

1 **TYRONE MITCHELL, P.C.**

2 Tyrone Mitchell, Esq., No. 016267

3 1130 North 2nd Street, Unit 102

4 Phoenix, Arizona 85004

5 Phone (602) 956-8200

6 Facsimile (602) 595-8467

7 tmitchell@tyronemitchellpc.com

8 *Attorney for Defendant*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 STATE OF ARIZONA,

CASE NO. P1300CR201600476

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

COMES NOW, Defendant Anthony Richards, by and through attorney undersigned,
and objects to the State's Notice of Filing Victim Statement in Support of Request to Testify
via Video Appearance. In particular, the State filed a written statement from the victim's
sister, State witness Joan Shattuck, requesting that she be allowed to testify at trial via
videotape rather than appearing in person due to her personal family hardships, including the

1 fact that her husband's caregiver has given notice and she will not be able to find another
2 caregiver to provide the necessary care and watch over him while she is attending a trial in
3 Arizona. Ms. Shattuck also concedes that she is aware of the previous trial court's Order
4 that she appear in person for trial and acknowledges that her conduct during the first trial
5 was the cause of the sanction.
6

7 Defendant adamantly object to this request for several reasons.

8 As this Court is aware, the first trial of this action ended in a mistrial due to collusion
9 between the prosecutor and multiple state witnesses, including Joan Shattuck, wherein the
10 State violated the Rule of Exclusion and engaged in prosecutorial misconduct, including
11 coaching its witnesses. As a sanction for this conduct, the Honorable Tina Ainley ordered
12 that all witnesses need to be physically present at trial because Defendant has a right to
13 confront these witnesses. The trial court made clear that defense counsel does *not* need to
14 agree to video testimony at the trial of this action. There is no ambiguity with this Order,
15 which is the "law of the case", and this Order was in direct response to the Court's finding
16 that the State's witnesses, including Joan Shattuck, engaged in inappropriate behavior during
17 trial.
18
19
20

21 In the case at bar, Defendant Anthony Richards has a constitutional right to confront
22 Ms. Shattuck, as well as all the state witnesses, and to compel their physical appearance at
23 trial in order to preserve his right to a fair trial. In fact, this right of confrontation is
24 especially crucial in a case such as this one, where Ms. Shattuck, a key state witness, has
25 admittedly engaged in collusion and inappropriate conversations, which continued even after
26
27
28

1 the mistrial, despite the court's admonitions. In this instance, it is particularly imperative
2 that defense counsel has a chance to confront this witness and challenge her credibility.

3 To that end, there are important factors impacting the credibility of a witness which
4 video testimony does not properly capture, such as body language and demeanor. To be
5 sure, if there was ever a case where a state witness' credibility is at issue and must be
6 challenged through in-person testimony, this is the one, as demonstrated by the trial court's
7 ruling on this very issue. Therefore, based on all of these factors, defense counsel objects to
8 the State's request to present Joan Shattuck's trial testimony via videotape. Defense counsel
9 further requests oral argument on this Motion.
10
11

12 Defendant's Objection is based upon the *Arizona Rules of Criminal Procedure*, Rule
13 16.1(d), the "law of the case" doctrine, as well as the Sixth and Fourteenth Amendments to
14 the United States Constitution. This Motion is further supported by the attached
15 Memorandum of Points and Authorities incorporated by reference herein and any
16 facts and arguments submitted pursuant to an oral argument held on this matter.
17
18

19 RESPECTFULLY SUBMITTED this 18th day of January, 2022.

20
21 /s/ Tyrone Mitchell
22 Tyrone Mitchell
23 Attorney for Defendant
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 I. **STATEMENT OF FACTS**

4 The State indicted Defendant Anthony Richards on 24 counts, including one count of
5 First Degree Murder of the victim Larry Powers. The first trial of this action commenced on
6 March 4, 2020. The Rule of Exclusion was invoked at trial. During trial, the victim’s sister,
7 Joan Shattuck, was allowed to listen to the trial via phone. Prior to testimony on March 6,
8 2020, state witness Craig Comstock discussed his testimony with prosecutor Casi Harris and
9 detective John McDormett. After his meeting with prosecutor Harris, Mr. Comstock texted
10 Joan Shattuck and told her:
11

12
13 “Just spent 45 minutes going over case with Casey [Casi Harris]. I pretty much only
14 need to say yes or no. I go on at 1:30.”

15 On March 6, 2020, following the direct examination of Mr. Comstock, trial was
16 recessed for that week. That evening, Ms. Shattuck and Mr. Comstock began a conference
17 regarding Mr. Comstock’s upcoming testimony which lasted three days. In particular, on
18 Saturday, March 7, 2020, Mr. Comstock and Ms. Shattuck talked on the phone for two to
19 three hours so that Ms. Shattuck could help coach Mr. Comstock with his testimony. When
20 a question came up about a particular date, Mr. Comstock and Ms. Shattuck contacted the
21 state investigator Paul Chastain to clarify the date. Ms. Shattuck also contacted detective
22 John McDormett on Sunday, March 8, 2020.
23
24
25
26
27
28

1 On March 11, 2020, a mistrial was declared for violation of the Rule of Exclusion.

2 On November 6, 2020, defense counsel filed a Motion to Dismiss/Motion to Preclude, and
3 on November 10, 2020, counsel filed a Motion to Dismiss/Motion to Preclude for
4 prosecutorial misconduct.
5

6 On December 21, 2020, the Honorable Tina Ainley held an oral argument on
7 Defendant's two motions to dismiss and motion to modify release conditions. During oral
8 argument, prosecutor Josh Fisher stated:
9

10 "It was the most egregious example of violating the rule of exclusion of witnesses I
11 have ever been privy to." *See Transcript of Oral Argument, December 21, 2020, pgs.*
12 *24-25.*

13 After hearing oral arguments from both defense counsel and the prosecutor, the trial
14 court denied Defendant's motions to dismiss. In the Court's Order, Judge Ainley stated that
15 she agrees that the witnesses engaged in behavior that was not appropriate during trial, and
16 that the court declared a mistrial based on such behavior. Judge Ainley also acknowledged
17 that more conversations have been discovered since the mistrial which will need to be
18 addressed during the next trial. The trial court issued the following sanction pursuant to its
19 Order:
20

21 "The Court does feel that several things are appropriate. The only reason Ms.
22 Shattuck was allowed to appear by video testimony or her deposition being played is
23 that counsel agreed to that. ***Counsel does not have to agree to that. During trial,***
24 ***witnesses need to be present and the Defendant has a right to confront his***
witnesses.

25 ***The Court agrees that, should trial proceed from here, counsel has no obligation to***
26 ***agree that Ms. Shattuck's deposition be played. Counsel has the right to insist that***

27
28

1 *every witness come in and provide live testimony in front of the Defendant.”*
2 *(Emphasis added) (Minute Entry, Court Order 12/21/20, attached as an Exhibit)*

3 Following this ruling, Defendant Anthony Richards filed a Special Action with the
4 Arizona Court of Appeals, No. 1CA-SA 21-0009, to challenge the trial court’s denial of
5 Defendant’s motions to dismiss. On February 2, 2021, the Arizona Court of Appeals
6 declined to accept jurisdiction of the Special Action. Thereafter, Defendant filed a Petition
7 for Review with the Arizona Supreme Court, arguing that the trial court’s remedy of a
8 mistrial was not sufficient when there was overwhelming evidence of collusion, violation of
9 the Rule of Exclusion, and prosecutorial misconduct. In particular, Defendant argued that
10 the Court of Appeals abused its discretion by failing to accept jurisdiction regarding the trial
11 court’s failure to preclude these witnesses from testifying at trial after violating the Rule of
12 Exclusion, failure to provide a sanction for prosecutorial misconduct, and failure to dismiss
13 the case. The Arizona Supreme Court declined to accept jurisdiction of the Petition for
14 Review.
15 Review.

16 The second trial of this action is currently set for February of 2020.

17 **II. LAW AND ARGUMENT**

18 **A. DEFENDANT RICHARDS HAS A CONSTITUTIONAL RIGHT TO** 19 **CONFRONT AND CROSS-EXAMINE HIS ACCUSERS FACE TO** 20 **FACE WITH LIVE TESTIMONY**

21 “The confrontation clauses of the state and federal constitutions guarantee
22 criminal defendants the right to confront their accusers. Ariz. Const. art. 2, § 24; *State v.*
23
24
25
26
27
28

1 *Edwards*, 136 Ariz. 177, 665 P.2d 59 (1983); U.S. Const. amend. VI; *Pointer v. Texas*, 380
2 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). This right protects the accused's ability
3 to confront and cross-examine his accusers face-to-face. *Edwards*, 136 Ariz. at 180-81, 665
4 P.2d at 62-63.” *State v. Robinson*, 153 Ariz. 191, 203 (Ariz. 1987).

6 “The right of an accused to confront an adverse witness is guaranteed by the sixth
7 amendment to the United States Constitution which is applicable to the states under the
8 fourteenth amendment, *Pointer v. Texas*, 380 U.S. 400, 403, 85 S.Ct. 1065, 1067-68, 13
9 L.Ed.2d 923 (1965), and by art. 2, § 24 of the Arizona Constitution, *State v. Pereda*, 111
10 Ariz. 344, 345, 529 P.2d 695, 696 (1974). This right has been considered one of the most
11 important safeguards to a fair trial. Its purpose is to give an accused the opportunity, not only
12 of testing the recollection and sifting the conscience of the witness, but of compelling him to
13 stand face to face with the jury in order that they may look at him, and judge by his
14 demeanor upon the stand and the manner in which he gives his testimony whether he is
15 worthy of belief. *Mattox v. United States*, 156 U.S. 237, 242-43, 15 S.Ct. 337, 339, 39 L.Ed.
16 409 (1895).” *State v. Edwards*, 136 Ariz. 177, 180-81 (Ariz. 1983).

21 In the instant case, Defendant Anthony Richards adamantly objects to the State’s
22 Notice of Filing Victim Statement in Support of Request to Testify Via Video Appearance.
23 In particular, the State proposes to have one of its key witnesses, Joan Shattuck, testify at
24 trial through video, in direct contravention to the trial court’s ruling on December 21, 2020,
25 which was a specific sanction designed to prevent the collusion, inappropriate behavior by
26
27

1 the State's witnesses, especially Joan Shattuck, and violation of the Rule of Exclusion, which
2 led to a mistrial in this case.

3 The State's request also violates Defendant Richards' constitutional right to confront
4 his accusers, and right to a fair trial. Without a doubt, state witness Joan Shattuck's
5 credibility is directly at issue, and can only be properly challenged through face-to-face
6 confrontation in this case.
7

8 In the instant case, Joan Shattuck, the victim's sister, was the sole reason Larry
9 Power's case was investigated. In particular, Ms. Shattuck gathered information and sent it
10 to the police, as well as to state witness Craig Comstock. State investigator Paul Chastain
11 and detective John McDormett used the information submitted by Ms. Shattuck to further
12 their investigation. To be sure, Craig Comstock described his relationship with Ms. Shattuck
13 as "a crusade to see justice done", and Ms. Shattuck described them as "a unified front".
14
15

16 Unfortunately, when it came time for trial of this case, Ms. Shattuck did not act to
17 promote justice. Rather, she violated the Rule of Exclusion, and engaged in prohibited
18 conversations with Mr. Comstock the weekend before his trial testimony in order to help
19 coach him. Ms. Shattuck not only talked to Mr. Comstock and helped him remember
20 information pertinent to his anticipated testimony, but she also communicated with the
21 investigator and detective in charge of the case.
22

23
24 Ultimately, the combined inappropriate conduct of Joan Shattuck, Craig Comstock,
25 investigator Paul Chastain and detective John McDormett resulted in a mistrial. However,
26 the trial court's ruling did not deter Ms. Shattuck from engaging in more flagrant
27

1 misconduct. To be sure, after the mistrial, the trial court once again ordered witnesses not to
2 talk to each other. However, Mr. Comstock and Ms. Shattuck once again violated the trial
3 court's order and began communicating with each other, both through texts and phone calls.
4

5 Furthermore, when additional disclosures were made by the State on October 2, 2020,
6 these disclosures included texts and emails between Ms. Shattuck, Mr. Comstock,
7 investigator Chastain, and detective McDormett which had never been produced prior to the
8 first trial. Moreover, depositions of the witnesses revealed multiple instances of prohibited
9 communications before, during, and after trial between Ms. Shattuck and Mr. Comstock, and
10 further evidenced that Craig Comstock had colluded with prosecutor Harris.
11

12 In the instant case, Joan Shattuck admitted to her inappropriate conduct, yet continued
13 to violate the trial court's orders even after the mistrial. Clearly, this witness is not only a
14 key state witness, but her credibility is highly questionable. Now this witness wants to once
15 again violate the trial court's orders and refuses to come to trial due to family hardship.
16

17 While this Court may be sympathetic to the personal struggles, health care needs, and
18 inconvenience that this trial may cause for Ms. Shattuck, Defendant Richards' liberty is at
19 stake and he has a constitutional right to a fair trial, which includes the right to confront and
20 cross-examine the credibility of all state witnesses, especially Ms. Shattuck. These
21 constitutional rights far outweigh any personal inconvenience and hardship that this trial may
22 create for Ms. Shattuck.
23

24 Indeed, Defendant's right to confront his accusers is paramount to safeguarding his
25 right to a fair trial. In this case, Ms. Shattuck has proven to be untrustworthy and her
26
27

1 credibility or lack thereof will substantially impact this case. Defendant Richards has a right
2 to compel Ms. Shattuck to appear at trial so that defense counsel can test her recollection and
3 compel her to stand face to face with the jury so they may look at her, judge her body
4 language and demeanor upon the stand, and the manner in which she gives her testimony so
5 the jury can decide if she is worthy of belief. Video testimony is not good enough and will
6 not provide the tools needed for Defendant to properly challenge Ms. Shattuck's credibility.
7

8 Based on the foregoing, this Court should deny the State's request to allow video tape
9 testimony for any of its witnesses, including Joan Shattuck. Moreover, Defendant requests
10 that this Court affirm the "law of the case", and preclude the State from offering testimony
11 from any witness who does not come to court in person to provide such testimony.
12
13

14
15 **B. THE LAW OF THE CASE HAS ALREADY BEEN ESTABLISHED BY**
16 **THE TRIAL COURT'S RULING WHICH EXPLICITLY PROVIDES**
17 **THAT DEFENDANT HAS A RIGHT TO COMPEL THE STATE**
18 **WITNESSES TO PROVIDE IN PERSON TESTIMONY**

19 "'Law of the case' concerns the practice of refusing to reopen questions previously
20 decided in the *same* case by the same court or a higher appellate court." *Davis v. Davis*, 195
21 Ariz. 158, 162, ¶ 13, 985 P.2d 643, 647 (App. 1999) (quoting *Kadish v. Ariz. State Land*
22 *Dep't*, 177 Ariz. 322, 327, 868 P.2d 335, 340 (App. 1993)) (emphasis added)." *State v.*
23 *Whelan*, 208 Ariz. 168, 171 (Ariz. Ct. App. 2004).
24
25
26
27
28

1 Similarly, Rule 16.1(d) of the Arizona Rules of Criminal Procedure provides for
2 finality of pretrial determinations. This section provides that “[e]xcept for good cause, or as
3 otherwise provided by these rules, an issue previously determined by the court shall not be
4 reconsidered.” *Rule 16.1(d), Arizona Rules of Criminal Procedure*. See also, *State v. King*,
5 180 Ariz. 268, 279 (Ariz. 1994).
6

7 In the instant case, Defendant Anthony Richards requests that this Court uphold the
8 established “law of the case”, and preclude the State from offering testimony from Ms.
9 Shattuck unless she is present, in person, so that Mr. Richards can properly confront her.
10

11 As set forth in detail above, the trial court issued an Order on December 21, 2020,
12 following the first mistrial, wherein the court denied Defendant’s motions to dismiss and
13 motions to preclude testimony despite violation of the Rule of Exclusion and prosecutorial
14 misconduct. In issuing the Order, Judge Ainley was clear that the court was imposing
15 sanctions, albeit short of a dismissal, for the prosecutor and state witnesses’ inappropriate
16 behavior during the first trial. To be sure, not only did the court order a mistrial, but in
17 addition, Judge Ainley mandated that as part of the “law of the case”, defense counsel does
18 not need to agree to video testimony. Rather, the court clearly ruled that “[C]ounsel has the
19 right to insist that every witness come in and provide live testimony in front of the
20 Defendant.” (*Minute Entry, Court Order 12/21/20, attached as an Exhibit*)
21
22
23

24 In this case, there is no good cause for changing the “law of the case”. Judge Ainley
25 was clear that safeguards would be put in place for the second trial to avoid the collusion and
26 inappropriate communications which occurred during the first trial, such that Defendant’s
27
28

1 constitutional rights of confrontation and right to a fair trial would be protected, and
2 Defendant would have a right to address the conduct of the State's witnesses at trial. To be
3 sure, the State has not alleged any good cause other than filing the statement of Joan
4 Shattuck. However, this statement does not constitute good cause for changing a prior ruling
5 of this court. Even if we assumed good cause exists, such alleged good cause is substantially
6 outweighed by Defendant's right to confront Ms. Shattuck and test her credibility in front of
7 the jury, face to face.
8

9
10 Clearly, Ms. Shattuck makes this request with unclean hands, and the State is lucky
11 that this case was not dismissed outright following the first mistrial. Undoubtedly, the
12 misconduct was egregious and a dismissal would have been appropriate. Moreover, this case
13 is one where Ms. Shattuck's credibility is directly at issue, and thus, Defendant's rights of
14 confrontation and right to a fair trial are more crucial than ever. Accordingly, Defendant
15 respectfully requests that this Court uphold the "law of the case" and deny the State's request
16 to allow video testimony for Joan Shattuck.
17

18 19 **III. CONCLUSION**

20 Based on the foregoing, Defendant Anthony Richards respectfully objects to the
21 State's Notice of Filing Victim Statement in Support of Request to Testify Via Video
22 Appearance, and requests that this Court compel Ms. Shattuck to provide in person
23 testimony at trial.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 18th day of January, 2022.

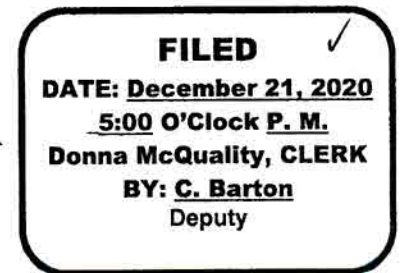
By /s/Tyrone Mitchell
Tyrone Mitchell
Attorney for Defendant

ORIGINAL OF THE FOREGOING E-FILED to the following registrants this 18th day of January, 2022 to:

Judge of the Superior Court
Yavapai County Attorney's Office

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION: 3 DONNA McQUALITY, CLERK
HON. TINA R. AINLEY BY: C. BARTON, Deputy Clerk
CASE NO. P1300CR201600476 DATE: DECEMBER 21, 2020

TITLE: COUNSEL:
STATE OF ARIZONA, *Josh Fisher*
(Plaintiff) **Yavapai County Attorney (e)**
(For Plaintiff)
vs.
ANTHONY JAMES RICHARDS, *Craig Williams*
(Defendant) **Craig Williams (e)**
(For Defendant)

TIME SET FOR:	NATURE OF PROCEEDINGS	COURT REPORTER
ORAL ARGUMENT		FTR GOLD

START TIME: 4:03 p.m.

APPEARANCES: Josh Fisher, Counsel for State (*by T.E.A.M.S. video*)
Anthony James Richards, Defendant *in custody (by T.E.A.M.S. video)*
Craig Williams, Counsel for Defendant (*by T.E.A.M.S. video*)

This is the time set for an Oral Argument on two Motions to Dismiss and the Motion to Modify Release Conditions.

Defense Counsel presents argument.

Counsel for the State presents argument.

The Court agrees the witnesses engaged in behavior that was not appropriate during trial. The Court declared a mistrial based on that behavior. Since then, more conversations have been discovered. These are issues and areas that need to be addressed during trial.

The Court does feel that several things are appropriate. The only reason Ms. Shattuck was allowed to appear by video testimony or her deposition being played is that counsel agreed to that. Counsel does not have to agree to that. During trial, witnesses need to be present and the Defendant has a right to confront his witnesses.

The Court agrees that, should trial proceed from here, counsel has no obligation to agree that Ms. Shattuck's deposition be played. Counsel has the right to insist that every witness come in and provide live testimony in front of the Defendant.

The Court **ORDERS** there shall be no further conversations between any of the witnesses in this case. If there is, it can be sanctionable, including preclusion and/or dismissal of the case. But because that was not asked for previously and they are not under any obligation once the trial has ended, the Court does not believe that there is a basis for absolute dismissal at this point.

Defendant filed a Motion to Reconsider Release Conditions. Based on Defendant's medical circumstances **IT IS ORDERED** reducing the bond to \$20,000 cash or security.

IT IS FURTHER ORDERED:

- Setting a Pretrial Conference on **February 22, 2021 at 3:00 p.m.**, in Division PTA. Should Defendant post bond in this matter, Defendant must appear at least by T.E.A.M.S. video in Division.
- Time is excluded.
- Release conditions are confirmed as modified.

Defense requests the Court make specific findings regarding preclusion of all four witnesses.

The Court does not believe that absolute preclusion is required at this time. The Court has issued an order, however, that there will be no conversations between witnesses moving forward. That order shall continue through the time of sentencing in this case. The witnesses should not be speaking to each other between now and any potential sentencing, or, and through any trial.

The Court believes it is premature to order preclusion, but that is not ruled out moving forward.

Defense Counsel notes that the Court may have entered a very similar order during the mistrial for the witnesses not to communicate at all. Counsel believes Mr. Comstock was there when that happened.


Defense Counsel may file an amended motion with this Court if there was previous order that ordered the witnesses to not communicate with each other.

The Court **does not find** that preclusion is the appropriate remedy at this time based on the fact that there has already been a mistrial, counsel was allowed to re-depose and interview the witnesses. The Court believes those sanctions were sufficient. Should Defense believe there was a previous order that was violated, Defense Counsel may send to the Court for consideration of another sanction.

Defense Counsel requests the Court enter specific findings regarding prosecutorial misconduct.

Based on the evidence Defense Counsel presented regarding prosecutorial misconduct, the Court disagrees. Had the Court thought that the leading was egregious, the Court would have sustained any objections and the Court did not. The issue was discussed and addressed by the mistrial and the Court stands by its ruling.

END TIME: 4:55 p.m.


The Honorable Tina R. Ainley
JUDGE OF THE SUPERIOR COURT

cc: Division 3 (e)
Division PTA (e)
YCSO (e)
PVS (e)
OBL (e)