and after his trial that went ignored. Even after it was verified.” Appellant requested that this Court set a “special hearing” to hear his evidence while the case is pending on direct appeal. On February 8, 2023, the Court ordered that Ms. Levitt was withdrawn as appointed counsel for Appellant and that the Yuma County Superior Court appoint substitute counsel for Appellant. The order also directed the superior court to order that substitute counsel meet with Appellant within 30 days of appointment and notify this Court whether Appellant wishes to proceed with or withdraw his Motion: Special Hearing.
- On May 10, 2023, following the Yuma County Superior Court appointing Julie Hall to represent Appellant as substitute counsel on April 10, 2023, substitute counsel filed a Status Report advising this Court that she had met with Mr. Strong and was working to collect the case file from prior trial and appellate counsel, but had not yet collected the entire file which she “must be familiar with the substantive facts [ ] in addition to the[] procedural history” to “effectively discuss this matter and provide competent advice to Mr. Strong.” Substitute counsel also advised this Court that she has begun the necessary review of the currently available files but required additional time to complete the review. Counsel requested “an additional 90 days to update the Court regarding [Appellant]’s desire to proceed with his Motion: Special Hearing.”
- On May 11, 2023, the Court denied in part and granted in part Appellant’s request for an additional 90 days to update the Court regarding his desire to proceed with his Motion: Special Hearing. Specifically, the Court ordered that Appellant advise whether he withdraws his Motion: Special Hearing or file a Second Supplemental Opening Brief that presents Appellant’s claims of prosecutorial misconduct and malicious prosecution for the Court’s consideration in this matter.
- On July 14, 2023, Appellant’s substitute counsel filed a Notice re: Special Hearing withdrawing his Motion: Special Hearing. Appellant’s substitute counsel, noting the Court’s deadline and the volume of transcripts contained in the record below, asserts that “this determination was made prior to a review of the full record[,]” and therefore, contends counsel cannot comply with “the broader obligation to [Appellant],” nor “with her duty to ensure that all potentially meritorious claims and supporting facts contained in the record have been asserted at this stage.”
- Nevertheless, although counsel avows she was “able to advise [Appellant] regarding the previous request for a special hearing,” counsel contends that she “cannot yet evaluate whether there are facts and claims contained in the record that warrant supplemental briefing during this direct appeal,” and requests an additional ninety days to complete review of the record and determine whether supplemental briefing is necessary.
- Upon review and consideration, and GOOD CAUSE APPEARING,
- While the Court takes note of substitute counsel’s declared duty “to ensure that all potentially meritorious claims and supporting facts contained in the record have been asserted” and counsel’s assertion that she “cannot yet evaluate whether there are facts and claims contained in the record that warrant supplemental briefing during this direct appeal,” this appeal has been at issue since supplemental briefing, ordered by this Court on June 7, 2021, was completed on August 23, 2021.
- The current issue pending before the Court, whether Appellant wishes to continue with his Motion: Special Hearing that alleged unsupported allegations of prosecutorial misconduct and malicious prosecution, is moot with counsel’s avowal Appellant was advised regarding his Motion: Special Hearing and has withdrawn the motion.
- Therefore,
- IT IS ORDERED that Appellant’s request for an additional ninety days to complete review of the record and determine whether a supplemental brief is necessary is denied.
- IT IS FURTHER ORDERED that Appellant’s Motion: Special Hearing is denied as moot.
- This matter was previously submitted for decision at the conclusion of supplemental briefing on August 23, 2021, and an opinion will issue in due course. (Hon William G. Montgomery)