

Arizona Supreme Court
Criminal Death Penalty Appeal

CR-22-0106-AP

STATE OF ARIZONA v CHRISTOPHER MICHAEL MONTOYA

Appellate Case Information

Case Filed: 26-Apr-2022
Case Closed:

Dept/Composition

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)
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Side 2. CHRISTOPHER MICHAEL MONTOYA, Appellant
(Litigant Group) CHRISTOPHER MICHAEL MONTOYA

- Christopher Michael Montoya

Attorneys for: Appellant

Steve B Koestner, Esq. (AZ Bar No. 11566)
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CASE STATUS

Apr 26, 2022.....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CR2017-006253-001	First Degree Murder	Death	Michael W Kemp, Trial	GLT PLEA	

124 PROCEEDING ENTRIES

- 26-Apr-2022 FILED: Notice of Appeal (Clerk, MCSC) (Judgment filed in MCSC on 4/13/2022)
- 18-May-2022 FILED: Notice of Appearance [Kerrie Chamberlin and Michelle DeWaelsche Attorneys of Record]; Certificate of Service (Appellant Montoya)
- 18-May-2022 FILED: Order (MCSC) 12/28/17 (Appellant Montoya)
- 20-May-2022 FILED: Reporter's Transcript - 7/7/21 - Oral Argument (Tara L. Kramer)
- 25-May-2022 FILED: Letter From Kindle Re: First Request for Extension of Time to File Transcripts (Treated as First Motion for Extension of Time); (Copy of) Notification Notice of Appeal Filed (Scott Kindle)
- 20-May-2022 FILED: Notice of Appearance [Kaitlin Hollywood Attorney of Record]; Certificate of Service (Appellee State)
- 26-May-2022 FILED: (First) Extension Request (Scott Coniam)
- 27-May-2022 On May 25, 2022, Scott Kindle, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Scott Kindle, Court Reporter, a first extension of time up to and including June 30, 2022 in which to file Reporter's Transcripts in the above-entitled matter. (Tracie K. Lindeman Clerk)
- 27-May-2022 On May 26, 2022, Scott Coniam, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Scott Coniam, Court Reporter, a first extension of time up to and including July 11, 2022, in which to file Reporter's Transcripts in the above-entitled matter. (Tracie K. Lindeman Clerk)

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10. 27-May-2022 FILED: Electronic Record on Appeal - MCSC ME and Instruments
11. 28-May-2022 FILED: Reporter's Transcript - 3/23/22 - Trial (Voir Dire Continuing) (Luz Franco)
12. 30-May-2022 FILED: Reporter's Transcript - 5/6/21 - Capital Case Management Conference (Kristyn Lobry)
13. 30-May-2022 FILED: Reporter's Transcript - 10/7/21 - Status Conference (Kristin Lobry)
14. 30-May-2022 FILED: Reporter's Transcript - 5/17/19 - Pretrial Conference (Kristin DeCasas)
15. 30-May-2022 FILED: Reporter's Transcript - 9/27/19 - Capital Case Management Conference (Lori Thielmann)
16. 30-May-2022 FILED: Reporter's Transcript - 9/17/21 - Oral Argument (Lauren Kuhnhenh)
17. 30-May-2022 FILED: Reporter's Transcript - 5/14/21 - Change of Plea (Lauren Kuhnhenh)
18. 30-May-2022 FILED: (First) Extension Request)(Terry Masciola)
19. 30-May-2022 FILED: (First) Motion for Extension of Time to File Transcripts (Hope Yeager)
20. 31-May-2022 FILED: Reporter's Transcript - 8/10/21 - Status Conference (Marylynn LeMoine)
21. 31-May-2022 FILED: First Motion for Extension of Time to File Transcripts (Brigid Donovan)
22. 31-May-2022 Brigid Donovan, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Brigid Donovan, Court Reporter, a first extension of time up to and including July 1, 2022, in which to file Reporter's Transcripts for 4/20/18, 7/13/18, 1/11/19, 7/11/19, 11/15/19, and 1/31/20 in the above-entitled matter. (Tracie K. Lindeman Clerk)
23. 31-May-2022 Hope Yeager, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Hope Yeager, Court Reporter, a first extension of time up to and including June 30, 2022, in which to file Reporter's Transcripts for 6/7/2018, 9/14/2018, 6/22/2020, 3/28/2022, 3/29/2022, and 4/4/2022 in the above-entitled matter. (Tracie K. Lindeman Clerk)
24. 31-May-2022 Terry Masciola, Court Reporter, having filed a first request for extension of time to file transcripts,

IT IS ORDERED granting Terry Masciola, Court Reporter, a first extension of time up to and including June 30, 2022, in which to file Reporter's Transcripts in the above-entitled matter. (Tracie K. Lindeman Clerk)
25. 27-May-2022 FILED: Exhibit Worksheet

Box 1 of 7 - [SEALED] Plt Exb Nos 1-2

Box 2 of 7 - [SEALED] Plt Exb Nos 3-4

Box 3 of 7 - Envelope: [SEALED] RT GJ - 12/05/17 [Jennifer Church]; Envelope: Criminal History; Envelope : [SEALED] Flashdrive

Def Exh Nos - 1-4; 378 (CD); 385 (CD) 387-389; 408-410; 463-464;

Plt Exh Nos - 38; 41; 44-48; 53; 55-56; 61-62; 81-87; 89-106; 109; 112-113; 118-337; 339-368; 383-384; 390-400; 402-403; 405; 415 (CD); 416-430; 431-432 (CD) 433-448; 450-451; 457 (CD) 458-462; 465 (Flashdrive); 466 (CD) 467-471

Box 4 of 7 - [SEALED] Def Exb No 379

Box 5 of 7 - [SEALED] Def Exb No 380

Box 6 of 7 - [SEALED] Def Exb No 381

Box 7 of 7 - [SEALED] Def Exb No 382
26. 1-Jun-2022 FILED: Affidavit (Treated as First Motion for Extension of Time)(Linda Lopez)

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27. 6-Jun-2022 Linda Lopez, Court Reporter, having filed a first request for extension of time to file transcripts,
IT IS ORDERED granting Linda Lopez, Court Reporter, a first extension of time up to and including July 1, 2022, in which to file Reporter's Transcripts in the above-entitled matter. (Tracie K. Lindeman Clerk)
28. 7-Jun-2022 FILED: Reporter's Transcripts - 8/23/19 - Pretrial Conference (Andres Anaya)
29. 7-Jun-2022 FILED: Reporter's Transcript - 6/18/21 - Pretrial Conference (Lisa Bradley)
30. 7-Jun-2022 FILED: Reporter's Transcript - 3/19/21 - Pretrial Conference (Lisa Bradley)
31. 7-Jun-2022 FILED: Reporter's Transcript - 2/24/21 - Pretrial Conference (Lisa Bradley)
32. 7-Jun-2022 FILED: Reporter's Transcript - 9/15/20 - Pretrial Conference (Lisa Bradley)
33. 7-Jun-2022 FILED: First Motion for Extension of Time to File Transcripts (Debra Carney)
34. 8-Jun-2022 FILED: Reporter's Transcript - 4/12/22 - Trial Day 17 (Debra Carney)
35. 8-Jun-2022 Debra Carney, Court Reporter, having filed a first request for extension of time to file transcripts,
IT IS ORDERED granting Debra Carney, Court Reporter, a first extension of time up to and including June 30, 2022, in which to file Reporter's Transcripts in the above-entitled matter. (Tracie K. Lindeman Clerk)
36. 9-Jun-2022 FILED: Reporter's Transcript - 11/16/18 - Complex Case Management Conference (Nicole Buldis)
37. 10-Jun-2022 FILED: Reporter's Transcript - 4/12/22 - Sentencing (Debra Carney)
38. 14-Jun-2022 FILED: Reporter's Transcripts - 7/13/18 - Capital Case Management Conference (Brigid M. Donovan)
39. 14-Jun-2022 FILED: Reporter's Transcript - 3/10/22 - Voir Dire (Scott Coniam)
40. 14-Jun-2022 FILED: Reporter's Transcript - 12/14/21 - Capital Case Management Conference (Scott Coniam)
41. 15-Jun-2022 FILED: Reporter's Transcript - 3/7/22 - Pretrial Conference (Scott Coniam)
42. 21-Jun-2022 FILED: Reporter's Transcript - 4/20/18 - Complex Case Scheduling Conference (Brigid Donovan)
43. 21-Jun-2022 FILED: Reporter's Transcript - 2/10/2022 - Pretrial Conference (Scott Coniam)
44. 23-Jun-2022 FILED: Reporter's Transcript - 3/3/22 - Status Conference (Scott Coniam)
45. 23-Jun-2022 FILED: Reporter's Transcript - 3/8/22 - Voir Dire (Scott Coniam)
46. 24-Jun-2022 FILED: Reporter's Transcript - 6/7/2018 - Status Conference - AM (Hope J Yeager)
47. 24-Jun-2022 FILED: Reporter's Transcript - 9/14/2018 - Capital/Complex Case Management Conference - AM (Hope J Yeager)
48. 24-Jun-2022 FILED: Reporter's Transcript - 6/22/2020 - Status Conference - AM(Hope J Yeager)
49. 25-Jun-2022 FILED: Reporter's Transcript - 2/03/2022 - Conference (Terry Masciola)
50. 25-Jun-2022 FILED: Reporter's Transcript - 2/23/2022 - Conference (Terry Masciola)
51. 27-Jun-2022 FILED: Reporter's Transcript - 11/15/19 - Capital Case Management Conference (Brigid Donovan)
52. 27-Jun-2022 FILED: Reporter's Transcript - 7/11/19 - Capital Case Management Conference (Brigid Donovan)
53. 28-Jun-2022 FILED: Reporter's Transcript - 4/5/22 - Trial Day 13 (Linda Lopez)
54. 29-Jun-2022 FILED: Reporter's Transcript - 8/27/2020 - Oral Argument (Scott Kindle)
55. 29-Jun-2022 FILED: Reporter's Transcript - 11/29/2021 - Status Conference (Scott Kindle)
56. 29-Jun-2022 FILED: Reporter's Transcript - 3/30/2022 - Trial Day 10 (Scott Kindle)
57. 29-Jun-2022 FILED: Reporter's Transcript - 4/06/2022 - Trial Day 14 (Scott Kindle)
58. 29-Jun-2022 FILED: Reporter's Transcript - 1/11/2021 - Capital Case Management Conference (Terry Masciola for Teri Veres)

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59. 29-Jun-2022 FILED: Reporter's Transcript - 3/28/2022 - Trial Day 8 - AM/PM (Hope J Yeager)
60. 1-Jul-2022 FILED: Reporter's Transcript - 3/29/2022 - Trial Day 9 - AM/PM (Hope J Yeager)
61. 1-Jul-2022 FILED: Reporter's Transcript - 3/9/2022 - Voir Dire (Scott Coniam)
62. 1-Jul-2022 FILED: Reporter's Transcript - 3/31/2022 - Jury trial (Scott Coniam)
63. 1-Jul-2022 FILED: Reporter's Transcript - 3/21/2022 - Pretrial Motions (Scott Coniam)
64. 1-Jul-2022 FILED: Reporter's Transcript - 1/11/19 - Capital Case Management Conference (Brigid Donovan)
65. 1-Jul-2022 FILED: Reporter's Transcript - 1/31/20 - Capital Case Management Conference (Brigid Donovan)
66. 2-Jul-2022 FILED: Reporter's Transcript - 04/04/2022 - Trial Day 12 - AM/PM - (Hope J Yeager)
67. 3-Jul-2022 FILED: Reporter's Transcript - 3/8/19 - Capital Case Management Conference (Terry Masciola on Behalf of Jeanne Kappedal)
68. 11-Jul-2022 FILED: Reporter's Transcript - 3/22/22 - Trial (VoirDire) (Scott Coniam)
69. 11-Jul-2022 FILED: Reporter's Transcript - 3/24/22 Trial (Motions)(Scott Coniam)
70. 11-Jul-2022 FILED: Reporter's Transcript - 4/7/22 - Oral Argument (Scott Coniam)
71. 12-Jul-2022 FILED: Reporter's Transcript - 04/11/22 - Trial (Closings) (Scott Coniam)
72. 20-Jul-2022 FILED: Reporter's Transcript - 2/16/18 - Initial Pretrial Conference - Complex Case (Janice Penfield)
73. 20-Jul-2022 FILED: Reporter's Transcript - 1/4/18 - Not Guilty Arraignment (Janice Penfield)
- RECORD COMPLETE -----
74. 26-Jul-2022 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 October 25, 2022. 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.
- IT IS FURTHER ORDERED that any party seeking to modify a deadline shall comply with Ariz. R. Crim. P. 31.3(e), 31.6(e) and ARCAP 6(a)(2) and (3) and ARCAP 6(b), as applicable, prior to the deadline the party seeks to modify.
- IT IS FURTHER ORDERED that briefs shall comply with Ariz. R. Crim. P. 31.14(a) unless the Court grants a motion to exceed word limit filed pursuant to Ariz. R. Crim. P. 31.6 and ARCAP 6(b) upon a showing of good cause prior to the due date.
- IT IS FURTHER ORDERED that A.R.S. § 13-4042 and Ariz. R. Crim. P. 31.14(c)(2) be complied with to the extent required by law. (Hon. Kathryn H. King)
75. 8-Aug-2022 FILED: Motion to Unseal Records, Exhibits and Transcripts; Certificate of Service (Appellant Montoya)
76. 11-Aug-2022 FILED: Response to Motion to Unseal Records, Exhibits, and Transcripts; Certificate of Service (Appellee State)

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77. 17-Aug-2022 On August 8, 2022, Appellant Christopher Montoya filed a "Motion to Unseal Records, Exhibits, and Transcripts." On August 11, 2022, the Appellee State of Arizona filed a "Response to Motion to Unseal Records, Exhibits, and Transcripts," explaining that the State "has no objection to Appellant's Motion to Unseal Records, Exhibits, and Transcripts."

Upon review and consideration, and GOOD CAUSE APPEARING,

IT IS ORDERED the motion to unseal records, exhibits, and transcripts is granted in part and denied in part, as stated herein.

IT IS FURTHER ORDERED that upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal the grand jury transcript dated December 2, 2017 (See ROA 4), the juror list (See ROA 419), the juror questionnaires (See ROA 425-448), and ROA 12, 13, 14, 28, 29, 35, 86, 88, 90, 100, 101, 110, 111, 112, 115, 116, 117, 129, 130, 147, 148, 152, 156, 157, 160, 172, 177, 233, 269, 310, 319, 334, 389, and 416, and provide copies to counsel and then reseat the documents.

Appellant has also requested that the Court unseal juror lists and juror biographical information and direct the Clerk of the Supreme Court to provide copies to counsel for the parties. Based on review of the record on appeal sent to the Court, the juror biographical information was not included with the electronic index of record sent by the Clerk of the Maricopa County Superior Court. To the extent Appellant's request for "juror lists" seeks to unseal the juror list required pursuant to Ariz. R. Crim. P. 18.3(a), that information was not included with the electronic index of record sent by the Clerk of the Maricopa County Superior Court. Further, juror biographical information and the juror list required by Rule 18.3(a) are not part of the Record on Appeal pursuant to Ariz. R. Crim. P. 31.8(a)(1).

Therefore,

IT IS FURTHER ORDERED that the motion to unseal juror biographical information and direct the Clerk of the Supreme Court to provide copies to counsel for the parties is denied because the Clerk of this Court does not possess the juror biographical information and pursuant to Ariz. R. Crim. P. 18.3(b).

IT IS FURTHER ORDERED that to the extent Appellant's motion requests the Court to unseal the juror list required pursuant to Ariz. R. Crim. P. 18.3(a) the motion is denied, pursuant to Ariz. R. Crim. P. 18.3(b), without prejudice.

As to Appellant's motion to unseal the flash drive filed on 2/23/2022 (See ROA 348), the Court notes a concern based on the information contained on the flash drive, pursuant to its duties under Ariz. R. Crim. P. 39(g)(1), to inquire regarding compliance with the provisions of A.R.S. § 13-4401 et seq. (specifically, § 13-4411) and Ariz. R. Crim. P. 39.

Therefore,

IT IS FURTHER ORDERED that on or before August 24, 2022, the Appellee State of Arizona shall file a notice with this Court to confirm that the requirements of A.R.S. § 13-4411 (specifically §§ 13-4411(B), (C), and (D)) have been satisfied, advise the Court whether victim's rights have been complied with as outlined in Ariz. R. Crim. P. 39(d) and (g), and whether the Victim requests to be heard on Appellant's motion to unseal the flash drive filed on 2/23/2022 (See ROA 348) and the related protective order (See ROA 347) entered by the superior court. If the Victim does wish to be heard on Appellant's motion, the Victim may file a response to Appellant's motion on or before August 31, 2022.

Next, as to Appellant's motion to unseal ROA 329, based on the Court's review of the superior court's protective order (See ROA 311) related to ROA 329,

IT IS FURTHER ORDERED that the motion is denied without prejudice to the Appellant filing a supplemental motion advising the Court: (1) whether Appellant is moving to temporarily unseal the unredacted or redacted information (See ROA 286, 311, and 319, addressing ROA 329) and receive copies from the Clerk of the Supreme Court; and (2) whether Appellant is moving to lift the protective order entered by the superior court (See ROA 311). Appellant's supplemental motion, if any, shall further advise the Court whether Appellant's counsel received the redacted information referenced in ROA 311 from Appellant's trial counsel and address the legal and factual arguments related to the motion to unseal. The supplemental motion, if any, shall not exceed 2,000 words and shall be filed on or before August 24, 2022. If Appellant files a supplemental motion, the State shall file a response to the supplemental motion not to exceed 2,000 words on or before August 31, 2022, that confirms, based on consultation with the trial prosecutor, whether the exhibits attached to ROA 329 are the redacted or unredacted version of the information. The Appellant may file a reply to the State's response not to exceed 1,000 words on or before September 7, 2022.

IT IS FURTHER ORDERED that all protective orders entered by the superior court, specifically but not limited to ROA 51, 151, 272, 273, and the protective order contained in ROA 311, shall remain in full force and effect subject to further order of this Court.

Finally, as to Appellant's request that the Court direct the Clerk to provide counsel with a digital copy of the sealed exhibits,

IT IS FURTHER ORDERED that the request is denied as to directing the Clerk how to provide counsel with copies. Counsel for the parties shall confer with the Clerk of the Supreme Court as to the Clerk's preferred procedures for the parties to obtain copies of the sealed records, exhibits, and transcripts discussed herein.

IT IS FURTHER ORDERED counsel for the parties shall not include any information from sealed items in the briefs, other filings in this or any matter, or otherwise disclose such information to the public or other unauthorized parties without prior, further order from this Court.

IT IS FURTHER ORDERED pursuant to Ariz. R. Crim. P. 18.3 and Rule 123(e)(10), Rules of the Supreme Court, counsel shall maintain the confidentiality of all juror information, including all information that personally identifies jurors and jurors' home and

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work telephone numbers and addresses, and may not disclose any such information to the public or any party unless good cause is shown to this Court and an order from this Court permits such disclosure.

IT IS FURTHER ORDERED pursuant to A.R.S. § 12-312(A) and (B), Ariz. R. Crim. P. 18.3(b), and Ariz. R. Sup. Ct. 123(e)(10), as part of maintaining the confidentiality of all juror information, that the parties and any person on behalf of the parties shall not contact any prospective juror or juror (e.g., including but not limited to in writing, by phone, or in person) unless good cause is shown to this Court and an order from this Court permits such direct contact. (Hon. Kathryn H. King)

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|-----|-------------|--|
| 78. | 24-Aug-2022 | FILED: Supplement to Motion to Unseal Records, Exhibits and Transcripts; Certificate of Service (Appellant Montoya) |
| 79. | 24-Aug-2022 | FILED: Notice to the Court Re: Victims' Rights and Appellant's Motion to Unseal Flash Drive; Certificate of Service (Appellee State) |
| 80. | 31-Aug-2022 | FILED: Response to Supplement to Motion to Unseal Records, Exhibits and Transcripts; Certificate of Service (Appellee State) |
| 81. | 7-Sep-2022 | FILED: Reply to State's Response to Supplement to Motion to Unseal Records, Exhibits and Transcripts; Certificate of Service (Appellant Montoya) |

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82. 13-Sep-2022 On August 8, 2022, Appellant Christopher Montoya filed a "Motion to Unseal Records, Exhibits, and Transcripts." On August 11, 2022, the Appellee State of Arizona filed a "Response to Motion to Unseal Records, Exhibits, and Transcripts," explaining that the State "has no objection to Appellant's Motion to Unseal Records, Exhibits, and Transcripts."

On August 17, 2022, the Court issued an order that, inter alia, granted in part and denied in part Appellant's motion and directed the parties to file supplemental pleadings on the motion to unseal.

The parties, as directed, filed the following supplemental pleadings regarding Appellant's August 8, 2022, motion to unseal two items: "Sealed Document: Filed 02/23/2022 - Flash Drive" (See ROA 348); and the State's motion for in-camera inspection regarding proposed redaction of documents the State was required to disclose pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) (See ROA 310, 311, 319, 329).

On August 24, 2022, the State filed a "Notice to the Court Re: Victims' Rights and Appellant's Motion to Unseal Flash Drive." Also on August 24, 2022, Appellant filed his "Supplement to Motion to Unseal Records, Exhibits, and Transcripts." On August 31, 2022, the State filed its "Response to Supplement to Motion to Unseal Records, Exhibits and Transcripts." On September 7, 2022, Appellant filed his "Reply to State's Response to Supplement to Motion to Unseal Records, Exhibits, and Transcripts."

Upon review and consideration, and GOOD CAUSE APPEARING,

As to Appellant's motion to unseal the flash drive filed on 2/23/2022 (See ROA 347 and 348), based on the State's Notice to the Court Re: Victims' Rights and Appellant's original August 8, 2022, motion to temporarily unseal,

IT IS ORDERED that upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal the "Sealed Document: Filed 02/23/2022 – Flash Drive" (See ROA 347 and 348) and provide copies of the contents of the flash drive, subject to the protective order (See ROA 347) issued by the trial court, to counsel and then reseal the flash drive.

Next, based on review of the superior court's protective order (See ROA 311) related to ROA 329, review of the sealed documents and the supplemental pleadings from the parties, ROA 329 appears to include only the unredacted copies of the exhibits. The State did also file its motion for in-camera review of the exhibits attached to ROA 329, in what the State referred to as "a substantively similar motion" for in-camera review (ROA 310) with no exhibits attached. Thus, based on a review of the entire record, it appears that a redacted version of the documents that are the subject of ROA 310, 311, and 329 is not currently included in the record on appeal.

Further, the presiding criminal judge, following in-camera review of the State's redactions, ruled (See ROA 311) that "the redactions made by the State are appropriate, and that the redacted version of the materials should be disclosed to defense counsel" because the redacted material "(1) references to unrelated investigations involving a crime with no statute of limitations, (2) references to free talks or interviews by witnesses whose safety would be compromised if their cooperation with law enforcement was revealed, and (3) unnecessary embarrassment and privacy concerns." See *State v. Lukezic*, 143 Ariz. 60, 66 (1984) (the trial court is permitted to evaluate confidential material in-camera to determine what, if any, material is subject to disclosure).

Therefore,

IT IS FURTHER ORDERED that Appellant's motion to temporarily unseal ROA 329 and the attached exhibits is denied in part without prejudice. See *State v. Montaño*, 204 Ariz. 413, 423–24 ¶¶ 47–54, 428 ¶¶ 81–83 (2003).

IT IS FURTHER ORDERED that upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal ROA 329 and provide copies of only pages 1 through 10 of ROA 329 without the attached exhibits to counsel and then reseal the document.

IT IS FURTHER ORDERED pursuant to the Court's authority under Ariz. R. Crim. P. 31.8(g)(4) and Ariz. R. Civ. P. 5.4(c)(2) that the State shall file, pursuant to Ariz. R. Civ. P. 5.4(e), a Notice of Lodging Sealed Documents stating the State has lodged separate copies of the unredacted documents and the redacted documents that are the subject of ROA 311 and 329 as separate, sealed documents, pursuant to Ariz. R. Civ. P. 5.4(e)(2)(A) and (D) with the Clerk of the Supreme Court. The State shall serve only the filed Notice of Lodging Sealed Documents (absent the lodged sealed documents) on Appellant's counsel. Upon filing of the Notice of Lodging Sealed Documents by the State, upon request by Appellant's counsel, the Clerk of the Supreme Court shall temporarily unseal only the redacted documents lodged by the State and provide copies to counsel and then reseal the document.

However, if upon review of the redacted versions of the documents Appellant provides a legally and factually sufficient explanation why review of the unredacted versions of the documents is necessary to provide effective assistance of appellate counsel and to present arguably meritorious issues related to the presiding criminal judge's ruling (ROA 311), the confrontation clause, and *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Montaño*, 204 Ariz. at 423–24 ¶¶ 47–54, 428 ¶¶ 81–83, Appellant may re-urge his motion to unseal the unredacted documents.

IT IS FURTHER ORDERED that all protective orders entered by the superior court, specifically but not limited to ROA 51, 151, 272, 273, 347, and the protective order contained in ROA 311, shall remain in full force and effect subject to further order of this Court.

IT IS FURTHER ORDERED counsel for the parties shall not include any information from sealed items in the briefs, other filings in this or any matter, or otherwise disclose such information to the public or other unauthorized parties without prior, further order from this Court.

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IT IS FURTHER ORDERED pursuant to Ariz. R. Crim. P. 18.3 and Rule 123(e)(10), Rules of the Supreme Court, counsel shall maintain the confidentiality of all juror information, including all information that personally identifies jurors and jurors' home and work telephone numbers and addresses, and may not disclose any such information to the public or any party unless good cause is shown to this Court and an order from this Court permits such disclosure.

IT IS FURTHER ORDERED pursuant to A.R.S. § 12-312(A) and (B), Ariz. R. Crim. P. 18.3(b), and Ariz. R. Sup. Ct. 123(e)(10), as part of maintaining the confidentiality of all juror information, that the parties and any person on behalf of the parties shall not contact any prospective juror or juror (e.g., including but not limited to in writing, by phone, or in person) unless good cause is shown to this Court and an order from this Court permits such direct contact. (Hon. Ann A. Scott Timmer)

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83. 20-Sep-2022 On September 13, 2022, the Court issued an order that, in part, ordered the Appellee State of Arizona to file, pursuant to Ariz. R. Civ. P. 5.4(e), a Notice of Lodging Sealed Documents stating the State has lodged separate copies of the unredacted and redacted documents that are the subject of ROA 311 and 329 as separate, sealed documents, pursuant to Ariz. R. Civ. P. 5.4(e)(2)(A) and (D) with the Clerk of the Supreme Court, and serve only the filed Notice of Lodging Sealed Documents (absent the lodged sealed documents) on Appellant's counsel.

Upon further review of the record, staff has advised the Court that ROA 311 (ME: Order Signed [01/10/2022]) does not relate to sealed document ROA 329 (Motion for In Camera Inspection). Instead, sealed document ROA 319 (Motion to File Motion for In Camera Inspection Under Seal) and ROA 333 (ME: Ruling [02/07/2022]) relate to sealed document ROA 329. Further, ROA 311 (ME: Order Signed [01/10/2022]) relates to ROA 286 (Motion to File Second Motion for In Camera Inspection of Proposed Redactions and Request for Protective Order Under Seal) and sealed document ROA 310 (Motion for In Camera Inspection of Proposed Redactions and Request for Protective Order). Thus, based upon the further review of the record, it appears that neither the unredacted nor the redacted version of the documents that are the subject of ROA 286, 310, and 311 are currently included in the record on appeal.

Therefore, the Court, on its own motion, amends the above stated order, contained on page 4 of the Court's 9-13-2022 order, as follows:

IT IS ORDERED pursuant to the Court's authority under Ariz. R. Crim. P. 31.8(g)(4) and Ariz. R. Civ. P. 5.4(c)(2) that the Maricopa County Attorney's Office file, pursuant to Ariz. R. Civ. P. 5.4(e), a Notice of Lodging Sealed Documents stating that the Maricopa County Attorney's Office has lodged separate copies of the unredacted documents and the redacted documents that are the subject of ROA 286, 310, and 311 in the underlying superior court case CR2017-006253-001, as separate, sealed, labeled documents, pursuant to Ariz. R. Civ. P. 5.4(e)(2)(A) and (D), with the Clerk of the Supreme Court. The Notice of Lodging Sealed Documents may be filed and the separate, sealed copies of the unredacted and redacted documents lodged over the counter in hardcopy with the Clerk of the Supreme Court.

IT IS FURTHER ORDERED that the Maricopa County Attorney's Office shall serve only the filed Notice of Lodging Sealed Documents (absent the lodged sealed documents) on Appellee State of Arizona and Appellant's counsel.

IT IS FURTHER ORDERED that upon filing of the Notice of Lodging Sealed Documents by the Maricopa County Attorney's Office, upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal only the redacted documents lodged by the Maricopa County Attorney's Office and provide copies to counsel and then reseal the document.

However, if upon review of the redacted version of the documents Appellant provides a legally and factually sufficient explanation why review of the unredacted versions of the documents is necessary to provide effective assistance of appellate counsel and to present arguably meritorious issues related to the presiding criminal judge's ruling (ROA 311), the confrontation clause, and *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *State v. Montaño*, 204 Ariz. 413, 423–24 ¶¶ 47–54, 428 ¶¶ 81–83 (2003). Appellant may re-urge his motion to unseal the unredacted documents. Also, if upon review of the redacted versions of the documents Appellee provides a legally and factually sufficient explanation why review of the unredacted versions of the documents is necessary Appellee may file a motion to unseal the unredacted documents.

Further, based on the further review of the superior court record, the superior court's order (See ROA 333) related to sealed document ROA 329, review of the sealed document, and the supplemental pleadings from the parties, ROA 329 does include only unredacted exhibits. Furthermore, the presiding criminal judge, following in-camera review of the documents ruled (See ROA 333) that having "previously reviewed the information provided by the State for in camera inspection in this case. The Court finds that the information provided has no bearing on the credibility of the witness and need not be disclosed. . . [and] the State need not disclose the information previously filed under seal in CR2016-126635."

Therefore, the Court, on its own motion, amends its order contained on pages 2–3 of the Court's 9-13-2022 order, as follows:

IT IS FURTHER ORDERED that Appellant's motion to temporarily unseal ROA 329 and the attached exhibits is denied in part. See *Montaño*, 204 Ariz. at 423–24 ¶¶ 47–54, 428 ¶¶ 81–83.

IT IS FURTHER ORDERED that upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal ROA 329 and provide copies of only pages 1 through 10 of ROA 329 without the attached exhibits to counsel and then reseal the document.

However, as with the documents above related to ROA 286, 310, and 311, if upon review of pages 1 through 10 of ROA 329, Appellant provides a legally and factually sufficient explanation why review of the exhibits attached to ROA 329 is necessary to provide effective assistance of appellate counsel and to present arguably meritorious issues related to the presiding criminal judge's ruling (ROA 333), the confrontation clause, and *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Montaño*, 204 Ariz. at 423–24 ¶¶ 47–54, 428 ¶¶ 81–83, Appellant may re-urge his motion to unseal the unredacted exhibits attached to ROA 329.

IT IS FURTHER ORDERED that all protective orders entered by the superior court, specifically but not limited to ROA 51, 151, 272, 273, 347, and the protective orders contained in ROA 311 and 333, shall remain in full force and effect subject to further order of this Court.

IT IS FURTHER ORDERED that the order on page 2 of the 9-13-2022 order temporarily unsealing "Sealed Document: Filed 02/23/2022 – Flash Drive" (See ROA 342, 347, and 348) remains in effect.

IT IS FURTHER ORDERED counsel for the parties shall not include any information from sealed items in the briefs, other filings

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in this or any matter, or otherwise disclose such information to the public or other unauthorized parties without prior, further order from this Court.

IT IS FURTHER ORDERED pursuant to Ariz. R. Crim. P. 18.3 and Rule 123(e)(10), Rules of the Supreme Court, counsel shall maintain the confidentiality of all juror information, including all information that personally identifies jurors and jurors' home and work telephone numbers and addresses, and may not disclose any such information to the public or any party unless good cause is shown to this Court and an order from this Court permits such disclosure.

IT IS FURTHER ORDERED pursuant to A.R.S. § 12-312(A) and (B), Ariz. R. Crim. P. 18.3(b), and Ariz. R. Sup. Ct. 123(e)(10), as part of maintaining the confidentiality of all juror information, that the parties and any person on behalf of the parties shall not contact any prospective juror or juror (e.g., including but not limited to in writing, by phone, or in person) unless good cause is shown to this Court and an order from this Court permits such direct contact. (Hon. Ann A. Scott Timmer)

84. 3-Oct-2022 FILED: Unopposed Motion for Extension of Time to File Opening Brief; Certificate of Service (Appellant Montoya)
85. 5-Oct-2022 Appellant Montoya filed an "Unopposed Motion for Extension of Time to File Opening Brief" on October 03, 2022. Pursuant to Arizona Rules of Criminal Procedure, 31.6(e) and Arizona Rules of Civil Appellate Procedure, Rule 6(b), the caption of a motion for procedural order must also include the words, "Motion for Procedural Order." Therefore,
- IT IS ORDERED the motion is denied without prejudice to Appellant's ability to file a motion in compliance with Arizona Rules of Crim. Proc. Rule 31.6(e) and ARCAP 6(b) by October 12, 2022. (Tracie K. Lindeman Clerk)
86. 5-Oct-2022 FILED: Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief; Certificate of Service (Appellant Montoya)
87. 5-Oct-2022 A "Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief" (Appellant Montoya) having been filed on October 05, 2022,
- IT IS ORDERED granting a first extension of time to file an opening brief on or before January 23, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie Lindeman, Clerk)
88. 18-Oct-2022 FILED: Notice of Lodging Sealed Documents; Certificate of Service (MCAO)
89. 18-Oct-2022 FILED: [SEALED] Redacted Documents Per ASC Order Filed 9/20/22 (MCAO)
90. 18-Oct-2022 FILED: [SEALED] Unredacted Documents Per ASC Order Filed 9/20/22 (MCAO)
91. 16-Jan-2023 FILED: [Second] Motion for Procedural Order; Unopposed Motion for Extension of Time to File Opening Brief; Certificate of Service (Appellant Montoya)
92. 17-Jan-2023 FILED: Motion for Clarification of Court's August 17, 2022, Order Unsealing Records, Exhibits, and Transcripts; Motion to Unseal Exhibits 1-4 and 379-382; Certificate of Service (Appellant Montoya)
93. 18-Jan-2023 A "Motion for Procedural Order; Unopposed Motion for Extension of Time to File Opening Brief" (Appellant Montoya) having been filed on January 16, 2023,
- IT IS ORDERED granting a second extension of time to file an opening brief on or before March 24, 2023. No further extensions of time shall be granted absent extraordinary circumstances. This matter is subject to dismissal if the petition for review is not filed by March 24, 2023.
(Tracie K. Lindeman Clerk)

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94. 19-Jan-2023 The Court has issued three prior orders to temporarily unseal records, exhibits, and transcripts in this matter on August 17, 2022, September 13, 2022, and September 20, 2022, following motions by the Appellant Christopher Montoya.

On January 17, 2023, Appellant filed a "Motion for Clarification of Court's August 17, 2022, Order Unsealing Records, Exhibits, and Transcripts; Motion to Unseal Exhibits 1–4 and 379–382" requesting clarification whether Exhibits 1-4 and 379-382 were included among the documents temporarily unsealed in the August 17, 2022, order, and, in the event the exhibits have previously not been temporarily unsealed, moving the Court to temporarily unseal those exhibits and directing the Clerk, upon request by counsel, to make the temporarily unsealed exhibits available to counsel for review.

Upon review and consideration, and GOOD CAUSE APPEARING,

IT IS ORDERED the motion for clarification of the Court's August 17, 2022, order is granted.

The Court's prior orders temporarily unsealing records, exhibits, and transcripts—dated August 17, 2022, September 13, 2022, and September 20, 2022—consistent with the Court's longstanding practice when the superior court has issued protective orders, temporarily unsealed only the records, exhibits, and transcripts specifically requested by Appellant.

IT IS FURTHER ORDERED that the motion to temporarily unseal Exhibits 1–4 from hearing date 9-17-2021 and Exhibits 379–382 from hearing date 3-8-2022 (admitted 3-21-2022) is granted, as stated herein.

IT IS FURTHER ORDERED that upon request by counsel for either party, the Clerk of the Supreme Court shall temporarily unseal Exhibits 1, 2, 3, and 4 from hearing date 9-17-2021, and Exhibits 379, 380, 381, and 382 from hearing date 3-8-2022 (admitted 3-21-2022), and make the exhibits available to counsel for review, and then reseal the exhibits.

IT IS FURTHER ORDERED that all protective orders entered by the superior court, specifically but not limited to ROA 51, 151, 272, 273, and the protective order contained in ROA 311, shall remain in full force and effect subject to further order of this Court.

IT IS FURTHER ORDERED counsel for the parties shall not include any information from sealed items in the briefs, other filings in this or any matter, or otherwise disclose such information to the public or other unauthorized parties without prior, further order from this Court.

IT IS FURTHER ORDERED pursuant to Ariz. R. Crim. P. 18.3 and Rule 123(e)(10), Rules of the Supreme Court, counsel shall maintain the confidentiality of all juror information, including all information that personally identifies jurors and jurors' home and work telephone numbers and addresses, and may not disclose any such information to the public or any party unless good cause is shown to this Court and an order from this Court permits such disclosure.

IT IS FURTHER ORDERED pursuant to A.R.S. § 12-312(A) and (B), Ariz. R. Crim. P. 18.3(b), and Ariz. R. Sup. Ct. 123(e)(10), as part of maintaining the confidentiality of all juror information, that the parties and any person on behalf of the parties shall not contact any prospective juror or juror (e.g., including but not limited to in writing, by phone, or in person) unless good cause is shown to this Court and an order from this Court permits such direct contact.

IT IS FURTHER ORDERED that counsel for the parties shall confer with the Clerk of the Supreme Court as to the Clerk's preferred procedures for the parties to obtain copies of the sealed records, exhibits, and transcripts. (Hon. John R. Lopez IV)

95. 10-Feb-2023 FILED: Notice of Damaged Exhibit 466 and Request for State to Provide Duplicate; Certificate of Service (Appellant Montoya)

96. 15-Feb-2023 On May 27, 2022, the Clerk of the Supreme Court received the record on appeal from the Maricopa County Superior Court. After receipt of all necessary reporter's transcripts, the Clerk determined that the record on appeal was complete on July 26, 2022.

On February 10, 2023, Appellant Christopher Montoya ("Appellant"), through appointed counsel, advised the Court that Trial Exhibit 466 (a DVD marked "QT Target Walmart") is damaged and unreadable. Trial Exhibit 466 was admitted at trial on April 5, 2022.

The Clerk of the Supreme Court and Staff have informed the Court that Trial Exhibit 466 is damaged and unreadable due to the DVD being broken.

Therefore, upon consideration, and GOOD CAUSE APPEARING,

IT IS ORDERED pursuant to Ariz. R. Crim. P. 31.8(g)(1)(B) and (g)(4) that the Appellee State of Arizona, through counsel of record, shall obtain an undamaged, readable copy of Trial Exhibit 466 and file that copy with the Clerk of the Supreme Court within thirty days of this Order.

IT IS FURTHER ORDERED that Appellee and Appellant, through counsel, shall file a stipulation, pursuant to Ariz. R. Crim. P. 31.8(g)(1)(A), simultaneously with the copy of Trial Exhibit 466, stating that Appellee and Appellant, stipulate and certify that the supplemental submission of the copy of Trial Exhibit 466 filed by the parties with the Clerk of the Supreme Court is a true and accurate copy of Trial Exhibit 466, and corrects and completes the record on appeal. (Hon. Ann A. Scott Timmer)

97. 10-Mar-2023 FILED: Motion for Preparation of Additional Transcript and to Supplement the Record on Appeal; Certificate of Service (Appellant Montoya)

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98. 10-Mar-2023 On March 10, 2023, Appellant Christopher Montoya filed a Motion for Preparation of Additional Transcript and to Supplement the Record on Appeal requesting that the Court order the preparation of one additional reporter's transcript in this matter and to supplement the record on appeal. Appellant requests, pursuant to Ariz. R. Crim. P. 31.8(b)(2)(A) and (C), that the Court order the preparation of the reporter's transcript for the superior court proceedings on November 9, 2020 (Capital Case Management Conference), in this matter before the Honorable Theresa Sanders, recorded by Court Reporter Lisa Bradley.
- Appellant also requests that the Court order the record on appeal be supplemented to include the reporter's transcript of the November 9, 2020, proceedings in the superior court.
- Therefore, upon consideration, and GOOD CAUSE APPEARING,
- IT IS ORDERED that Court Reporter, Lisa Bradley, pursuant to Ariz. R. Crim. P. 31.8(b)(2), (d)(1), (d)(3), and 31.9(c) shall prepare the transcript for the November 9, 2020, proceedings before the superior court in this matter promptly upon receipt of this order and shall deliver the prepared transcript to the Clerk of the Supreme Court, the Appellant, and Appellee State of Arizona, pursuant to Ariz. R. Crim. P. 31.8(d), not later than April 24, 2023. (Hon James P. Beene)
99. 11-Mar-2023 FILED: Reporter's Transcript 11/9/2020 - Capital Case Management Conference (Lisa Bradley)
100. 15-Mar-2023 FILED: Unopposed Motion for Extension of Time to Comply with the Court's 2/15/23 Order Re: Trial Exhibit 466; Certificate of Service (Appellee State)
101. 16-Mar-2023 FILED: Notice of Errata [Motion for Procedural Order]; Certificate of Service (Appellee State)
102. 16-Mar-2023 An "Unopposed Motion for Extension of Time to Comply with the Court's 2/15/23 Order Re: Trial Exhibit 466" (Appellee State) having been filed on March 15, 2023,
- IT IS ORDERED granting a 14-day extension of time to comply with the Court's 2/15/23 Order. The exhibit and stipulation shall be filed on or before March 29, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman Clerk)
103. 17-Mar-2023 FILED: Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief (Third Request); Certificate of Service (Appellant Montoya)
104. 20-Mar-2023 A "Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief (Third Request)" (Appellant Montoya) having been filed on March 17, 2023,
- IT IS ORDERED granting a third extension of time to file the opening brief on or before May 23, 2023. No further extensions of time shall be granted absent extraordinary circumstances. This matter is subject to dismissal if the opening brief is not filed by May 23, 2023. (Hon James P. Beene)
105. 24-Mar-2023 FILED: Joint Stipulation Regarding Exhibit 466; Certificate of Service (Appellee State)
106. 15-May-2023 FILED: Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief (Fourth Request); Certificate of Service (Appellant Montoya)

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107. 16-May-2023 Appellant Montoya filed a Motion for Procedural Order: Unopposed Motion for Extension of Time to File Opening Brief (Fourth Request) on May 15, 2023. The motion states that the State does not oppose the requested extension.
- The Court's original order for briefing was issued July 22, 2022, and set October 25, 2022, as the due date for the opening brief. Appellant has received three prior extensions of the opening brief due date related to: (1) a delay that was the result of temporarily unsealing portions of the record on appeal and counsels' caseload; (2) ongoing issues compiling and reviewing portions of the record on appeal, exhibits, and counsels' caseload; and (3) continuing review of the record and newly obtained sealed documents and exhibits, and counsels' caseload. The opening brief is currently due on or before May 23, 2023.
- Appellant's current motion requests an extension of 45 days, until July 7, 2023. Appellant's motion advises that since the Court granted the third request for an extension of time in March 2023, "counsel have been working diligently to finalize identification of potential issues [], complete extensive research into these issues, and begin drafting the opening brief." The motion further states that while "counsel had hoped to file the opening brief by the current deadline of May 23rd," counsel suffers from a "substantial health issue" that has hampered her ability "over the past two months" to finalize the opening brief.
- The Court understands the prior extensions of the due date to file the opening brief, in large part, were prompted by verifying that the record on appeal was complete including sealed documents and exhibits. Nevertheless, considering the multiple extensions already received, and more notably, the amount of time that has passed since the Court's initial briefing order, the Court notes, in the strongest possible terms, this case must proceed, and it takes counsel at their word that "counsel is committed to finishing [the opening] brief by the [] requested [] due date of July 7, 2023."
- Therefore, upon review and consideration, and GOOD CAUSE APPEARING,
- IT IS ORDERED the motion to extend time to file opening brief is granted.
- IT IS FURTHER ORDERED that Appellant's Opening Brief, upon consideration of Appellant's motion and the requirements pursuant to Rule 31.14(c)(1), shall be filed no later than July 7, 2023.
- IT IS FURTHER ORDERED that should counsel seek an additional extension, any motion must be accompanied by a detailed description of the efforts taken by counsel to comply with this order and the reasons why such efforts were unavailing, including a detailed timeline. Counsel are admonished that it is unlikely that the Court will grant any additional extension, and that they are to act with diligence and alacrity to comply with this order.
- IT IS FURTHER ORDERED pursuant to Rule 31.14(b) 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.
- IT IS FURTHER ORDERED that A.R.S. § 13-4042 and Rule 31.14(c)(2) be complied with to the extent required by law. (Hon. John R. Lopez IV)
108. 28-Jun-2023 FILED: Unopposed Motion to Permit Reference to Sealed Pleading ROA 334; Certificate of Service (Appellant Montoya)
109. 29-Jun-2023 On June 28, 2023, Appellant Christopher Montoya filed an Unopposed Motion to Permit Reference to Sealed Pleading ROA 334, requesting an order from this Court permitting him to reference a specific sealed document in his briefing, including only the information contained in pages 1-3 of the pleading itself exclusive of the attached exhibits.
- Appellant's motion states that "the pleading had originally been sealed solely on the basis that some of the attached exhibits contained photographs of the victim as found at the scene and at the autopsy." Motion at 1. Appellant also notes that several "other pleadings relating to the admission of gruesome photographs which did not have attached exhibits were not sealed." Motion at 1-2; see also ROA 293, 300, and 303. Appellant avows that "this request is necessary to provide Mr. Montoya with effective assistance of appellate counsel." Motion at 2.
- Appellant advises in his motion that the Appellee State of Arizona has no objection to the motion.
- herefore, upon consideration, and GOOD CAUSE APPEARING,
- IT IS ORDERED granting Appellant's Motion to Permit Reference to Sealed Pleading ROA 334, exclusive of any reference to the exhibits attached thereto. (Hon James P. Beene)
110. 7-Jul-2023 FILED: [STRICKEN Per ASC Order Filed 7/18/23] Appellant's Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Montoya)
111. 7-Jul-2023 FILED: Motion for Procedural Order: Motion for Leave to Exceed Word Limit for the Opening Brief; Certificate of Service (Appellant Montoya)
112. 11-Jul-2023 FILED: Response to Motion for Leave to Exceed Word Limit for Opening Brief; Certificate of Service (Appellee State)

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113. 18-Jul-2023 On July 7, 2023, Appellant Christopher Montoya filed Appellant's Opening Brief including a Certificate of Compliance that indicates the Brief was prepared using 14-point Times New Roman proportionately spaced font and contains 38,362 words.
- In conjunction with his opening brief, Appellant filed a Motion for Procedural Order: Motion for Leave to Exceed Word Limit for the Opening Brief requesting that the Court allow his 38,362-word opening brief. Appellant's Opening Brief exceeds the word limit set by Ariz. R. Crim. P. 31.14(a) for an opening brief in a capital case by 10,362 words — more than one-third longer than the word limit allowed by the Rule. The motion states that the Appellee State of Arizona was unable to take a position on Appellant's motion without seeing the brief.
- Appellant asserts that counsel have "identified nine issues that need to be raised in the opening brief. These issues are significant, and ethically require counsel to draft a brief containing more than 28,000 words." Motion at 2 (citing A.R.S. § 13-4041; Ariz. R. Crim. P. 6.8(a)(5); ABA Guidelines, Guideline 10.15.1C and commentary (2003)). Additionally, Appellant argues that several of the issues require in-depth factual and legal discussion. He specifically notes issues related to: (1) jury selection and recent amendments to Ariz. R. Crim. P. 18.4 and 18.5 related to the use of peremptory strikes during jury selection; and (2) his guilty pleas to both capital and non-capital crimes and the recent amendments to Ariz. R. Crim. P. 32 and 33.
- More specifically, Appellant asserts that issues raised in his opening brief involving voir dire and juror issues required advising the Court about "the substance of the jury selection overall and the parties' and trial court's interactions with multiple jurors." Motion at 3-4. Appellant further contends that his "prosecutorial misconduct issue required an in-depth discussion of witness testimony, victim impact statements, and closing argument." Id. at 4. Finally, due to Appellant "plead[ing] guilty to the indictment, admit[ing] two capital aggravating circumstances, and cho[osing] to waive the presentation of nearly all mitigation, the prosecutor's actions in presenting rebuttal evidence... as well as her statements made in [] closing argument, arguably gained even more significance than in a 'typical' capital case." Id.
- On July 11, 2023, after Appellant served the brief and motion, the State filed a Response to Motion to Exceed Word Limit for Opening Brief, stating that the State has no objection to the Appellant's requested expansion of the word limit.
- Upon review and consideration,
- IT IS ORDERED that Appellant's Motion for Procedural Order: Motion for Leave to Exceed Word Limit for the Opening Brief, based on the specific circumstances in this matter and to the extent it requests that the Court accept Appellant's 38,362-word opening brief filed on July 7, 2023, is denied.
- IT IS FURTHER ORDERED that Appellant's Opening Brief filed on July 7, 2023, is stricken from the record.
- IT IS FURTHER ORDERED that Appellant's Motion for Procedural Order: Motion for Leave to Exceed Word Limit for the Opening Brief, to the extent it requests that the Court expand the word limit is granted in part, based on the specific circumstances in this matter.
- Appellant shall file an opening brief that shall not exceed 35,000 words and shall otherwise comply with Ariz. R. Crim. P. 31.14(a) on or before August 8, 2023. No extensions of this due date shall be granted absent extraordinary circumstances.
- IT IS FURTHER ORDERED that the Appellee State of Arizona's response to the opening brief shall not exceed 35,000 words and shall otherwise comply with Ariz. R. Crim. P. 31.14(a). Appellant's reply shall not exceed 15,000 words and shall otherwise comply with Ariz. R. Crim. P. 31.14(a).
- No further expansion of the word limits ordered herein will be granted in this matter absent extraordinary circumstances. (Hon Kathryn H. King)
114. 8-Aug-2023 FILED: Appellant's Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Montoya)
115. 6-Sep-2023 FILED: Notice of Substitution of Counsel [Jason Gannon Attorney of Record]; Certificate of Service (Appellee State)
116. 28-Sep-2023 FILED: Unopposed Motion for Procedural Order (Extension for Answering Brief); Certificate of Service (Appellee State)
117. 28-Sep-2023 An "Unopposed Motion for Procedural Order (Extension for Answering Brief)" (Appellee State) having been filed on September 28, 2023,
- IT IS ORDERED granting a first extension of time to file the answering brief on or before December 8, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman Clerk)
118. 5-Dec-2023 FILED: Motion for Procedural Order (Motion to Cite Sealed Documents); Certificate of Service (Appellee State)

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119. 6-Dec-2023 On December 5, 2023, Appellee State of Arizona filed Motion for Procedural Order (Motion to Cite Sealed Documents), requesting an order from this Court permitting it to cite three sealed documents in its answering brief.
- The motion states that Appellee “intends to cite three sealed documents in its answering brief: Defendant’s Objections to Photographs, ROA 334; the flash drive containing photographs of the victim’s autopsy, ROA 348; and the juror questionnaire for prospective juror 119/seated juror 17, ROA 434 Part 10 pages 88, 90–91.” Motion at 1. Appellee avows that “citation and reference to these sealed documents is necessary to properly respond to [Appellant]’s [opening] brief.” Motion at 1.
- Appellee advises that it contacted counsel for the Appellant Christopher Michael Montoya, and they have no objection to the motion.
- Therefore, upon consideration, and good cause appearing,
- IT IS ORDERED granting Appellee’s Motion to Cite Sealed Documents. Appellee may cite the requested sealed documents consistent with the avowals of Appellee’s counsel exclusive of including any photos or content contained on ROA 348 or attached as an exhibit to ROA 334. See Motion at 2. (Hon. Kathryn H. King)
120. 8-Dec-2023 FILED: Appellee’s Answering Brief; Certificate of Service; Certificate of Compliance (Appellee State)
121. 29-Dec-2023 FILED: Motion for Procedural Order: Unopposed Motion for 60-Day Extension of Time to File Reply Brief (First Request); Certificate of Service (Appellant Montoya)
122. 2-Jan-2024 A “Motion for Procedural Order: Unopposed Motion for 60-Day Extension of Time to File Reply Brief (First Request)” (Appellant Montoya) having been filed on December 29, 2023,
- IT IS ORDERED granting a first extension of time to file the reply brief on or before March 8, 2024. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman Clerk)
123. 8-Mar-2024 FILED: Appellant’s Reply Brief; Certificate of Service; Certificate of Compliance (Appellant Montoya)
124. 8-Mar-2024 FILED: Copy of Unpublished Memorandum Decision; Certificate of Service (Appellant Montoya)