

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/06/2022

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

EVELYN R HERNANDEZ
MICHAEL G GINGOLD
DAVID ROTHSCHILD
BRIAN A FOUTZ

v.

CHRISTOPHER CLEMENTS (001)

NIKOLAS D FORNER

D&C MATERIALS-CSC
JUDGE MOSKOWITZ

TRIAL MINUTE ENTRY
DAY 7

Prior to Trial continuing, State's Exhibit 372 through 375 and Defendant's Exhibit 376 are marked for identification.

1:27 p.m. Trial to a Jury continues from April 4, 2022.

Courtroom 8A SCT

State's Attorney:	Evelyn Hernandez and Michael Gingold
Defendant's Attorney:	Nikolas Forner
Defendant:	Present

Court Reporter, Lisa Bradley, is present.

A record of the proceedings is also made digitally.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/06/2022

The Jury is not present.

The Court has received the parties' revised Rule 404(b) limiting instructions.

There being no objection,

IT IS ORDERED directing the Clerk of the Court to seal the email to counsel regarding Juror 11 dated April 6, 2022, not to be opened without further order of the Court.

FILED: Email dated April 6, 2022

The State requests that Juror 11 be excused from further jury duty on this trial. The Defense agrees.

IT IS ORDERED excusing Juror 11 from further jury duty on this trial.

1:35 p.m. The Jury is now present.

The Court advises the Jury that courthouse COVID protocols will be removed and normal operations will resume as of Friday, April 15, 2022.

State's case continues:

Christopher Cooley is sworn and testifies.

Over the Defendant's objection, State's Exhibit 374 is received in evidence.

IT IS ORDERED sustaining the Defendant's objection as to the State's request to admit State's Exhibits 365 and 373.

The Court receives a written juror question, which has been designated as juror question #22. Out of the hearing of the Jury, same is reviewed by counsel and any objections noted.

A response to the juror question is given to the Jury through the questioning of the witness by the Court.

FILED: Juror Question #22

The witness is excused.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/06/2022

Melissa Stark is sworn and testifies.

LET THE RECORD REFLECT that the witness has identified the Defendant in court this date.

State's Exhibits 367 and 368 are received in evidence.

2:53 p.m. The Jury is reminded of the admonition and excused from the courtroom; court remains in session.

Counsel do not have any issues to discuss with the Court at this time.

2:54 p.m. Court stands at recess.

Defendant's Exhibits 377 through 379 are marked for identification.

3:24 p.m. Court reconvenes.

State's Attorney:	Evelyn Hernandez and Michael Gingold
Defendant's Attorney:	Nikolas Forner
Defendant:	Present

Court Reporter, Lisa Bradley, is present.

A record of the proceedings is also made digitally.

The Jury is not present.

Counsel announce ready.

3:27 p.m. The Jury is now present.

Melissa Stark resumes the stand and testifies further.

Upon motion of the Defense, State's Exhibit 85 is received in evidence.

Upon motion of the Defense, State's Exhibit 86 is received in evidence.

Upon motion of the Defense, State's Exhibit 88 is received in evidence.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/06/2022

Upon motion of the Defense, State's Exhibit 89 is received in evidence.

4:29 p.m. The Jury is reminded of the admonition and excused until April 7, 2022 at 10:30 a.m.; court remains in session.

LET THE RECORD REFLECT that Ms. Stark is still present. David Rothschild, counsel for Ms. Stark, is present.

Upon the Court's inquiry, Ms. Stark advises that she is able to return tomorrow (April 7, 2022) at 10:15 a.m. in order to listen to a CD for recollection (Defendant's Exhibit 376) prior to trial reconvening.

4:32 p.m. Ms. Stark is now excused for the evening.

Further discussion is held regarding whether the State said "DCS" during Ms. Stark's testimony.

The Defense re-urges his motion for a mistrial.

Oral argument is presented.

For the reasons set forth on the record,

IT IS ORDERED denying the Defendant's oral motion for a mistrial, subject to reconsideration.

4:56 p.m. Court stands at recess until April 7, 2022 at 10:30 a.m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/07/2022

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

EVELYN R HERNANDEZ
MICHAEL G GINGOLD
DAVID ROTHSCHILD

v.

CHRISTOPHER CLEMENTS (001)

NIKOLAS D FORNER
JUDGE MOSKOWITZ

TRIAL MINUTE ENTRY
DAY 8

Prior to Trial continuing, State's Exhibit 380 and Defendant's 381 are marked for identification.

10:37 a.m. Trial to a Jury continues from April 6, 2022.

Courtroom 8A SCT

State's Attorney:	Evelyn Hernandez and Michael Gingold
Defendant's Attorney:	Nikolas Forner
Defendant:	Present

Court Reporter, Lisa Bradley, is present.

A record of the proceedings is also made digitally.

The Jury is not present.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/07/2022

The Court advises the parties that Juror 16 advised this Court's staff that she has a migraine.

10:38 a.m. Juror 16 is now present and discussion is held.

10:41 a.m. Juror 16 is now excused from the courtroom.

Discussion is held regarding Juror 16.

10:44 a.m. Juror 16 is now present and discussion is held.

10:47 a.m. Juror 16 is now excused from the courtroom.

Discussion is held regarding Juror 16.

Juror 16 will remain on this jury trial.

Upon the Court's inquiry, Defense counsel advises that Ms. Stark did listen to the CD for refreshing recollection purposes before trial started this morning.

The Court advises that it listened to the FTR and Ms. Hernandez did refer to the letter (Exhibit 289) as the "DCS letter."

The State also reviewed the FTR and agreed that "DCS" was said.

The Defense re-urges a motion for mistrial.

For the reasons set forth on the record,

IT IS ORDERED denying Defendant's oral motion for mistrial.

11:13 a.m. The Jury is now present.

State's case continues:

Melissa Stark resumes the stand and testifies further.

Defendant's Exhibit 377 is received in evidence.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/07/2022

11:31 a.m. The Jury is reminded of the admonition and excused from the courtroom; court remains in session.

LET THE RECORD REFLECT that the witness is excused for the lunch hour.

The Court makes a record of its observation as to Juror 16. The parties make no further record.

Discussion is held regarding questions asked of Ms. Stark by Defense counsel and questions the State will be allowed to ask on re-direct examination.

12:02 p.m. Court stands at recess.

1:11 p.m. Court reconvenes.

State's Attorney:	Evelyn Hernandez and Michael Gingold
Defendant's Attorney:	Nikolas Forner
Defendant:	Present

Court Reporter, Lisa Bradley, is present.

A record of the proceedings is also made digitally.

The Jury is not present.

Discussion is held regarding sealing Defendant's Exhibit 377.

IT IS ORDERED that Defendant's Exhibit 377 shall be filed under seal upon conclusion of trial unless redacted before then.

Discussion is held regarding clarification as to the burglary charges in Tucson the Defendant faces.

1:18 p.m. The Jury is now present.

Melissa Stark resumes the stand and testifies further.

State's Exhibit 117 is received in evidence.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/07/2022

The Court notes that there are several jury questions. The Court will collect those questions and the Jury may take a break.

2:09 p.m. The Jury is reminded of the admonition and excused from the courtroom; court remains in session.

LET THE RECORD REFLECT the witness steps down and directed to remain outside of the courtroom.

The Court makes a record of its observations as to Juror 16. No additional record is made by either party.

The Court receives written juror questions, which are designated as juror question #s 23 through 30. Same are reviewed with counsel and any objections noted.

2:27 p.m. Court stands at recess.

Defendant's Exhibits 382 through 384 are marked for identification.

2:52 p.m. Court reconvenes.

State's Attorney:	Evelyn Hernandez and Michael Gingold
Defendant's Attorney:	Nikolas Forner
Defendant:	Present

Court Reporter, Lisa Bradley, is present.

A record of the proceedings is also made digitally.

The Jury is not present.

The Defense presents oral motions as stated on the record.

Oral argument is presented.

The Defense requests a limiting instruction on Exhibit 117.

IT IS ORDERED that if either party wishes to file a brief regarding whether Exhibit 117 is Rule 404(b) evidence and subject to a limiting instruction, said brief shall be submitted so **no later than April 11, 2022 prior to trial reconvening.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-005669-001 DT

04/07/2022

The Defense orally moves for a mistrial for the reasons set forth on the record.

Oral argument is presented.

IT IS ORDERED denying the Defendant's oral motion for mistrial, subject to reconsideration if any additional briefing on the issue before trial resumes next Monday morning (April 11, 2022).

3:33 p.m. The Jury is now present.

Melissa Stark resumes the stand and testifies further.

A response to each appropriate juror question is given to the Jury through the questioning of the witness by the Court.

FILED: Juror Question #s 23 through 30

The witness is excused, subject to recall.

3:50 p.m. The Jury is reminded of the admonition and excused until April 11, 2022 at 10:30 a.m.; court remains in session.

The Defense orally re-urges its oral motion for mistrial.

For the reasons set forth on the record,

IT IS ORDERED denying the Defendant's motion for mistrial, subject to reconsideration based on any information the Court receives before trial reconvenes on Monday (April 11, 2022).

3:56 p.m. Court stands at recess until August 11, 2022 at 10:30 a.m.