

No. 26-

IN THE

Supreme Court of the United States



FREDERICK JEROME HILL, JR.,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Due Process Clause permits a criminal conviction to stand when no court has ever determined whether the defendant was competent at the time of trial.

LIST OF PARTIES

Petitioner:

Frederick Jerome Hill, Jr., Defendant in the trial court, Appellant in the Arizona Court of Appeals, and Petitioner in this Court.

Respondent:

State of Arizona, Plaintiff in the trial court, Appellee in the Arizona Court of Appeals, and Respondent in this Court.

RELATED PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), Petitioner is aware of the following proceedings directly related to this case:

Arizona Superior Court, Maricopa County

State of Arizona v. Frederick Jerome Hill, Jr., No CR2018-06863.

Judgment entered on September 4, 2024.

Arizona Court of Appeals, Division One

State of Arizona v. Frederick Jerome Hill, Jr., Nos. 1 CA-CR 21-0231; 1 CA-CR 24-0170; 1 CA-C 24-0506 (Consolidated). Memorandum Decision filed, Affirming Conviction, November 4, 2025.

Supreme Court of Arizona

State of Arizona v. Frederick Jerome Hill, Jr., No. CR-25-0333-PR.
Petition for Review denied May 5, 2026.

Counsel is unaware of any other cases directly related to this case within the meaning of Supreme Court Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Frederick Jerome Hill, Jr. respectfully prays that a writ of certiorari issue to review the judgment of the Arizona Court of Appeals, Division One, which affirmed the judgment of the Arizona Superior Court, Maricopa County Trial Court, convicting and sentencing Petitioner for first degree (felony) murder, armed robbery and conspiracy to commit aggravated robbery in violation of Ariz. Rev. Stat. §§ 13-1105, 13-1902, 13-1003, and 13-1903.

OPINIONS BELOW

The memorandum decision of the Arizona Court of Appeals, Division One, affirming Petitioner's convictions and sentences is reproduced in Appendix A. The opinion is unpublished and is available at 2025 WL 3077396 (Ariz. Ct. App. Nov. 4, 2025).

The order of the Supreme Court of Arizona denying the Petition for Review, entered on May 5, 2026, is reproduced in Appendix C.

JURISDICTION

The Arizona Court of Appeals, Division One, entered its memorandum decision affirming Petitioner's convictions and sentences on November 4, 2025.

The Supreme Court of Arizona denied Petitioner's Petition for Review on May 5, 2026, in No. CR-25-0333-PR.

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the judgment sought to be reviewed is the final judgment of the highest court of the State of Arizona in which a decision could be had, and the case presents substantial federal questions under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

This Petition is timely filed pursuant to Supreme Court Rule 13 because it is filed within ninety days after entry of the order of the Supreme Court of Arizona denying discretionary review.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law"

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This petition arises from Petitioner's conviction for first-degree murder and the competency proceedings conducted after trial.

Throughout the post-trial proceedings, Petitioner consistently requested a judicial determination of whether he had been competent at the time of trial. Although the Arizona courts received evidence, expert testimony, and legal argument directed to that issue, no Arizona court ever determined whether Petitioner was competent at the time of trial before allowing his conviction to become final.

COMPETENCY PROCEEDINGS

Following Petitioner's conviction, defense counsel undertook a post-trial mitigation investigation. During that investigation, counsel discovered substantial evidence raising concerns regarding Petitioner's competency at the time of trial and requested competency proceedings pursuant to Arizona Rule of Criminal Procedure 11, Arizona's procedural mechanism for determining competency and implementing the constitutional prohibition against trying, convicting, or sentencing an incompetent defendant.

The competency proceedings extended for more than a year. The competency court appointed experts, received multiple expert reports, ordered supplemental evaluations, conducted an evidentiary hearing, and considered evidence directed to Petitioner's competency at the time

of trial. During those proceedings, Petitioner expressly requested that the court determine whether he had been competent at the time of trial and renewed that request in a written closing argument invoking the Due Process Clause of the Fourteenth Amendment. App. E at 31a.

A. The Competency Court Declined to Determine Petitioner's Competency at the Time of Trial.

The competency court acknowledged that Petitioner had requested a determination of his competency during trial, stating:

Defense counsel filed a motion on 6/2/2022 asking the court to “set a competency hearing.” The court granted Defense’s request and transferred the matter for further proceedings pursuant to Rule 11, Arizona Rules of Criminal Procedure. The Defendant was placed in Rule 11 proceedings subsequent to his conviction of significant criminal charges. During the Rule 11 evidentiary hearing, through the presentation of evidence and argument, Defense counsel asked this court to find that the Defendant was incompetent at the time of his criminal trial. **This court is declining to make any findings regarding Defendant’s competence prior to the filing of the Rule 11 motion.** Defense counsel has not provided any legal authority for this court to take such action. It is this court’s position that Rule 11 proceedings are forward-looking. *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824 (1960). (The court’s inquiry is whether the Defendant “has sufficient present [emphasis added] ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.”). Therefore, this court’s findings will be limited

to the Defendant's competency to proceed in his criminal matter. (emphasis added). App. D at 25a.

The competency court therefore determined only that Petitioner was competent to proceed and made no judicial determination whether Petitioner had been competent at the time of trial.

B. Petitioner Renewed His Request Before Sentencing.

Because the competency court expressly declined to determine Petitioner's competency at the time of trial, Petitioner filed a written Request to Determine Competency at the Time of Trial, again requesting that the superior court determine whether he had been competent when tried before judgment and sentence were entered. App. F at 36a.

C. The Sentencing Court Entered Judgment Without Determining Petitioner's Competency at the Time of Trial.

At sentencing, defense counsel again advised the court that the competency court had expressly declined to determine Petitioner's competency at the time of trial and argued:

"There's been no ruling. Mr. Hill has a due process right to have it ruled upon." App. G at 42a:18-19.

Counsel further advised the court that the experts who had testified

during the competency proceedings remained available to testify concerning Petitioner's competency at the time of trial.

The sentencing court nevertheless entered judgment and imposed a life sentence without determining whether Petitioner had been competent at the time of trial. App. G at 52a:5-8.

D. Petitioner Again Presented the Federal Constitutional Issue
in a Motion to Vacate Judgment.

Petitioner next filed a Motion to Vacate Judgment, again asserting that the Due Process Clause prohibited his conviction from standing because the issue of his competency at the time of trial had been raised, evidence had been presented, and expert testimony had been received, yet no court had determined whether he had been competent when tried.

As the motion explained:

"As it stands, the issue as to whether Mr. Hill was incompetent to stand trial has been raised, evidence has been presented, and testimony via experts has been received by the court, but no finding has been made." App. H at 58a.

Petitioner requested that the superior court vacate the judgment or, alternatively, determine whether he had been competent at the time

of trial.

E. The Superior Court Denied Relief Without Determining
Petitioner's Competency at the Time of Trial.

The superior court denied the Motion to Vacate Judgment. The court concluded that it was unaware of authority permitting a retrospective competency determination absent an appellate remand. App. B at 19a.

Accordingly, the superior court denied relief without determining whether Petitioner had been competent at the time of trial.

F. Petitioner Presented the Same Federal Constitutional
Question on Direct Appeal.

On direct appeal, Petitioner argued that his conviction violated the Due Process Clause because no Arizona court had determined whether he had been competent at the time of trial.

The Arizona Court of Appeals acknowledged that:

A Rule 11 Commissioner determined that Hill was competent to proceed to sentencing but did not make a determination on his retroactive competency at trial, telling Hill to instead make a motion before the superior court. Hill did so in March 2024, which the court denied. In July 2024, Hill moved to vacate his judgment due to being incompetent at the time of trial, which was also denied. *State v. Hill*, Nos. 1 CA-CR 21-0231, 1 CA-CR 24-0170, 1 CA-CR 24-0506, 2025 LX 405644,

at 30 (Ct. App. Nov. 4, 2025), App. A at 18a ¶72.

The Arizona Court of Appeals acknowledged that the competency court "did not make a determination on his retroactive competency at trial..." *Id.* App. A at 18¶72. The court nevertheless affirmed, holding only that the superior court did not abuse its discretion in denying Petitioner's requests for a retrospective competency determination. App. A at 18 ¶74. In doing so, the Court of Appeals did not address Petitioner's federal constitutional argument that due process does not permit a criminal conviction to stand when no court has ever determined whether the defendant was competent at the time of trial.

G. The Arizona Supreme Court Denied Review.

Petitioner presented the same federal constitutional question in his Petition for Review to the Arizona Supreme Court. The Arizona Supreme Court denied review. App. C at 21a.

H. The Federal Constitutional Question Was Timely Raised, Repeatedly Presented, and Never Decided.

Petitioner consistently presented the same federal constitutional issue throughout the state-court proceedings: whether due process required a judicial determination of his competency at the time of trial

before his conviction could constitutionally stand. Although that issue was repeatedly presented, no Arizona court ever determined whether Petitioner was competent at the time of trial. Petitioner nevertheless stands convicted of first-degree murder and sentenced to life imprisonment.

REASONS FOR GRANTING THE PETITION

- I. This Court's Competency Jurisprudence Establishes That Competency at the Time of Trial Is a Constitutional Prerequisite to a Valid Criminal Conviction.

The Due Process Clause prohibits the criminal trial and conviction of an incompetent defendant. For more than sixty years, this Court has developed a consistent body of constitutional law protecting that fundamental guarantee. Beginning with *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam), and continuing through *Pate v. Robinson*, 383 U.S. 375 (1966), *Drope v. Missouri*, 420 U.S. 162 (1975), and *Cooper v. Oklahoma*, 517 U.S. 348 (1996), this Court has repeatedly recognized that competency to stand trial is a constitutional prerequisite to a valid criminal conviction.

A. *Dusky* Established the Constitutional Standard for Competency to Stand Trial.

In *Dusky*, this Court established the constitutional standard governing competency to stand trial. A defendant is competent only if he possesses "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has both a rational and factual understanding of the proceedings against him. *Dusky*, 362 U.S. at 402.

Because the existing competency determination did not satisfy that constitutional standard, this Court vacated the conviction and remanded for further proceedings. *Dusky* thus established that a criminal conviction cannot rest upon a constitutionally inadequate determination of competency. *Dusky*, 362 U.S. at 403.

B. *Pate* Established That Due Process Requires Procedures to Protect the Right Recognized in *Dusky*.

In *Pate*, this Court recognized that the constitutional standard announced in *Dusky* has little practical meaning unless courts employ procedures adequate to protect it. Accordingly, the Court held that when the evidence raises a bona fide doubt regarding competency, due process

requires the trial court to conduct competency proceedings. *Pate*, 383 U.S. at 385.

C. *Drope* Reaffirmed the Trial Court's Continuing Constitutional Duty.

In *Drope*, this Court reaffirmed that the prohibition against trying an incompetent defendant is rooted in the Due Process Clause and emphasized that the obligation to protect that constitutional right continues throughout the criminal proceedings. Trial courts must remain alert to circumstances suggesting incompetency because the constitutional prohibition cannot depend upon procedural happenstance. *Drope*, 420 U.S. at 180-81.

D. *Cooper* Reaffirmed That the Right Is Fundamental.

Finally, in *Cooper*, this Court described the prohibition against trying an incompetent defendant as "fundamental to an adversary system of justice." *Cooper*, 517 U.S. at 354.

Collectively, these decisions establish two constitutional principles.

First, competency at the time of trial is a constitutional prerequisite to a valid criminal conviction.

Second, due process requires sufficient procedures to ensure that

this constitutional prerequisite is meaningfully protected.

Each of this Court's competency decisions presuppose that, before a criminal conviction may constitutionally stand, some court will determine whether the defendant satisfied the constitutional standard for competency established in *Dusky*. This case presents the question whether the Due Process Clause permits a conviction to become final when that determination is never made.

II. This Case Presents the Constitutional Question Left Unresolved by This Court's Competency Jurisprudence.

This case does not ask the Court to reconsider *Dusky*, *Pate*, *Drope*, or *Cooper*.

Nor does Petitioner contend that Arizona failed to conduct competency proceedings.

Arizona conducted competency proceedings.

The competency court appointed experts, received expert reports, conducted an evidentiary hearing, and considered evidence directed to Petitioner's competency at the time of trial. Petitioner repeatedly requested a judicial determination whether he satisfied the constitutional standard for competency to stand trial.

Yet no Arizona court ever made that determination.

The competency court expressly declined to determine Petitioner's competency at the time of trial.

The sentencing court entered judgment without making that determination.

The superior court denied Petitioner's Motion to Vacate Judgment without making that determination.

The Arizona Court of Appeals affirmed, without addressing Petitioner's federal constitutional argument that due process does not permit a conviction to stand absent a judicial determination, that the defendant satisfied the constitutional standard for competency to stand trial.

Accordingly, this case presents the constitutional question left unresolved by this Court's competency jurisprudence:

Whether the Due Process Clause permits a criminal conviction to stand without a judicial determination that the defendant satisfied the constitutional standard for competency to stand trial.

Petitioner does not ask this Court to determine whether he was competent or incompetent at the time of trial.

Rather, Petitioner asks whether the Constitution permits a conviction to become final after competency proceedings have been conducted, expert evidence has been received, the issue has been repeatedly presented, and yet no court has ever determined whether the constitutional prerequisite to conviction has been satisfied.

III. This Case Is an Ideal Vehicle for Resolving the Question Presented.

This case presents a clean vehicle for resolving the constitutional question.

The issue was timely raised and consistently preserved throughout the state-court proceedings. Petitioner first requested a judicial determination of his competency at the time of trial during the competency proceedings. After the competency court expressly declined to determine that issue, Petitioner renewed the request before sentencing, at sentencing, in his Motion to Vacate Judgment, on direct appeal, and in his Petition for Review.

There is no dispute that the federal constitutional issue was repeatedly presented. There is likewise no dispute that no Arizona court ever determined whether Petitioner satisfied the constitutional standard for competency to stand trial.

The material facts are undisputed, the record is fully developed, and the sole issue presented is one of federal constitutional law. This case therefore provides an ideal vehicle for resolving whether the Due Process Clause permits Petitioner's conviction to stand without a judicial determination that he satisfied the constitutional standard for competency to stand trial.

Each of this Court's competency decisions presupposes that, before a criminal conviction may constitutionally stand, some court will determine whether the defendant satisfied the constitutional standard for competency established in *Dusky*. This case presents the question of whether the Due Process Clause permits a conviction to become final when that determination is never made.

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CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Dated: 8/2/24

A large, stylized handwritten signature in blue ink, likely belonging to Michelle Hill, is written over a horizontal line.

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Appendix A

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

FREDERICK JEROME HILL, JR., *Appellant*.

Nos. 1 CA-CR 21-0231
1 CA-CR 24-0170
1 CA-CR 24-0506
(Consolidated)

FILED 11-04-2025

Appeal from the Superior Court in Maricopa County
No. CR2018-006863-001
The Honorable Frank W. Moskowitz, Judge

AFFIRMED

COUNSEL

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By Monique Branscomb Wilhite
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Joshua C. Smith
Counsel for Appellee

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MEMORANDUM DECISION

Judge Andrew J. Becke delivered the decision of the Court, in which Presiding Judge David B. Gass and Judge Michael J. Brown joined.

B E C K E, Judge:

¶1 Defendant Frederick Jerome Hill, Jr. appeals his convictions and sentences for first-degree felony murder, armed robbery, and conspiracy to commit aggravated robbery. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 On the evening of August 20, 2016, Deshaun M. was waiting with his girlfriend and brother in the parking lot of a gentlemen’s club for other guests to arrive for Deshaun’s birthday party. A Mercedes-Benz with two men inside pulled up near Deshaun. Deshaun told his girlfriend and brother that he would be right back and got into the Mercedes-Benz. After ten minutes, Deshaun’s brother and girlfriend had not heard from Deshaun and could not reach him. Becoming concerned, they looked around the club’s parking lot and then at a hotel near the club. Police responded to a call for shots fired at that hotel and found Deshaun in the parking lot. He was pronounced dead at the scene.

¶3 Police found an iPhone near Deshaun’s body with Hill’s fingerprint on the phone case. Deshaun’s phone, an Android, was missing. DNA swabs were taken of Deshaun’s hands, and the single-source major contributor was consistent with Hill. Hill was also listed on registration and title for a matching Mercedes-Benz at the relevant time.

¶4 Upon locating Deshaun’s phone, police interviewed the only contact that Hill’s and Deshaun’s phones had in common: Amber¹. Amber told police she arranged for Hill to purchase 30–40 oxycodone pills from Deshaun on the night of his murder. Hill had then texted another individual, Sam², about the arranged drug purchase and said a “[l]ick [was] going down.” “Lick” is street slang for a robbery or burglary. Initially, both

¹ We use a pseudonym in place of a witness’s name.

² A pseudonym.

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Hill and Sam were charged as co-defendants. The State later dismissed the charges against Sam and prosecuted only Hill.

¶5 The State initially indicted Hill for first-degree murder and armed robbery in CR2016-007034³. However, through an interview with homicide detective Anthony Winter, defense counsel discovered that Detective Winter presented false testimony to the grand jury to secure Hill's indictment and in affidavits to support search and arrest warrants.

¶6 Detective Winter admitted mistakenly including in his report and testifying that Deshaun's brother identified Hill as the Mercedes-Benz driver, the car that Deshaun got into before he was found dead. However, Deshaun's brother merely identified Hill as someone he recognized generally—not someone he recognized from the night of the murder. To address the false statements, the State dismissed the indictment and re-indicted Hill for first-degree felony murder, armed robbery, and conspiracy to commit aggravated robbery.

¶7 Before trial, Hill moved to suppress evidence obtained from a search warrant based on the detective's affidavit and requested a *Franks*⁴ hearing. Hill took issue with the following statements the detective made in his application for the warrant:

(1) Upon presenting the photographic lineup, [Deshaun's brother] identified the person in position #2 as a person he recognized. The person in position [#]2 was identified as Frederick Hill Jr.

(2) The 2007 Mercedes Benz S Class passenger car with Arizona license plate [] was registered to Frederick Hill at the time of the incident on August 20, 2016, and observed on surveillance video in the parking lot of the [hotel] . . . , and in the parking lot of [the gentlemen's club] around the time of Deshaun []'s murder.

³ The State moved this court to take judicial notice of the records in the initial case against Hill per Arizona Rule of Evidence 201. We grant its motion. *In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4 (App. 2000) ("[T]his court [may] take judicial notice of anything of which the trial court could take notice It is proper for a court to take judicial notice of its own records or those of another action tried in the same court.").

⁴ *Franks v. Delaware*, 438 U.S. 154 (1978).

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¶8 For statement (1), Hill claimed Detective Winter omitted the information that Deshaun’s brother did not recognize Hill “from the club that night.” As for statement (2), Hill claimed it was a false statement to say the car was observed on surveillance video in the parking lots of both the hotel and the gentlemen’s club.

¶9 Under *Franks*, the superior court found the detective “recklessly disregarded the truth by including a false statement in the supporting affidavit and made a reckless omission of fact that tends to mislead,” but upon “removing the false statement and adding in the omission” the court found “the remaining content of the affidavit [was] more than sufficient to support a finding of probable cause.” The court denied Hill’s motion to suppress.

¶10 After a 25-day jury trial, Hill was convicted of first-degree felony murder, armed robbery, and conspiracy to commit aggravated robbery. Following his conviction, Hill moved for a new trial, which the superior court denied, Hill also moved to continue sentencing and to hold a competency hearing, which the court granted. Hill was determined competent to proceed and was subsequently sentenced to varying terms of imprisonment on each count, the longest of which was life imprisonment with the possibility of release after 25 years. Hill then moved to vacate the judgment of guilt based on lack of competency, which was denied.

¶11 Hill appeals. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶12 Hill raises six arguments on appeal. We address each in turn.

I. Hill Fails to Establish Prosecutorial Error.

¶13 Hill first argues he was denied a fair trial, and this court should reverse his conviction because of cumulative “prosecutorial misconduct.” Hill also claims the superior court abused its discretion when it denied his motion for a new trial and his motion for mistrial for the same.

¶14 The State argues that because Hill does not “allege any ethical violations by the prosecutors, his claims should be analyzed for ‘prosecutorial error’ instead.” Prosecutorial misconduct and prosecutorial error both encompass “any conduct that infringes a defendant’s constitutional rights.” *State v. Murray*, 250 Ariz. 543, 548, ¶ 12 (2021).

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Misconduct, however, may “imply a concurrent ethical rules violation.” *Id.* Because Hill does not argue “concurrent ethical rules” violations, we refer to his claims as “prosecutorial error.”

¶15 Hill must show that “the prosecutor’s [error] so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Murray*, 250 Ariz. at 548, ¶ 13. If error is present and “a reasonable likelihood exists that the [error] could have affected the jury’s verdict . . . we will reverse a conviction.” *State v. Dansdill*, 246 Ariz. 593, 602, ¶ 28 (App. 2019). Where the defendant objected at trial, we review each claim for harmless error. *Id.* Additionally, we review the denial of a motion for new trial and motion for mistrial for an abuse of discretion. *State v. Mills*, 196 Ariz. 269, 271, ¶ 6 (App. 1999).

A. False testimony to the grand jury

¶16 Hill first argues the State relied on false testimony to secure an indictment and conviction. Hill takes issue with the false statements Detective Winter made to the first grand jury. But Hill does not argue any prosecutor knew about or abetted Detective Winter’s false testimony before Hill’s counsel discovered it.

¶17 It is undisputed that Detective Winter’s testimony that Deshaun’s brother identified Hill as present on the night of the murder was false. But he provided that testimony to secure the initial indictment—an indictment that was ultimately dismissed. The State obtained a second indictment without the detective’s false testimony. We cannot say the State committed prosecutorial error when it did exactly what we expect of prosecutors in this situation: dismiss the tainted indictment and obtain a new indictment without the false testimony. *See Maretick v. Jarrett*, 204 Ariz. 194, 198, ¶ 14 (2003) (holding misleading testimony at a grand jury indictment and the prosecutor’s interference necessitated a remand for a redetermination of probable cause); *see also United States v. Basurto*, 497 F.2d 781, 785 (9th Cir. 1974) (“[I]f the prosecutor had brought the perjury to the court’s attention before the trial commenced and the indictments had been dismissed, the Double Jeopardy Clause of the Fifth Amendment would not have barred trial under a new indictment.”). Hill fails to demonstrate prosecutorial error here.

B. False statements in a search warrant affidavit

¶18 Hill also argues the State committed prosecutorial error when Detective Winter made false statements in an affidavit used to support the search warrant for the iPhone found by Deshaun’s body.

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¶19 As an initial matter, false statements used by a detective to support search warrants are police misconduct, not prosecutorial misconduct (or error). This issue is addressed by moving to suppress and showing the defendant is entitled to a *Franks* hearing. See *State v. Lapan*, 249 Ariz. 540, 546, ¶ 16 (App. 2020). Hill moved to suppress the evidence and the superior court ruled on his request for a *Franks* hearing, finding there was still probable cause to search the phone upon removing the false statements.

¶20 Hill does not argue the superior court erred in its redetermination of probable cause. Though we could treat Hill's failure to develop this argument on appeal as waiver of that argument, in our discretion, we elect to review the redetermination of probable cause. *State v. Sanchez*, 200 Ariz. 163, 166, ¶ 8 (App. 2001) (finding waiver for failure to develop argument). We review *de novo* the court's finding that a redrafted search warrant affidavit is sufficient to establish probable cause. *State v. Buccini*, 167 Ariz. 550, 555 (1991).

¶21 A defendant challenging a search warrant affidavit is entitled to a hearing "when he makes a substantial preliminary showing (1) that the affiant knowingly, intentionally, or with reckless disregard for the truth included a false statement in the supporting affidavit, and (2) the false statement was necessary to the finding of probable cause." *Frimmel v. Sanders*, 236 Ariz. 232, 239, ¶ 27 (App. 2014). Upon showing perjury or reckless disregard for the truth, the false statement is struck and "[u]nless the affidavit, purged of its falsities . . . provides a sufficient basis for probable cause, the search warrant must be voided and the evidence seized pursuant to it must be suppressed." *Id.* at ¶ 28.

¶22 Hill made the requisite showing that Detective Winter both recklessly disregarded the truth with a false statement and recklessly omitted a fact that tends to mislead. The superior court determined, however, that the affidavit, stripped of the falsity and including the material omission, was more than sufficient to establish probable cause for the search. We agree.

¶23 Courts look at the totality of the circumstances to determine whether an officer has probable cause to conduct a search. *Illinois v. Gates*, 462 U.S. 213, 230–31 (1983). An officer has probable cause "if a reasonably prudent person, based upon the facts known by the officer, would be justified in concluding that the items sought are connected with the criminal activity and that they would be found at the place to be searched." *Buccini*, 167 Ariz. at 556.

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¶24 Even with the false statement struck and the omission added, the facts known to Detective Winter at the time and included in the affidavit were more than sufficient to support a finding of probable cause to search the iPhone. On the night of Deshaun’s murder, the iPhone was found within feet of his body. Hill’s fingerprint was found inside the phone’s case. Amber admitted to police that she had set up a drug transaction between Deshaun and Hill to occur on the night Deshaun was murdered, another connection between Hill and the victim. These facts were more than sufficient to establish probable cause to search the phone.

C. DNA and disposal of the murder weapon

¶25 Hill next argues the prosecutor “improperly suggested that Sam could be a potential minor contributor to the DNA found on [Deshaun’s] hands” and improperly asked the jury: “If you were a suspect in a murder case, and you knew the police were looking for you, what would you do with the murder weapon?”

¶26 Any “[s]uggestion by question or innuendo of unfavorable matter which is not in evidence and which would be irrelevant, or for which no proof exists is improper and can constitute misconduct.” *See Pool v. Superior Court (State)*, 139 Ariz. 98, 103 (1984). However, the prosecutor is given “wide latitude in presenting closing argument to the jury” and may “summarize the evidence, make submittals to the jury, urge the jury to draw reasonable inferences from the evidence, and suggest ultimate conclusions.” *State v. Allen*, 253 Ariz. 306, 338 (2022) (internal quotations and citations omitted).

¶27 At trial, a forensic scientist testified that swabs from Deshaun’s hand at the scene of the crime had the DNA of at least three people, with Hill as a major contributor and two unidentifiable minor contributors. In closing argument, Hill’s defense counsel asserted, based on testimony from the scientist, that one of the minor contributors was a woman. In rebuttal, the prosecutor said the following:

[PROSECUTOR]: There’s also the minor contributors that [the forensic scientist] testified to. She testified, on the stand, that she couldn’t make a determination about who the minor contributors were. You were told something about there might have been female DNA on there, but a determination couldn’t be made. And I want to make sure I’m clear on this, we don’t know who those minor contributors are, but I would suggest to you that one possibility regarding the female DNA,

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or potential female DNA, is [Jane]⁵. She was with Deshaun that night and, at the time, she was his girlfriend. There were other potential minor contributors as well. And, again, don't know who they are, but I would submit to you that another potential minor contributor is [Sam].

¶28 The prosecutor's argument was consistent with the evidence presented at trial. At trial, Deshaun's brother testified that Deshaun shook the hands of two men in a vehicle before getting into that same vehicle the night of the murder. Based on mapped cell phone records, Sam's phone hit a cell site one mile from the crime scene about fifteen minutes before police received a 911 call reporting shots fired. Further, the prosecutor emphasized that the forensic scientist could not specifically identify the minor contributors, but that Hill was the major contributor. The prosecutor presented a reasonable inference to the jury based on the evidence presented at trial — that Sam could be a potential minor contributor.

¶29 As to the rhetorical question, defense counsel in her closing argument reminded the jury that the State had failed to present the murder weapon. The prosecutor then said the following in rebuttal closing:

[PROSECUTOR]: . . . The defendant had four months to dispose of the murder weapon. He had four months. We didn't find the murder weapon, but the defendant certainly had a lot of time to dispose of it [H]ere's a question for you: If—if you were a suspect in a murder case, and you knew . . . that the police were looking for you, what would you do with the murder weapon? That's something to think about here. I won't even draw the conclusion for you. I'll let you draw it as individuals and as jurors in this trial.

¶30 These statements were also consistent with evidence presented at trial. While the State invited the jurors to put themselves in the shoes of Hill — an improper argument — it did not improperly “appeal to the fears or passions of the jury.” *See State v. Morris*, 215 Ariz. 324, 337, ¶ 58 (2007); *see also Taylor v. DiRico*, 124 Ariz. 513, 518 (1980) (holding “golden rule” arguments are improper). The prosecutor suggested a reasonable explanation for the murder weapon's absence, consistent with the evidence. That included evidence showing Hill was arrested four months after the

⁵ A pseudonym.

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murder and evidence showing Hill may have known he was being pursued by police.

¶31 Moreover, the superior court instructed the jury that the lawyers' arguments were not evidence to be considered in reaching its conclusions. *See State v. Newell*, 212 Ariz. 389, 403, ¶¶ 67–68 (2006) (holding that jury instructions stating that closing arguments are not evidence negated improper comments of prosecutor). On this record, Hill fails to show error.

D. Improper vouching

¶32 Finally, Hill argues the State engaged in improper vouching when it “vouched for the credibility of [witnesses]” and “asserted that [Hill] engaged in a robbery, had an accomplice, and conspired to commit a crime, even though no evidence established that any property was taken from [Deshaun] or that an accomplice was present.”

¶33 Prosecutorial vouching occurs when the prosecutor “places the prestige of the government behind its witness” or “suggests that information not presented to the jury supports the witness’s testimony.” *State v. Johnson*, 247 Ariz. 166, 204, ¶ 157 (2019) (internal quotations and citations omitted). “The first type of vouching involves personal assurances of a witness’s veracity” while “[t]he second type of vouching involves prosecutorial remarks that bolster a witness’s credibility by reference to matters outside the record.” *State v. King*, 180 Ariz. 268, 277 (1994).

¶34 Hill fails to provide any specific examples in the record of the State vouching for witnesses. A review of the trial transcripts reveals only one mention of vouching. Hill claimed it was vouching and “inappropriate for the State to say that they took something to the grand jury and then the grand jury said it was okay” in its closing argument. As best we can determine, Hill was referencing the following statement made by the State:

You all heard Detective Winter testify in this case. Detective Winter conceded his mistakes in this case. It’s your job to judge his credibility, but he conceded the mistakes. Detective Winter went back to the grand jury, this case was re-presented to the grand jury, and the statement that he made at the initial grand jury was corrected at the next grand jury.

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¶35 This statement does not constitute vouching. The State is conceding Detective Winter made false statements at the first grand jury proceeding and clarifies that he then corrected those statements for the second grand jury proceeding. Hill fails to show error.

¶36 Hill further contends that no evidence was presented at trial to support that he “engaged in robbery, had an accomplice, and conspired to commit a crime.” It is not clear to this court how this constitutes vouching. Nevertheless, we address the sufficiency of the evidence for Hill’s convictions below and find substantial evidence supports the verdict. *See infra* ¶¶ 38–44.

¶37 Because Hill fails to show any error, he necessarily fails to show the superior court abused its discretion in denying his motions for new trial and mistrial based on prosecutorial error. *Mills*, 196 Ariz. at 271.

II. The Superior Court Correctly Denied Hill’s Motion for Judgment of Acquittal.

¶38 Hill next argues the superior court erred in denying his Arizona Rule of Criminal Procedure 20 motion for judgment of acquittal on all three counts. We review a denial of a motion for judgment of acquittal *de novo*. *State v. Andersen*, 255 Ariz. 320, 323, ¶ 7 (App. 2023).

¶39 The superior court must “enter a judgment of acquittal on any offense charged in an indictment . . . if there is no substantial evidence to support a conviction.” Ariz. R. Crim. P. 20(a)(1). Substantial evidence is “proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *State v. West*, 226 Ariz. 559, 562, ¶ 16 (2011) (internal quotations and citations omitted). “We view the facts in the light most favorable to sustaining the verdicts and resolve all conflicts in the evidence against the defendant.” *Andersen*, 255 Ariz. at 323, ¶ 7. For our review, circumstantial and direct evidence are indistinguishable. *Id.*

¶40 Relevant to Hill’s case, a person commits conspiracy where, with “intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense.” A.R.S. § 13-1003(A). A person commits armed robbery if “in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking

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or retaining property.” A.R.S. § 13-1902. And a person commits felony murder if he commits or attempts to commit, in this case, robbery “and, in the course of and in furtherance of the offense or immediate flight from the offense, the person . . . causes the death of any person.” A.R.S. § 13-1105(A)(2).

¶41 In his Rule 20 motion, Hill argued the State failed to show that (1) Hill took anything from Deshaun; (2) Hill had a weapon; and (3) Hill and Sam communicated about the robbery. We disagree. Substantial evidence supports the jury’s verdict.

¶42 The State presented evidence that Hill was present at the crime scene. Hill’s phone was found near Deshaun’s body and Hill’s DNA was found on both his own phone and Deshaun’s hands. Cell phone records place Sam and Hill in the area during the time of the crime, and text messages between Hill and Sam discussing a “lick,” a slang term commonly used to describe robbing someone, indicate a conspiracy to commit a robbery.

¶43 Additionally, the State presented evidence that Hill used force in coercing Deshaun to surrender property, namely Deshaun’s gunshot wounds and witness testimony describing men fighting at the crime scene and hearing subsequent gun shots. As to the property, the State presented evidence that Amber arranged for Hill to purchase 30–40 oxycodone pills from Deshaun. Amber also testified that Deshaun always brought the oxycodone pills to an arranged meet-up. Evidence shows Deshaun got into Hill’s car right before his murder yet police did not find any pills on Deshaun.

¶44 We find that the evidence was “adequate and sufficient” for a reasonable jury to conclude Hill’s guilt beyond a reasonable doubt as to conspiracy to commit aggravated robbery, armed robbery, and first-degree felony murder. The superior court correctly denied Hill’s Rule 20 motion.

III. Hill Fails to Establish Reversible Error Based on Racial Disparity in Jury Composition.

¶45 Hill argues that underrepresentation of Black potential jurors in his venire panel violated his Sixth Amendment right to a jury comprised of a fair cross section of the community. Hill moved to challenge the jury panel if it did not represent a fair cross section of the community and then objected to passing the jury panel on that basis. Hill also requested an evidentiary hearing to present evidence on this claim. The court denied the request for an evidentiary hearing but allowed Hill to make a record of any

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additional information to support his claim. Hill submitted no further evidence on this issue to the court.

¶46 To be qualified as a juror in Arizona, one must be at least 18 years old, be a U.S. citizen, be a resident of the jurisdiction where one is summoned, never have been convicted of a felony unless civil rights have been restored, and not be currently adjudicated mentally incompetent or insane. A.R.S. § 21-201. Courts in Arizona “use random selection procedures throughout the juror selection process including . . . [s]electing persons to be qualified or summoned for jury service, [a]ssigning jurors to panels, [and] [c]alling jurors for voir dire.” A.R.S. § 21-313(C).

¶47 For Hill’s trial, the superior court used the Struck method to select jurors from the venire panel to sit on the final jury. The Struck method involves randomly assigning jurors a number reflecting the size of the venire panel, and the jurors with the lowest assigned numbers who have not been released become the jury. THE JUDICIAL BRANCH OF ARIZONA MARICOPA COUNTY, RACIAL AND ETHNIC REPRESENTATION THROUGH THE JURY SELECTION PROCESS: AN ANALYSIS OF 2019 JURY DATA FROM THE SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY 6 (2021), <https://napco4courtleaders.org/wp-content/uploads/2021/06/Jury-Representation-Study-Superior-Court-in-Maricopa-County-May-2021.pdf>.

¶48 Hill claims that the Struck method of selecting jurors leads to Black potential jurors in a venire panel being “mathematically ineligible” to be placed on a jury. Hill argues that Black members of the venire panel were ineligible to be a juror in his trial because, according to his perception, they were assigned a high number and therefore dismissed after those with the lower numbers were seated on the jury.

¶49 To establish a violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a ‘distinctive’ group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Duren v. Missouri, 439 U.S. 357, 364 (1979). We review a claim of a violation of constitutional rights *de novo*. *In re Marriage of Friedman & Roels*, 244 Ariz. 111, 114, ¶ 11 (2018).

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¶50 The first element of the *Duren* test is met as there is no dispute that Black is a distinctive group within Maricopa County. But Hill's argument fails at *Duren*'s second step.

¶51 Absolute and comparative disparity may be used by courts to assist in determining whether the second element of *Duren* is met. *See State v. Sanderson*, 182 Ariz. 534, 538 n.2 (App. 1995) (using absolute disparity in a *Duren* analysis); *see also Berghuis v. Smith*, 559 U.S. 314, 329 (2010) (identifying three methods: absolute disparity, comparative disparity, and standard deviation and holding "neither *Duren* nor any other decision of this Court specifies the method or test courts must use to measure the representation of distinctive groups in jury pools").

¶52 Absolute disparity is calculated "by subtracting the percentage of [Black] Americans in the jury pool . . . from the percentage of [Black] Americans in the local, jury-eligible population" *Id.* at 323. Comparative disparity is calculated "by dividing the absolute disparity . . . by the group's representation in the jury-eligible population." *Id.*

¶53 Hill presented uncontested data that 5.47%⁶ of Maricopa County is Black. The parties agreed that six of 184 jurors on the venire panel identified as Black, or 3.26%. The absolute disparity, 3.26% subtracted from 5.47%, is 2.21%. *Id.* The comparative disparity, 2.21% divided by 5.47%, is 40.4%. *Id.*

¶54 "[T]he Arizona Supreme Court has indicated that an absolute disparity of 11 percent may, in appropriate cases, be sufficient to . . . conclude that the defendant has satisfied" the second element. *Sanderson*, 182 Ariz. at 538. The Ninth Circuit has found a 2% absolute disparity insufficient to establish the second element. *See United States v. Martinez-Orosco*, 215 F. App'x 693, 695 (9th Cir. 2006); *see also United States v. Rioux*, 97 F.3d 648, 657–58 (2d Cir. 1996) (finding 2.14% insufficient to establish the second element). We conclude that the absolute disparity of 2.21% present here is not sufficient to support the second element.

¶55 The second element is unlikely to be met if the comparative disparity is "well below 50 percent . . . especially if the absolute disparity is also small." *Sanderson*, 182 Ariz. at 538, n.2. We recognize that 40.4% is not "well below 50 percent," however, "absolute disparity and comparative

⁶ The superior court accepted the data as true with the caveat that this percentage "may be overinclusive because it may include folks that aren't even eligible to" be jurors.

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disparity measurements . . . can be misleading when . . . ‘members of the distinctive group compose only a small percentage of those eligible for jury service.’” *Id.* at 329 (cleaned up) (quoting *People v. Smith*, 615 N.W.2d 1, 2–3 (Mich. 2000)).

¶56 Furthermore, comparative disparity has been disfavored by the First, Second, Eighth, Ninth, and Tenth Circuits, especially when a small population is involved. *See, e.g., United States v. Hafén*, 726 F.2d 21, 24 (1st Cir. 1984) (finding a “comparative disparity figure distorts the proportional representation” for small groups); *Rioux*, 97 F.3d at 655 (rejecting comparative disparity); *United States v. Whitley*, 491 F.2d 1248, 1249 (8th Cir. 1974) (finding comparative disparity is “inappropriate where a small proportion of the population is black”); *United States v. Sanchez-Lopez*, 879 F.2d 541, 547 (9th Cir. 1989) (rejecting comparative disparity); *United States v. Shinault*, 147 F.3d 1266, 1273 (10th Cir. 1998) (“In this case, considering the small size of each of the groups in relation to the larger community, it is not surprising that the comparative disparity numbers are large.”).

¶57 Given that this distinctive group makes up a small proportion of Maricopa County and the absolute disparity of only 2.21%, the comparative disparity here is not a reliable indicator of whether the venire panel is “fair and reasonable in relation to the number” of Black Americans in Maricopa County. Hills fails to meet the second element.

¶58 Hill’s argument also fails at *Duren*’s third and final step. The third element of the *Duren* test requires Hill to show that the underrepresentation was “inherent in the particular jury selection process utilized.” *Sanderson*, 182 Ariz. at 539 (quoting *Duren*, 439 U.S. at 366). Hill argues that the jury selection process in Maricopa County, randomly assigning members of the venire panel a number and empaneling those with the lowest assigned number, leads to Black individuals being “mathematically ineligible” for becoming empaneled jurors.

¶59 Defense counsel based this argument on her perception of the numbers randomly assigned to Black members of the panel. But Hill provided no evidence to the superior court regarding how the Struck method systematically excludes Black individuals. The process is random and not tied to race. Hill’s argument is essentially that the random numbers generated failed to result in a sufficient number of Black jurors, but there is “no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition.” *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975).

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¶60 Although an evidentiary hearing was not granted, the superior court did offer Hill an opportunity to present evidence to support his motion, an opportunity he declined. A showing of underrepresentation of a distinctive group in a jury is not enough to prove systematic exclusion. *Sanderson*, 182 Ariz. at 538; *see also Taylor*, 419 U.S. at 538. Accordingly, the court did not err in denying Hill’s motion to challenge the jury panel and motion for an evidentiary hearing on statistical underrepresentation.

¶61 Hill also argues that the State’s use of peremptory challenges⁷ supports a claim under *Batson v. Kentucky*, 476 U.S. 79 (1986). But when the court asked Hill if he had an objection to the state’s peremptory strikes, he responded that he did not. Hill raised no *Batson* challenge at any point in the trial. A *Batson* challenge is untimely if raised for the first time on appeal. *State v. Holder*, 155 Ariz. 83, 86 (1987). Hill has waived any claim based on *Batson*.

IV. The Superior Court Properly Admitted Cell Phone Records.

¶62 Hill argues the superior court erred in admitting cell phone records in violation of hearsay rules. We review a court’s evidentiary rulings for an abuse of discretion. *Davis v. Davis*, 246 Ariz. 63, 65, ¶ 6 (App. 2018). Hill also argues the court’s admission of the records violated his Sixth Amendment right under the United States Constitution to confront witnesses. We review evidentiary rulings that implicate the Confrontation Clause *de novo*. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 42 (2006).

¶63 The State used phone records, or call detail records (“CDRs”), to create cell site location information (“CSLI”) maps. These maps show the location of cell towers to which a phone connected. The State introduced CSLI maps for phones owned by Deshaun, Hill, Amber, and Sam. The CDRs are generated and stored by Sprint whenever a phone connects to a cell tower. The CDRs only show the caller’s telephone number, the number called, the cellular tower to which the caller’s phone connected, and the duration of the call in seconds. Hill argues that the use of the CDRs was

⁷ Arizona eliminated peremptory challenges in criminal and civil trials in August 2021 by order of the Supreme Court of Arizona. Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, No. R-21-0020 (Ariz. 2021). The peremptory challenges here were made in February 2021, before the elimination became effective.

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hearsay because they were used for their content, to show the location of the phone.

¶64 Even if the CDRs and CSLI maps are hearsay, they are subject to the business records exception. The court applied this exception in admitting the evidence. The business records exception applies to a record if: (1) it “was made at or near the time by – or from information transmitted by – someone with knowledge”; (2) it “was kept in the course of a regularly conducted activity of a business”; (3) “making the record was a regular practice of that activity”; (4) the above “conditions are shown by the testimony of the custodian”; and (5) “the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.” Ariz. R. Evid. 803(6).

¶65 The custodian of records for Sprint testified to each of the elements of the exception at trial. Hill does not argue that either the CDRs or the CSLI maps were untrustworthy. The phone records were not used to show the content of messages or phone calls, only to show the cell tower locations to which a phone connected. Hill therefore fails to show that the court abused its discretion in applying the business records exception to hearsay to the cell phone records.

¶66 Hill next argues that the admission of the cell phone records violated the Confrontation Clause. The Confrontation Clause bars testimonial evidence of a nontestifying witness from being introduced without the defendant having the prior opportunity to confront that witness. *State v. Fordson*, 258 Ariz. 167, 171, ¶ 14 (App. 2024). Testimonial evidence includes “ex parte in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations . . . or similar pretrial statements that declarants would reasonably expect to be used prosecutorially.” *Crawford v. Washington*, 541 U.S. 36, 51 (2004). When determining whether a statement is testimonial, “the question is whether, in light of all the circumstances, viewed objectively, the ‘primary purpose’ of the conversation was to ‘creat[e] an out-of-court substitute for trial testimony.’” *Ohio v. Clark*, 576 U.S. 237, 245 (2015) (alteration in original).

¶67 The cell phone records are not testimonial. The records were “created for the administration of [Sprint’s] affairs and not for the purpose of establishing or proving some fact at trial.” *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009). Sprint maintains the records “regardless of their possible use in a criminal prosecution.” *State v. King*, 213 Ariz. 632, 638, ¶ 26 (App. 2006) (finding that certain public records were akin to business

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records and therefore did not violate the Confrontation Clause). Because the records are not testimonial, there is no Confrontation Clause violation. *See Smith v. Arizona*, 602 U.S. 779, 784 (2024) (“The [Confrontation] Clause’s prohibition ‘applies only to testimonial hearsay.’” (quoting *Davis v. Washington*, 547 U.S. 813, 823 (2006))).

V. Hill’s Collateral Estoppel Argument Fails.

¶68 Hill next argues because the charges against Sam were dismissed without prejudice, “the State should be precluded from asserting [Sam’s] involvement at Hill’s trial under the doctrine of collateral estoppel,” or issue preclusion. Hill also argues the superior court erred in denying his motion for new trial based on the same. We review a denial of a motion for new trial for an abuse of discretion. *Mills*, 196 Ariz. at 271.

¶69 Issue preclusion bars the same parties from re-litigating an issue once a valid and final judgment determines that issue. *State v. Young*, 258 Ariz. 26, 32, ¶ 20 (App. 2024). A dismissal without prejudice does not constitute a final judgment. *State v. Greenberg*, 236 Ariz. 592, 600, ¶ 36 (App. 2015). Because the State dismissed the charges against Sam without prejudice, issue preclusion does not apply here, and the superior court did not abuse its discretion in denying Hill’s motion for new trial.

VI. The Superior Court Did Not Abuse Its Discretion in Determining Hill Was Competent to Stand Trial.

¶70 Hill argues that the superior court erred in denying his requests to determine his competency retroactively. At sentencing, Hill asked the court to determine whether he was competent during trial. He also moved to vacate his judgment. Hill contends that this error resulted in “Hill’s conviction [being] constitutionally invalid,” entitling him to a new trial.

¶71 “We review a [superior] court’s decision on whether to order an examination and competency hearing for [an] abuse of discretion.” *State v. Mendoza-Tapia*, 229 Ariz. 224, 231, ¶ 22 (App. 2012). Under Arizona law, “a defendant has a right to a mental examination and hearing on his competency to stand trial when ‘reasonable grounds for an examination exist.’” *Id.* ¶ 23 (quoting Ariz. R. Crim. P. 11.3(a)). “Reasonable grounds exist if there is sufficient evidence to indicate that the defendant is not able to understand the nature of the proceedings against him and to assist in his defense.” *State v. Salazar*, 128 Ariz. 461, 462 (1981). A judge may rely on their own observations of the defendant to determine if reasonable grounds exist. *State v. Moody*, 208 Ariz. 424, 443, ¶ 48 (2004).

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¶72 Defense counsel brought a Rule 11 motion to determine competency for sentencing more than one year after the completion of trial. A hearing was granted, and while Hill’s two experts determined he was not competent, two of the three court appointed experts determined he was competent, with one indicating that he could have been malingering. A Rule 11 Commissioner determined that Hill was competent to proceed to sentencing but did not make a determination on his retroactive competency at trial, telling Hill to instead make a motion before the superior court. Hill did so in March 2024, which the court denied. In July 2024, Hill moved to vacate his judgment due to being incompetent at the time of trial, which was also denied.

¶73 The superior court denied the motion to vacate judgement, because “neither [Hill] nor his attorney requested a Rule 11 evaluation” before or during the trial. The court also noted that it did not order one *sua sponte* because the court inquired into, and defense counsel affirmed, Hill’s competency numerous times. Notably, on the eighth day of trial, the court remarked that Hill seemed tired, and asked defense counsel if there were “[a]ny Rule 11 concerns[.]” Hill and his counsel denied any concerns, stating that: “[H]e says he understands what’s going on and he – would like to go forward.” The court also observed Hill during trial and made a record throughout noting his competency. For example, the court found Hill was getting food, drink, and medication while in custody, was standing and sitting at the appropriate times, and was attentive.

¶74 Accordingly, Hill fails to show the court abused its discretion in denying his requests to retroactively determine his competency during trial. *See Mendoza-Tapia*, 229 Ariz. at 231, ¶ 24 (finding no abuse of discretion in a trial judge denying a retroactive Rule 11 hearing when the judge observed defendant at trial, noted observations of defendant’s behavior on the record, and when the defense counsel did not raise Rule 11 concerns before or during the trial).

CONCLUSION

¶75 For the foregoing reasons, we affirm Hill’s convictions and sentences.



MATTHEW J. MARTIN • Clerk of the Court

FILED:

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Appendix B

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2018-006863-001 DT

09/04/2024

HONORABLE FRANK W. MOSKOWITZ

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

CHRISTOPHER TODD SAMMONS
LOUIS T GIAQUINTO
KATIE STAAB

v.

FREDERICK JEROME HILL (001)

MONIQUE BRANSCOMB WILHITE

JUDGE MOSKOWITZ

MINUTE ENTRY

Pending before the Court is Defendant's Motion to Vacate Judgment ("the Motion"). It was filed July 15, 2024. It is fully briefed. Although Defendant requested oral argument and an evidentiary hearing, neither is necessary for the Court to resolve the Motion.

Defendant seeks to have his conviction vacated pursuant to Rule 24.2(3), Ariz. R. Crim. P., which provides that the Court must vacate a conviction if it "was obtained in violation of the United States or Arizona constitutions." Here, the Defendant's conviction was not obtained in violation of either Constitution.

This is the Defendant's third request¹ for a retroactive Rule 11 determination of his competency during trial since he was convicted by a jury. Prior to his conviction, neither the Defendant nor his attorney requested a Rule 11 evaluation. The Court also did not order one *sua sponte* for all the reasons pointed out in the State's Response, which cites to and quotes from the trial record. Defendant has not provided, and the Court is not aware of any authority that says Defendant is entitled to a retroactive Rule 11 determination of his competency during trial, absent the appellate court remanding the case for such a determination based upon a finding that the record demonstrates reasonable grounds to doubt a defendant's competency during trial. *Cf. State v. Mendoza-Tapia*, 229 Ariz. 224, 230-32 (App. 2012):

¹ The first request was made and denied during the post-trial Rule 11 proceedings before the Commissioners. The second request was made and denied at Sentencing.

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MARICOPA COUNTY

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We find no abuse of discretion in the judge's rejection of a Rule 11 hearing to retroactively determine whether Mendoza–Tapia was incompetent during trial, because Mendoza–Tapia did not offer any “reasonable grounds” to doubt his competency during trial. The judge had the opportunity to observe Mendoza–Tapia during trial, and noted in her findings that he appeared to be fully engaged in his defense, did not appear either confused or disengaged, and appeared rational. Defense counsel never raised any competency issue before or during trial. Mendoza–Tapia's argument on appeal relies in large part on sheer speculation that his decision at trial that he was not “mentally or emotionally ready to testify” might in hindsight have indicated incompetency, and that the length of time it took to restore Mendoza–Tapia to competency after trial suggested that he had been incompetent months before, during trial. We cannot say the judge abused her discretion in finding that this type of speculation did not constitute “reasonable grounds” to doubt his competency during trial. *Cf. State v. Romero*, 130 Ariz. 142, 146–47, 634 P.2d 954, 958–59 (1981) (holding no abuse of discretion in refusing to order competency examination based on opinions that appellant had “severe mental problems”).

¶ 25 Nor are we persuaded by Mendoza–Tapia's additional argument that reasonable grounds existed to conduct a retroactive Rule 11 hearing because one of the examining doctors had recently “testified that [Mendoza–Tapia] had been incompetent prior to the start of trial.” Defense counsel's avowal that this doctor had so testified was ambiguous at best. In response to the judge's inquiry as to why defense counsel had not asked the examining doctors directly how long Mendoza–Tapia had been incompetent, defense counsel said that at the most recent Rule 11 hearing, he had asked the doctor who had examined him five months after trial “whether he was incompetent weeks prior to that, and she indicated that he was.” In response to the judge's attempt to clarify whether this doctor had indicated “that he was competent [sic] during trial,” defense counsel said, “Incompetent prior to that time, yes.” Mendoza–Tapia did not make this avowal in his written motion and, did not confirm it by presenting the trial court or this court with a transcript of the evidentiary hearing at which this doctor testified. Under these circumstances, we decline to find the judge abused her discretion in denying his motion for a Rule 11 hearing.

On this record, this Court finds no basis to vacate Defendant's conviction.

IT IS THEREFORE ORDERED denying the Motion.

Appendix C



Supreme Court

STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

AARON C. NASH
Clerk of the Court

May 6, 2026

RE: STATE OF ARIZONA v FREDERICK JEROME HILL, JR.

Arizona Supreme Court No. CR-25-0333-PR
Court of Appeals, Division One No. 1 CA-CR 21-0231
Maricopa County Superior Court No. CR2018-006863-001
Court of Appeals, Division One No. 1 CA-CR 24-0170
Maricopa County Superior Court No. CR2018-006863-001
Court of Appeals, Division One No. 1 CA-CR 24-0506
Maricopa County Superior Court No. CR2018-006863-001

GREETINGS:

The following action was taken by the Arizona Supreme Court on May 5, 2026, regarding the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Justice Montgomery did not participate in the determination of this matter.

Aaron C. Nash, Clerk

TO:
Alice Jones
Joshua C Smith
Monique Branscomb Wilhite
Matthew J Martin
kc

Appendix D

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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12/05/2023

HONORABLE TRAVIS MARDEROSIAN

CLERK OF THE COURT
O. Hernandez
Deputy

STATE OF ARIZONA

T P C APPEALS COUNTY ATTORNEY
KATIE STAAB

v.

FREDERICK JEROME HILL (001)
DOB: 11/18/1983
Booking No.: T332275

MONIQUE BRANSCOMB WILHITE

COMM. MARDEROSIAN
CORRECTIONAL HEALTH SERVICES
COURT FORENSIC SERVICES UNIT
D&C MATERIALS-CSC

RULING

DEFENDANT COMPETENT - A.R.S. Section 13-4510(B)

An evidentiary hearing was held on 8/28/2023 and 10/19/2023 to determine the competence of Frederick Jerome Hill. The court heard testimony from Dr. Thomas Hyde, Charles Lyles, Tiffani Hill, Dr. Camille Hernandez, Dr. Rick Webster, and Dr. Jon Van Doren. The court took judicial notice of the court-appointed mental health experts ('MHEs') reports' over Defense counsel's objection. The following exhibits were admitted into evidence:

- Exhibit #4 – Dr. Van Doren's report dated 8/7/21
- Exhibit #5 – Dr. Van Doren's report dated 2/15/22
- Exhibit #6 – Dr. Van Doren's report dated 2/14/23
- Exhibit #7 – Dr. Hyde's report dated 5/31/22
- Exhibit #8 – Dr. Hyde's report dated 3/7/23
- Exhibit #9 – Dr. Hyde's report dated 8/7/23

Defense counsel was permitted to make a *Bishop* statement. The State's request to make a *Bishop* statement was denied. Instead, the State was allowed to make an offer of proof. The court

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did not consider the State's offer of proof in making its findings. The parties submitted written closing arguments at the court's request. The court finds as follows.

Generally Applicable Law

Competency is an "extremely narrow issue" focused on the test articulated by Rule 11.1, Ariz. R.Crim. P. See *State v. Steelman*, 120 Ariz. 301, 315, 585 P.2d 1213, 1227 (1978); see also *State v. Lewis*, 236 Ariz. 336, 340, 340 P.3d 415, 419 (App. 2014); see also *Bishop v. Superior court, In & For Pima Cty.*, 150 Ariz. 404, 407, 724 P.2d 23, 26 (1986) ("Rule 11 thus highlights the unique and distinctive nature of the hearing which determines competency to stand trial. Its sole purpose is to determine whether defendant has sufficient mental ability to allow the adversary system to operate properly").

The Supreme court has developed a dual analysis to determine defendant's competency to stand trial or plead. The inquiry is whether defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824 (1960); see also *Bishop v. Superior court, In & For Pima Cty.*, 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986).

A defendant is incompetent to stand trial when, "as a result of mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense." Ariz. R.Crim. P. 11.1; see also A.R.S. § 13-4501(2). The fact that a defendant suffers from a mental illness, defect, or disability is not, by itself, grounds for finding the defendant incompetent. See A.R.S. § 13-4501(2); Ariz. R.Crim. P. 11.1. Thus, a defendant found to have an intellectual disability is "not shielded from trial" automatically. *State v. Grell*, 212 Ariz. 516, ¶ 38, 135 P.3d 696, 705 (2006). Lack of cooperation with evaluations is not, by itself, grounds for a competency finding. Where the evidence establishes that lack of cooperation was volitional, rather than the result of a mental defect affecting competency, then a competency finding is warranted. See *State v. Amaya-Ruiz*, 166 Ariz. 152, 162, 800 P.2d 1260, 1270 (1990) ("The voluntary actions of the defendant do not provide an excuse in law for his ... irrational conduct.") (citing *State v. Tramble*, 116 Ariz. 249, 253, 568 P.2d 1147, 1151 (App.1977), quoting *State v. Cooper*, 111 Ariz. 332, 334, 529 P.2d 231, 233 (1974)).

"Restoration treatment is the preferred course; dismissal of the charges should only occur when 'there is clear and convincing evidence that the defendant will not be restored to competency within fifteen months.'" *State v. Silva*, 222 Ariz. 457, 460, 216 P.3d 1203, 1206 (App. 2009) (quoting A.R.S. § 13-4510(C)); see also Ariz. R.Crim. P. 11.5(b)(3). The initial determination of incompetence raises a rebuttable presumption of continued incompetence. *State v. Hehman*, 110 Ariz. 459, 460, 520 P.2d 507, 508 (1974); *State v. Blazak*, 110 Ariz. 202, 204, 516 P.2d 575, 577

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(1973); see also *Lewis*, 236 Ariz. at 340–41, 340 P.3d at 419–20. Nevertheless, restoration treatment most often results in restoration to competence or a discovery the defendant had been malingering. *Grell*, 212 Ariz. 516, ¶ 39, 135 P.3d at 705.

“Rule 11 thus highlights the unique and distinctive nature of the hearing which determines competency to stand trial. Its sole purpose is to determine whether defendant has sufficient mental ability to allow the adversary system to operate properly. Again, this is based on society’s decision that the adversary system best promotes the interests of justice; fundamental fairness requires that a defendant be armed with some minimal awareness of reality before the power of the state is exerted against him.” *Bishop*, 150 Ariz. at 407, 724 P.2d at 26.

“[T]he trial court cannot make a subsequent finding of competence unless some new evidence—either of restoration or malingering—is presented to rebut the presumption of continued incompetence.” *Lewis*, 236 Ariz. at 341, 340 P.3d at 420. But, as with other rebuttable presumptions, the presumption of continued incompetence “disappears entirely upon the introduction of any contradicting evidence and when such evidence is introduced the existence or non-existence of the presumed [incompetence] is to be determined exactly as if no presumption had ever been operative.” *Sheehan v. Pima County*, 135 Ariz. 235, 238, 660 P.2d 486, 489 (App.1982); cf. *State v. Grilz*, 136 Ariz. 450, 455, 666 P.2d 1059, 1064 (1983) (presumption of sanity “vanishes once [defendant] presents sufficient evidence to raise a reasonable doubt as to sanity”); see also *State v. Lewis*, 236 Ariz. at 341, 340 P.3d at 420 (App. 2014). Thus, evidence demonstrating the defendant is competent or invalidating the original determination of incompetence, such as evidence of malingering, will suffice to remove the presumption of continued incompetence. Cf. *State v. Arellano*, 213 Ariz. 474, ¶ 13, 143 P.3d 1015, 1018 (2006) (rebuttable presumption of intellectual disability ‘vanishes’ when state presents evidence intelligence quotient scores invalid or other evidence capital defendant not suffering from intellectual disability).

“The trial judge may rely on some testimony from one expert and other testimony from another expert and draw his own conclusions.” *State v. Bishop*, 162 Ariz. 103, 107, 781 P.2d 581, 585 (1989). In addition, “[t]he trial judge is not required to accept or reject expert testimony in toto and may rely on particular views of one or more experts even though he or she may disagree with the expert's ultimate conclusion.” Id; see also *State v. Glassel*, 211 Ariz. 33, 44, 116 P.3d 1193, 1204, opinion corrected on denial of reconsideration, 211 Ariz. 370, 121 P.3d 1240 (2005). The trial court may also rely, among other factors, on his or her own observations of the Defendant in the courtroom, including on the defendant’s demeanor and ability to answer questions. See *Glassel*, 211 Ariz. at 44, 116 P.3d at 1204; see also *State v. Moody*, 208 Ariz. 424, 443, 94 P.3d 1119, 1138 (2004) (citing *State v. Harding*, 137 Ariz. 278, 286, 670 P.2d 383, 391 (1983) (upholding a trial court's determination that a defendant was competent to waive his right to counsel based on psychiatric reports and the trial court's own observations)).

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Findings of Fact and Conclusions of Law

Competency At The Time Of Trial

Defense counsel filed a motion on 6/2/2022 asking the court to “set a competency hearing.” The court granted Defense’s request and transferred the matter for further proceedings pursuant to Rule 11, Arizona Rules of Criminal Procedure. The Defendant was placed in Rule 11 proceedings subsequent to his conviction of significant criminal charges. During the Rule 11 evidentiary hearing, through the presentation of evidence and argument, Defense counsel asked this court to find that the Defendant was incompetent at the time of his criminal trial.

This court is declining to make any findings regarding Defendant’s competence prior to the filing of the Rule 11 motion. Defense counsel has not provided any legal authority for this court to take such action. It is this court’s position that Rule 11 proceedings are forward-looking. *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824 (1960). (The court’s inquiry is whether the Defendant “has sufficient *present* [emphasis added] ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.”). Therefore, this court’s findings will be limited to the Defendant’s competency to proceed in his criminal matter.

Competency To Proceed With Sentencing

It is important to consider the procedural posture of the case, and what is required of the Defendant in their specific criminal proceeding, when deciding competence. *Chavez v. United States*, 656 F.2d 512, 518 (9th Cir. 1981) (“It might be constitutionally fair to require a marginally competent Defendant to make certain kinds of decisions, but not others.”). While competency proceedings generally observe whether the Defendant is able to fairly and appropriately stand trial, due to the post-trial posture of this case, the court’s inquiry is instead on the Defendant’s ability to factually understand the sentencing proceedings and participate intelligently to the extent participation is called for. *State v. Montano*, 136 Ariz. 605, 608 (1983); *Chavez v. United States*, 656 F.2d 512, 518 (9th Cir. 1981). The minimal requirements for a reasonable and rational sentencing to take place are as follows: the opportunity to prepare and participate in a presentence interview, for the Defendant to speak and ask for leniency from the court, and for the court to question and observe the Defendant. *State v. Fettis*, 136 Ariz. 58, 59, 664 P.2d 208, 209 (1983); Rule 26.10(b)(1), Arizona Rules of Criminal Procedure.

The Defendant has a history of seizures dating back to 2013. He has experienced these seizures prior to his arrest and while in custody. Dr. Van Doren and Dr. Hyde are of the opinion that Mr. Hill suffers from organic brain damage, although the etiology of this injury is unclear. Dr. Van

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Doren, who completed a neuropsychological evaluation, opined that Mr. Hill's "seizure disorder offers the most likely explanation of his cognitive-behavioral impairments." Exhibit #5 at 3. Dr. Van Doren conducted numerous psychological tests as detailed in his initial report dated 8/7/2021.

Mr. Hill scored in the borderline range in cognitive testing but did not meet the criteria for an intellectual disability. High school records show that Mr. Hill graduated from high school and passed proficiency testing in reading, writing, and mathematics. There is no indication that Mr. Hill engaged in any special education services within these records. After high school, Mr. Hill successfully completed a two-year culinary program and received an associate degree. As Dr. Van Doren points out, Mr. Hill was previously able to "manage the demands of culinary training and the work of a chef" despite memory impairments and intellectual limitations. Mr. Hill performed well on executive functioning testing. He was able to complete tasks of concrete novel problem-solving and balancing risk with reward and refine judgment with experience. His attention and working memory appeared intact.

Mr. Hill presented with impairments in the areas of immediate and delayed memory. These tests called for the recollection of information following a period of delay. Through further testing, Dr. Van Doren opined that Mr. Hill's issues with memory and behavioral initiation make it so he is "only capable of passively observing without actually participating in his defense." Exhibit #6 at 8.

While the court would like to accept the experts' testing at face value, the court seriously questions whether Mr. Hill was presenting in a genuine fashion during testing. Mr. Hill was unable to answer basic cognitive questions during his evaluation with Dr. Hernandez in September 2022. As such, Dr. Hernandez administered the M-FAST and Coin in the Hand tests which are both designed to assess exaggeration of psychological symptoms. Mr. Hill's scores on these tests were highly suggestive of poor effort. During this evaluation, Mr. Hill claimed he did not understand basic legal terminology despite participating in a lengthy criminal trial. He claimed memory issues as an explanation for his poor performance. In addition, Mr. Hill failed at least one cooperation test during both sessions with Dr. Van Doren. Mr. Hill is cognizant of his medical condition, its connection to his memory issues, and the implications this has on his criminal matter. It is entirely possible that Mr. Hill is attempting to undermine his criminal conviction, especially when considering the possibility of a lengthy prison sentence.

Mr. Hill presents as an unreliable historian. The court notes that there are several inconsistencies in Mr. Hill's historical reporting. For example, Mr. Hill reported to Dr. Van Doren in February 2022 that his only history of illicit substance use involved marijuana. However, during Dr. Hernandez's evaluation in September 2022, Mr. Hill reported that he has previously used cocaine and heroin. He also goes into great detail about his drug abuse history when speaking

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with Dr. Hyde in May 2022. Exhibit #7 at 9. It is difficult to weight the various Rule 11 reports in this matter due to the inconsistencies in Mr. Hill's self-reporting.

It should be noted that Mr. Hill tested positive for methamphetamine and fentanyl in November 2022 after experiencing a seizure and requiring a period of hospitalization. Further, Mr. Hill received disciplinary action for hoarding medication while in custody. Dr. Van Doren testified that he was not aware of this information. Dr. Hyde testified that he was aware of the drug use and medication hoarding, yet this information was left out of Dr. Hyde's otherwise thorough reports. The court finds that active drug use/abuse while in custody could substantially impact the experts' findings in this matter. It is unclear how frequently Mr. Hill is abusing drugs while in custody.

Although Dr. Van Doren's memory testing suggests impairments in memory functioning, Mr. Hill has shown the ability to describe his medical history at length, when he so chooses. At times, Mr. Hill can recall detailed information about his medical history, but other times he has trouble recalling his lawyer's name. While claiming to remember very little about his psychiatric history when meeting with Dr. Hernandez in September 2022, Mr. Hill was able to provide a lengthy and detailed history of prior mental health issues to Dr. Hyde, including medication, dates, frequencies, and descriptions. Exhibit #7 at 8-9. The court believes Mr. Hill plays up his memory issues at times to his advantage. But when he chooses to cooperate (like during his initial evaluation with Dr. Hyde), Mr. Hill has the capability of remembering detailed information from his life prior to his incarceration.

The evidence is conflicting in terms of Mr. Hill's short-term memory impairment. Dr. Van Doren completed psychological testing which showed concern with regards to Mr. Hill's ability to retain new information. However, Mr. Hill's recent memory appeared intact during his meeting with Dr. Webster in March 2023. In his report, Dr. Webster noted:

Mr. Hill appeared to not have any issues with his recent memory as he was able to provide his current medication conditions in detail concerning having stomach issues that he was able to advocate to medical personnel while he is in jail. He was able to remember this evaluator and report that he had a seizure since the last time he saw this evaluator. He was able to provide details of a car accident that happened 6 months prior to him coming to jail. He knew the current date. It was noted that he was resourceful to advocate for his current medical issues. It is noted that he was able to follow counsel as he reported that his attorney told him not to let others see his police report.

Webster's report dated 3/6/2023 at 4. Mr. Hill's apparent memory issues have not significantly impacted his ability to adequately meet his daily living needs, maintain proper hygiene, and advocate for medical assistance when necessary. Mr. Hill does present with a flat affect, but is

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stable, linear-thinking, logical, and generally cooperative. Any short-term memory issues do not seem to impact his ability to properly function within the jail facility. Nor do these issues appear to extend substantially to the courtroom.

According to Dr. Van Doren, Mr. Hill is able to make rational, well-reasoned decisions when presented with options, but struggles with spontaneously initiating thoughts. This limitation, however, does not appear to have diminished Mr. Hill's ability to raise concerns and problem-solve while in custody. Dr. Worsley's report dated 8/18/2022 describes in great detail the Correctional Health Services records relating to Mr. Hill's medical care. Mr. Hill has consistently and diligently advocated for medication adjustments, described negative effects of certain medications, and requested specific medications by name.

Mr. Hill was able to properly assist his attorney throughout the various pretrial hearings and lengthy trial. At no point in time during Mr. Hill's trial or prior was a Rule 11 motion filed. In fact, the question of competence was raised by the court at trial due to the Defendant closing his eyes, but Defense counsel conferred with her client and advised the court that she "does not have any Rule 11 concerns or any concerns that the Defendant is not able to assist in his defense." Minute Entry dated 3/3/2021. While Dr. Van Doren opined that the potential for Mr. Hill's mental health issues to go undetected throughout trial "exists," the absence of any Rule 11 motion prior to criminal conviction is highly suggestive of competence.¹

Mr. Hill must be able to ask the court for leniency at sentencing. Mr. Hill has the proper abilities in this regard. While the court agrees that Mr. Hill has some impairments as a result of his seizure disorder, those limitations will not deprive Mr. Hill of the ability to fairly and intelligently participate in the current legal proceedings. Mr. Hill did not have a problem participating in the numerous Rule 11 evaluations when he chose to put forth the effort. He was able to participate in a lengthy criminal trial without raising any red flags regarding his competence. He has adequate memory of the information relevant to his criminal case and the capability of using this information toward his defense.

Mr. Hill may benefit from extra time and assistance in framing his thoughts. This court suggests that Mr. Hill work with counsel in preparing a written statement for sentencing. Nonetheless, this court finds that the Defendant exceeds the minimum threshold for legal competency. Therefore, he is competent to proceed.

¹ *United States v. Clark*, 617 F.2d 180, 187 n.11 (9th Cir. 1980) ("If [the Defendant] had been unable to effectively assist counsel, it logically follows that his attorney would have been the first to know. The fact that his attorney apparently considered him competent is significant evidence that he was competent.").

State v. Djerf, 191 Ariz. 583, 592, 959 P.2d 1274, 1283 (1998) (an attorneys' assurances of their client's competence is significant to the question of competency).

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THE COURT FINDS the Defendant understands the proceedings and is able to assist counsel with Defendant's defense.

THE COURT FURTHER FINDS the Defendant competent pursuant to A.R.S. Section 13-4510(B).

IT IS FURTHER ORDERED transferring this matter to Judge Rueter for further proceedings.

IT IS FURTHER ORDERED setting Status Conference on 12/12/2023 at 8:30 a.m. before Judge Rueter.

IT IS FURTHER ORDERED excluding the time from 6/3/2022 through 12/5/2023 pursuant to Rule 8.4.

Counsel are directed by the Court to recompute the new last day and advise the Court within three (3) judicial days of notification if the computation is in error.

IT IS FURTHER ORDERED affirming prior custody/release orders.

IT IS FURTHER ORDERED that the written report(s) of the expert(s) be sealed and maintained in a confidential manner by the Clerk of the Superior Court; said report(s) shall not be disclosed to anyone except by written order of the Court.

SEALED AND FILED: Medical report(s) by the expert(s).

Appendix E

BRANSCOMB WILHITE LAW FIRM
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Monique Branscomb Wilhite SBN 013775
Attorney for Frederick Jerome Hill, Jr.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA

Plaintiff,

Case No.: CR2018-006863-001

and

**RULE 11 HEARING
CLOSING ARGUMENT**

FREDERICK JEROME HILL, JR.

Defendant.

(Assigned to the Hon. Travis
Marderosian)

Undersigned counsel hereby submits a written Closing Argument regarding the
competency of Mr. Hill:

1 The United States Constitution serves as the bedrock of our legal framework, ensuring that
2 every individual is accorded fair and equitable treatment. Central to this mandate is the explicit
3 prohibition against the trial or sentencing of individuals deemed mentally incompetent. This critical
4 provision is designed to protect the rights of the accused and ensure that due process is upheld. Its
5 underlying philosophy is rooted in the principle that defendants must possess the cognitive capacity
6 to comprehend legal proceedings and actively participate in their defense. By encompassing a
7 broad spectrum of mental and neurological conditions, this constitutional safeguard aligns with the
8 fundamental tenets of justice and equitable trial enshrined within the US Constitution.

9
10 In the specific context of Mr. Hill's legal proceedings, the findings of three out of five
11 evaluating physicians have unequivocally indicated that he is incompetent and has a longstanding
12 and current incapacity to stand trial. Initially, during the trial, undersigned counsel overlooked the
13 depth of Mr. Hill's cognitive impairment, attributing his demeanor to a lack of trust and chronic
14 pain. Additionally, much of undersigned counsel's interaction with Mr. Hill was during the
15 Pandemic and masks were worn during most interactions. Subsequent post-trial discussions
16 revealed the complexity of Mr. Hill's cognitive challenges, prompting the involvement of Dr. Van
17 Doren and Dr. Hyde. Their comprehensive assessments affirmed his incompetence and shed light
18 on the intricacies of his cognitive limitations.

19 Under the provisions of Rule 11, undersigned counsel retains the right to request an
20 evaluation at any point in time. In this instance, undersigned counsel's lack of expertise in cognitive
21 disorders hindered her ability to identify the specific nature of Mr. Hill's disability, thus
22 underscoring the necessity of engaging the expertise of Dr. Hyde and Dr. Van Doren.

23 Both Dr. Hyde's and Dr. Van Doren's comprehensive evaluations offered significant
24 insights into Mr. Hill's cognitive functioning, revealing notable limitations in his ability to engage
25 in multi-person interactions and retain information. Regarding memory retention, Dr. Van Doren's

1 testing indicated that the defendant retained only 25% of information right after hearing it and 12%
2 after a 25-minute delay, calling into question Dr. Worsley's assertion that the defendant is capable
3 of learning and retaining information. Additionally, Dr. Van Doren highlighted the disparity
4 between Dr. Webster's conclusions and the empirical evidence, emphasizing that Mr. Hill's memory
5 impairment and lack of initiation were the primary concerns, with low intellect serving as an
6 exacerbating factor. Furthermore, Dr. Van Doren underscored the challenges associated with
7 detecting Mr. Hill's negative symptoms within structured settings, such as a jail or a courtroom,
8 where Mr. Hill's behavior may appear disengaged or indifferent due to his condition, a sentiment
9 that echoed observations made by witnesses and the trial prosecutor.

10 For example, Doctor Webster's testimony revealed that, in addition to undertaking Rule 11
11 assessments for the court, he specializes in dealing with neurological impairments. He conducts
12 evaluations for individuals with mental illnesses, traumatic brain injuries, strokes, or any other
13 condition that might impede their functioning. However, in his Rule 11 evaluation of Mr. Hill, he
14 relied solely on a clinical interview, behavioral observation, mental status examination, and
15 collateral information, without any neurological tests or other assessments he uses in his work for
16 the state.

17 An examination of Dr. Hernandez's evaluation reveals inherent limitations in her assessment
18 process. Her evaluation lacked an exhaustive examination of collateral sources, specialized
19 training in identifying neurological injuries, and formal memory tests, all of which are integral
20 components in accurately assessing Mr. Hill's condition. Moreover, her area of expertise did not
21 extend to providing insights on the reports from Dr. Hyde and Dr. Van Doren, further underscoring
22 the limitations of her evaluation. Dr. Hernandez's assessment did not involve the examination of
23 collateral sources, potentially limiting the breadth of her understanding. Dr. Hernandez did not
24 conduct formal testing on Mr. Hill's memory or assess his capacity to generate spontaneous ideas,
25 which could have provided crucial insights into his cognitive abilities. She was not able to agree

1 or disagree with the reports of Dr. Hyde or Dr. Van Doren, because she does not have the expertise
2 and experience to do so.

3 While Dr. Worsley's opinion suggests the potential for restoration of Mr. Hill's competency
4 with suitable treatment, the in-depth evaluations conducted by Dr. Hyde and Dr. Van Doren
5 underscore the extent and irreversibility of his cognitive impairment, thereby limiting the prospects
6 for significant improvement.

7 Given the significant discrepancies and limitations within Dr. Webster and Dr. Hernandez's
8 evaluations, it is imperative for the court to meticulously scrutinize the methodologies employed
9 by these professionals. Dr. Webster's reliance on a limited set of evaluation tools and his omission
10 of critical neurological tests cast doubt on the validity of his conclusions regarding Mr. Hill's
11 competence. Similarly, Dr. Hernandez's evaluation was constrained by her lack of specialized
12 training and comprehensive assessment techniques, which may have hindered her ability to provide
13 a holistic understanding of Mr. Hill's condition.

14 Dr. Hyde and Dr. Van Doren are credible and qualified to make the determination that Mr.
15 Hill is incompetent. The testimony of the witnesses, his family who know him and watched the
16 trial, the statement made by undersigned counsel and even the statements made by the prosecutor
17 who conducted the trial all support that Mr. Hill was and is presently incompetent to go forward.

18 **RESPECTFULLY SUBMITTED** this day 3 of November 2023

19
20 **BRANSCOMB WILHITE LAW FIRM**

21 By: /s/ Monique Branscomb Wilhite 013775
22 Monique Branscomb Wilhite
23 *Attorney for Frederick Jerome Hill, Jr.*
24
25

1 **ELECTRONICALLY** filed with the Clerk of
2 the Maricopa County Superior Court and Copy
of the foregoing delivered emailed this day 3 of
November 2023 to:

3 The Honorable Travis Marderosian
4 Judge of the Superior Court
South Court Tower -13314/2D
5 Maricopa County Superior Court
Judicial Assistant Miranda Boshell
Miranda.Boshell@jbazmc.maricopa.gov

6
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Appendix F

BRANSCOMB WILHITE LAW FIRM
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Monique Branscomb Wilhite SBN 013775
Attorney for Frederick Jerome Hill

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

STATE OF ARIZONA

Plaintiff,

Case No.: CR2018-006863-001

and

FREDERICK JEROME HILL

Defendant.

**REQUEST TO DETERMINE
DEFENDANT'S COMPETENCY
AT THE TIME OF TRIAL BEFORE
JUDGMENT AND SENTENCE IS
ENTERED**

(Assigned to the Hon. Frank Moscovitz)

Defendant, *Frederick Jerome Hill* by and through undersigned counsel, hereby requests

I. RELIEF SOUGHT:

Defendant, by and through undersigned counsel, hereby submits this REQUEST TO DETERMINE DEFENDANT'S COMPETENCY AT THE TIME OF TRIAL BEFORE JUDGMENT AND SENTENCE IS ENTERED.

II. GROUNDS:

A defendant may not be tried, convicted, or sentenced while that defendant is incompetent. Ariz. R. Crim. P. 11.1. There must be a valid determination as to whether Mr. Hill was competent during his criminal trial. See, *State v. Bishop*, 139 Ariz. 567, 570, P79 P. 2d 1054, 57 (1984). In *Bishop*, the defendant entered a plea after the trial court found him competent, after a hearing the

1 defendant refused to attend. *Id.* On appeal, the Supreme Court of Arizona determined that the
2 record did not establish that the defendant had voluntarily waived his constitutional right to be
3 present at his competency hearing and therefore could not rule on whether to uphold the guilty
4 plea. *Id.*

5 Since there had never been a valid determination of the defendant's competency at the time
6 he entered his plea, the case was remanded to the trial court with instructions to make a
7 retrospective inquiry into the defendant's competency at the time he entered the plea. *Id.*

8 In this case, the presentence writer indicates that Mr. Hill was found competent. However,
9 the Rule 11 court only ruled on Mr. Hill's competence as to sentencing. There has not been a
10 determination as to Mr. Hill's competence **during his criminal trial.**

11 Although the defense specifically asked Commissioner Maderosian to make a finding as to Mr.
12 Hill's Competence at the time of his criminal trial, he declined to do so:

13 During the Rule 11 evidentiary hearing, through the presentation of
14 evidence and argument, Defense counsel asked this court to find that
15 the defendant was incompetent at the time of his criminal trial...The
court is declining to make any findings regarding Defendant's
competence prior to the filing of the Rule 11 motion [June 2, 2022].

16 Minute Entry Order, Ruling Defendant Competent – A.R.S. Section 13-4510(B), Commissioner
17 Marderosian, December 5, 2023, p. 4.

18 It is the defense position that Mr. Hill was incompetent before his trial, during his trial, and
19 is presently incompetent. During the competency hearing held on August 28, 2023, and October
20 10, 2023, Dr. Hyde and Dr. Van Doren testified that Mr. Hill was incompetent before trial, after
21 trial, and presently.

22 The defense has arranged for both experts to be present for the sentencing hearing so this
23 Court, the Court that conducted Mr. Hill's criminal trial and had an opportunity to observe Mr. Hill
24 during that time, may make inquiry and rule on this meritorious issue before Mr. Hill is sentenced.
25 Due Process and the Arizona and United States Constitution require this determination be made

1 before Mr. Hill's sentencing, to preserve the issue for appeal and advance his case in any
2 subsequent proceeding.

3 **RESPECTFULLY SUBMITTED** this 7 day of March 2024

4
5 **BRANSCOMB WILHITE LAW FIRM**

6 By: /s/ Monique Branscomb Wilhite 013775
7 Monique Branscomb Wilhite
8 *Attorney for Frederick Jerome Hill*

9 **ELECTRONICALLY** filed with the Clerk of
10 the Maricopa County Superior Court and Copy
11 of the foregoing delivered via efile this 7 this of
12 March 2024 to:

13 The Honorable Frank Moscovitz
14 Judge of the Maricopa County Superior
15 Court

16 Chris Sammons, Deputy County Attorney
17 Maricopa County Attorney's Office
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21 *State's Attorney*

22 By: mbw

Appendix G

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	1 CA-CR 24-0170
vs	)	CR2018-006863-001
	)	
FREDERICK J. HILL, JR.,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE FRANK W. MOSKOWITZ

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
March 8, 2024

(Copy)

By: Lori Reinhardt
Certified Reporter
AZ CR No: 50331

1 Kessler who's my mitigation specialist sitting here,
2 and then Mr. Hill's family and my witnesses.

3 THE COURT: Good afternoon.

4 Mr. Hill, if you would kindly state your
5 full name and date of birth.

6 THE DEFENDANT: Frederick Jerome Hill,
7 11/18/83.

8 THE COURT: Thank you. All right.

9 (Whereupon the victims rights advisement
10 was read by the Court.)

11 THE COURT: If you are attending this
12 hearing remotely, if you would kindly mute yourself
13 and only speak and unmute yourself when called upon
14 at the appropriate time. Thank you.

15 All right. I do have a request to
16 determine defendant's competency at the time of trial
17 before judgment and sentence is entered. I also have
18 the State's response.

19 Was there any reply filed?

20 MS. WILHITE: No, Your Honor.

21 THE COURT: Do you want to be heard on
22 that?

23 MS. WILHITE: Yes, Your Honor.

24 THE COURT: All right. You may proceed.

25 MS. WILHITE: Your Honor, I just wanted to

1 bring to the Court's attention this issue. I know in
2 the State's response they represented to the Court
3 that Mr. Hill was found competent to stand trial and
4 also the presentence writer indicated that.

5 However, Judge or Commissioner Marderosian
6 specifically said that he excluded any determination
7 of competency at the time of trial or before trial.
8 That issue needs to be determined or Mr. Hill would
9 waive that issue or potentially the Court of Appeals
10 or the Supreme Court would remand it for it to be
11 determined.

12 One of the things that Commissioner
13 Marderosian stated in his ruling was that he did not
14 believe that there was authority for a retroactive or
15 determination of competence, but I did cite a case
16 where the Court of Appeals -- in my short memo to
17 you, Your Honor, where they had to determine whether
18 or not the defendant was competent at the time that
19 he took a plea to determine whether or not they were
20 going to uphold his plea, and they required the trial
21 court to do a retroactive determination.

22 I wanted to bring -- because it indicated
23 that in the minute entry -- I mean, the minute entry
24 order, the presentence report, that all of that
25 litigation that we did, and even though I asked for

1 the Court to make that determination, the State had
2 an opportunity to rebut that, there was no
3 determination made, and I just wanted to specifically
4 quote the Court on page four of its ruling.

5 It says: During the Rule 11 evidentiary
6 hearing, through the presentation of evidence and
7 argument, defense counsel asked this Court to find
8 that the defendant was incompetent at the time of his
9 criminal trial.

10 The Court is declining to make any findings
11 regarding the defendant's competence prior to the
12 filing of the Rule 11 motion on June 2, 2022.

13 I want to state for the record that Mr. --
14 this crime occurred in August of 2016. The trial was
15 conducted between February of 2021 through April 21,
16 2021, and that was the finding that I was requesting
17 the Court to make.

18 So, that is just out there. There's been
19 no ruling. Mr. Hill has a due process right to have
20 it ruled upon, and we do have the doctors here. One
21 of the reasons I believe that the Commissioner didn't
22 want to make that determination was because he wasn't
23 there. I don't think the rules of the law
24 anticipated it would go to a different judge.

25 You were the trial judge. You observed

1 him, and I think that would be the last piece of the
2 puzzle. I'm not asking for extensive other hearings
3 or to waste the Court's time. The officers -- the
4 doctors that testified at the Rule 11 hearing are
5 also here. They can be questioned. They're also
6 going to talk about the mitigating factors that I
7 would be presenting as well.

8 THE COURT: Are they going to be presenting
9 just on mitigation, notwithstanding Rule 11, these
10 doctors?

11 If I were to say I'm not going to hear the
12 Rule 11 issue, would they still be presenting
13 evidence today about mitigation?

14 MS. WILHITE: Correct. So, they are going
15 to be able to testify or they will testify that he
16 was incompetent at the time of trial and that he was
17 in -- and that he was unable to conform his conduct
18 to the requirements of the law. They will talk about
19 his mental --

20 THE COURT: Let me back up. If I don't
21 grant your relief on Rule 11, am I still going to
22 hear from these doctors as to mitigation?

23 MS. WILHITE: Correct.

24 THE COURT: And did you file for Rule 11
25 relief in this case any time prior to June 2, 2022?

1 MS. WILHITE: No, Your Honor.

2 THE COURT: Do you know if anyone on behalf
3 of Mr. Hill ever sought Rule 11 relief prior to
4 June 2, 2022?

5 MS. WILHITE: Not that I know of, Your
6 Honor.

7 THE COURT: Thank you. I will hear from
8 the State.

9 MR. SAMMONS: Ms. Staab is going to address
10 this issue, Judge.

11 MS. STAAB: Your Honor, I'm going to
12 address this issue because I actually conducted the
13 Rule 11 proceedings for the State.

14 Defense counsel noted that she's not asking
15 to waste the Court's time here today; however, this
16 motion is extremely untimely. It has been since
17 December that defense counsel has been aware of
18 Commissioner Marderosian's finding in Rule 11 court
19 that this defendant is competent to proceed to
20 sentencing.

21 Defense counsel noted that the State
22 represented that the defendant is competent. That's
23 because this court -- a commissioner of this court
24 working in the Rule 11 court determined on the basis
25 of the court-appointed expert reports that this

1 defendant was competent to proceed.

2 There is no procedural mechanism under
3 Rule 11 for this Court to retroactively assess
4 whether the defendant was competent at the time of
5 trial. The procedural remedy for that is an appeal.

6 So, essentially what defense counsel is
7 asking this Court to do today is a lateral appeal of
8 Commissioner Marderosian's finding that this
9 defendant is competent.

10 Additionally, for this Court's
11 consideration, defense counsel is asking that two of
12 the witnesses that testified in the Rule 11
13 proceedings come before this Court and present the
14 exact same information that was presented to
15 Commissioner Marderosian.

16 Based on that information he declined to
17 make a ruling as to the defendant's competency at the
18 time of trial because there is no mechanism for that.
19 So, to ask for this Court to do that today is
20 improper.

21 So, the State is asking that the Court
22 decline defendant's motion and proceed with
23 sentencing.

24 THE COURT: All right.

25 MS. WILHITE: May I respond, Your Honor?

1 THE COURT: Yes.

2 MS. WILHITE: Your Honor, there -- I
3 requested something and the Court must rule. I'm
4 asking for the Court to rule on an issue that was
5 presented to the Rule 11 court, that they declined to
6 rule on and there was no -- the court is not saying
7 I'm rejecting their testimony with respect to that
8 aspect of the case.

9 He declined to rule on the issue that was
10 raised as to Mr. Hill's competency at the time of
11 trial and before. He declined to do that. That
12 issue was raised. It has to be ruled on. Whether --
13 it can't go forward otherwise Mr. Hill would waive
14 that issue and the Court of Appeals can't rule on
15 something that this Court did not do.

16 So, the issue was raised. There has to be
17 a finding on that particular part of the proceedings
18 and then that can be appealed. Right now there's
19 nothing to be appealed because the Commissioner did
20 not -- made a specific note in his ruling that I'm
21 not going to rule on that. Even though the defendant
22 presented evidence and argument and testimony, I'm
23 not going to rule on that.

24 So, we're not asking for the Court to redo
25 the Rule 11 proceedings, but we need a ruling on that

1 so that Mr. Hill can have a proper record, and we
2 believe based on the case law it's just going to be
3 remanded to this Court for a ruling on that
4 particular aspect of the Rule 11 procedure or Rule 11
5 issues.

6 THE COURT: Well, let me ask you, the
7 Commissioner considered the evidence of incompetency
8 that you provided and for lack of a better term,
9 rejected it or did not accept that, and finding him
10 competent to be sentenced, correct?

11 He considered what your experts had to say?
12 He heard from them?

13 MS. WILHITE: But not in saying that he's
14 making -- he heard from them, Your Honor, but he
15 said -- he did not say I'm finding that he was
16 competent at trial. He did not rule on it.

17 THE COURT: But he said legally -- he said
18 legally it's not a retroactive rule. That's what he
19 put in his ruling. He was not going to -- he didn't
20 have a legal basis to retroactively do it. I think I
21 read his ruling to say that.

22 But hear my question, please, okay? He
23 heard from the experts that you presented as to
24 whether or not he was competent to be sentenced.

25 MS. WILHITE: He allowed me to go into that

1 but he told me that he would not be --

2 THE COURT: So, what evidence would he have
3 heard differently about incompetency at the time of
4 trial?

5 Because he heard that there was alleged
6 incompetency for sentencing. What evidence would he
7 have heard differently about incompetency at the time
8 of trial? If he rejected it for one, what would be
9 the difference of holding it for both now if it's
10 just going to be redundant and then you'd be asking
11 me to be like an appellate or a horizontal appeal of
12 my colleague or the Commissioner that already made
13 his decision?

14 MS. WILHITE: But, Your Honor, he didn't
15 make a ruling on that issue. He made a ruling on
16 Mr. Hill's competence to go forward with the
17 proceedings now. He did not rule on whether he was
18 incompetent at the time of trial.

19 All he needs to do -- we don't need to
20 present any more evidence other than we need a ruling
21 from this Court. It's not a lateral appeal because
22 there's no ruling to appeal.

23 There has to be a ruling that he rejects
24 that and he said I'm specifically not going to touch
25 that. So, we don't have it. It's just out there in

1 the open. There's nothing to appeal.

2 THE COURT: What evidence would be put in
3 the record about incompetence at the time of trial
4 that is not already in the record in the Rule 11
5 proceeding with regard to incompetent at the time of
6 sentencing?

7 MS. WILHITE: Well, one thing that's
8 missing, Your Honor, is your observation of Mr. Hill
9 during the time of trial. So, we have to -- so what
10 I'm saying, Your Honor, is that Commissioner
11 Marderosian made his determination that Mr. Hill was
12 competent to go forward to sentencing today, but he
13 said I am not going to rule -- I'm not going to talk
14 about the testimony or the evidence or -- I'm not
15 considering that and I'm not going to rule on that.

16 And he specifically put that in his papers,
17 so we're not asking to present necessarily any
18 additional evidence. We just need a ruling under due
19 process so that it can be appealed. So, this isn't
20 about a lateral appeal. It's about just the Court
21 speaking, I'm ruling that he was or was not competent
22 at the time of trial, and we go forward. That's
23 something that I can appeal. The Court of Appeals
24 can have something to look at.

25 And the reason I cited the Bishop case is

1 because in the Bishop case -- just quickly -- he
2 entered a plea agreement but he didn't show up to his
3 competency hearing and there was no valid
4 determination of his competency. So, the Court of
5 Appeals said you've got to rule on this before we can
6 determine whether or not this plea should be upheld,
7 and they remanded it for a retroactive determination
8 as to whether or not he was competent at the time he
9 entered the plea. So, all we're asking for is a
10 ruling.

11 THE COURT: The difference there though on
12 Bishop was that there was a request to find him
13 competent or incompetent before the plea, okay, and
14 even though he didn't participate he at least had
15 requested -- someone had requested Rule 11 relief
16 before the plea.

17 Here, differently, there was no request for
18 Rule 11 relief until after he was convicted. So,
19 there was nothing before me during the trial or
20 before the trial to send for Rule 11, and I'm pretty
21 clear that a record was made about what I saw or
22 didn't see, and I'm not going to go back. That
23 record is the record. It is what it is.

24 There were questions asked by the Court,
25 observations made by the Court. I don't remember,

1 obviously, sitting here today when or what they were,
2 but I do remember asking you and maybe even asking
3 Mr. Hill and making observations. It's in the
4 record. It will stay on the record. It is what it
5 is.

6 But I don't find Bishop to hold the
7 proposition for what you say. Otherwise people could
8 just wait until they see how they do after a verdict
9 and decide whether or not they want to now seek
10 Rule 11 protections backward. It seems like you
11 should have to ask for Rule 11 at the time of the
12 concern, especially when questions were being asked
13 during the proceeding about Mr. Hill, whether it was
14 any condition he had.

15 I recall he may have had COVID or been
16 subject to COVID during that trial. I don't remember
17 other issues we discussed, and to the extent I'm
18 incorrectly stating it now I don't mean to do that
19 because the record is what it is. I said what I
20 said. I asked what I asked and what was answered and
21 what was said is there, so that will just have to
22 stand.

23 But I don't find a basis to, one,
24 retroactively do a Rule 11 determination legally.
25 Two, I don't find Bishop to hold that. Three, I

1 think the Rule 11 proceeding has already occurred by
2 my colleague, and I'm not going to go back in and be
3 some sort of appellate review of that decision and
4 revisit it.

5 So, I'm going to respectfully decline your
6 request to determine him competent at the time of
7 trial for those reasons and any other reasons put on
8 the record by the State.

9 MS. WILHITE: Well, Your Honor, I just want
10 to be clear. Under Rule 11.1, I believe, you can
11 raise the issue of competency at any time.

12 Two, we're not asking you to determine that
13 he's incompetent. We're -- if you were to determine
14 that he was -- we just need a ruling. I'm not asking
15 for you to overrule what Commissioner Marderosian
16 did. I'm simply asking you to finish that ruling and
17 you can rely on that, but he declined -- it's the
18 issue of the fact that there is no ruling on that
19 issue.

20 THE COURT: Rule 11.2(a) talks about --
21 2(a)(1), at any time after an information is filed or
22 an indictment is returned in Superior Court or a
23 misdemeanor complaint is filed, the court may on
24 motion or on its own motion order defendant's
25 examination to determine whether the defendant is

1 competent to stand trial. He's already stood trial.

2 MS. WILHITE: Well, Your Honor, I
3 respectfully offer that the Court of Appeals or
4 Supreme Court remanded a case for a retroactive
5 determination, but I understand your ruling, Your
6 Honor.

7 So, I just want to make it clear, your
8 ruling is not to rule on this issue, because it
9 hasn't been ruled on.

10 THE COURT: My ruling is what I just ruled
11 moments ago.

12 MS. WILHITE: I just want to make sure it's
13 clear for what I do going forward, so could you
14 please --

15 THE COURT: I'm not going to restate my
16 ruling. It's in the record for the reasons I stated.
17 I'm not going to now restate it another way.

18 MS. WILHITE: I just didn't understand.
19 I'm not asking the Court to rule that he was
20 incompetent at the time of trial. I'm asking the
21 Court to say whether -- if you're denying that or if
22 you --

23 Are you saying, well, I'm going to say that
24 he -- I'm not going to say whether or not he was
25 competent or I'm just going to let it be what it is,

1 whatever he put in his ruling, because he didn't rule
2 on whether or not he was competent at the time of
3 trial.

4 THE COURT: I'm not going to repeat my
5 ruling. It's what I said on the record.

6 MS. WILHITE: Okay. That's fine.

7 THE COURT: I'm sorry if it's not clear. I
8 tried to make it clear, and if the Court of Appeals
9 or Supreme Court or whatever thinks there's something
10 else that needs to be done then they can tell me at
11 the appropriate time and I'll address it at that
12 point or the court will address it at that point if
13 that's what is determined. But I just -- I don't see
14 how I can do that based on this record for the
15 reasons previously stated.

16 All right. Anything else on that before we
17 proceed?

18 MS. WILHITE: No, Your Honor.

19 MR. SAMMONS: No, Judge.

20 MS. STAAB: No. Thank you.

21 THE COURT: All right. Mr. Hill was found
22 guilty by a jury on April 21st of 2021. Based on
23 that jury verdict it's the judgment of this Court
24 that Mr. Hill is guilty of Count 1, first degree
25 felony murder, a class 1 felony, committed on

Appendix H

BRANSCOMB WILHITE LAW FIRM
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA

Plaintiff,

Case No.: CR2018-006863-001

and

FREDERICK JEROME HILL

Defendant.

MOTION TO VACATE JUDGEMENT

(Assigned to the Hon. Frank Moscovitz)

I. RELIEF SOUGHT: CR2018-006863-001

Defendant, by and through undersigned counsel, hereby submits this motion to vacate judgement.

II. GROUNDS:

The court must vacate a conviction if obtained in violation of the United States or Arizona constitutions. Rule 24.2(3), Arizona R. Crim. P.

“A defendant may not be tried, convicted, or sentenced while that defendant is incompetent.” Ariz. R. Crim. P. 11.1.

1 A notice of appeal was filed on March 19, 2024. The notice pursuant to Rule 31.9(e.) was
2 distributed on June 28, 2024, and this motion under Rule 24.2 must be filed within 15 days
3 (excluding Saturday and Sunday). Therefore, this motion is timely.

4 **A. Procedural Background**

5 Mr. Hill, the defendant- appellant, was convicted in April 2021, but was in Covid-19
6 quarantine for several months. As result, undersigned counsel was not able to complete the
7 mitigation investigation. The Maricopa County Superior Court Judge found good cause to
8 continue the sentencing to June 9, 2022.

9
10 The sentencing set for June 9, 202, was vacated by the Honorable Frank Moskowitz
11 because, during the defendant's mitigation investigation, two experts examined Mr. Hill and both
12 opined that Mr. Hill was not competent to proceed to sentencing. Undersigned counsel filed a
13 Motion to Continue Sentencing and requested a Competency Hearing, pursuant to Rule 11, of the
14 Arizona Rules of Criminal Procedure which provides that "[a] defendant may not be tried,
15 convicted, or sentenced while that defendant is incompetent." Ariz. R. Crim. P. 11.1.

16
17 A competency hearing was set for July 12, 2022, at 9:00 am. The hearing did not go
18 forward because the assigned judicial officer had a conflict and the case was transferred to
19 another division and set for August 4, 2022, at 9 a.m.

20 On August 4, 2022, one of the court -appointed doctors requested additional time to
21 complete her report and the matter was again continued to August 25, 2022.

22 On August 25, 2022, the court received reports from each court appointed doctor. One
23 doctor determined the defendant competent, and the second doctor determined the defendant
24 incompetent, but restorable. A third doctor was appointed, and the matter was reset for
25

1 September 22, 2022, at 9 a.m. The third doctor determined that Mr. Hill was competent and
2 Undersigned counsel requested an evidentiary hearing which was set for November 3, 2022. It
3 was necessary to update the expert reports so additional examinations were scheduled.

4 The November 3, 2022, hearing was continued to January 9, 2023, because the expert
5 witnesses needed additional time to update their reports and were not able to testify on the
6 scheduled date.

7 The January 9, 2023, hearing was rescheduled to March 27, 2023, because Mr. Hill
8 suffered two seizures in November which delayed the evaluations. The March 27, 2023, was
9 vacated because, in part, the third doctor did not submit a supplemental report.
10

11 A status conference was held on March 16, 2023. At that time, Dr. Hernandez, the third
12 doctor assigned by the court, did not submit a report and there were outstanding disclosure
13 issues, so the court vacated the hearing set for March 27, 2023, and set a status conference for
14 May 11, 2023.
15

16 On or about May 11, 2023, the court required the state to send undersigned counsel a list
17 of documents and records they believed they did not have and set a subsequent status conference
18 for May 25, 2023. Additionally, the case had been assigned to a new commissioner because the
19 subsequent commissioner was recently assigned to a new division.

20 On or about May 22, 2023, undersigned counsel filed a motion to extend the stay in this
21 matter and did not know when the hearing would be reset.
22

23 At the status hearing on May 25, 2023, the court set the competency hearing for August
24 21, 2023, and the status conference on the same day. The court issued an order for a status
25

1 conference for July 6, 2023, and corrected the error and set a status conference for August 21,
2 2023, and the competency hearing on August 28, 2023.

3 The stay of the appeal was extended to December 12, 2023, by this court. The hearing
4 was conducted on August 28, 2023, and was completed on October 19, 2023. The court took the
5 matter under advisement and ruled that Mr. Hill was competent, for sentencing purposes only, on
6 or about December 5, 2023. Mr. His was sentenced on March 8, 2024.

7 **B. There Is an Issue as to Whether Mr. Hill was Incompetent at the Time of Trial**
8

9 Three of the five doctors that evaluated Mr. Hill determined him to be incompetent and
10 two opined that he was incompetent at the time of trial. The Judge that presided over the Rule 11
11 hearing, declined to determine whether Mr. Hill was competent at the time of trial:

12 During the Rule 11 evidentiary hearing, through the presentation of evidence and
13 argument, defense counsel asked this court to find that the Defendant was incompetent at
14 the time of his criminal trial. This court is declining to make any findings regarding
15 Defendant's competence prior to the filing of the Rule 11 motion (on June 2, 2022).

16 Minute Entry of 12/2/2023, CR2018-006863-001, Ruling.

17 At sentencing, undersigned counsel requested that a finding be made as to whether Mr.
18 Hill was competent to stand trial. The two experts that testified at the Rule 11 hearing were
19 present on March 8, 2024, to testify that Mr. Hill was incompetent at the time of trial. The state
20 had the opportunity to cross-examine the same experts during the competency hearing.

21 Transcript of the proceeding, March 8, 2024, page 4, line 25- page 18, line 16.

22 As it stands, the issue as to whether Mr. Hill was incompetent to stand trial has been
23 raised, evidence has been presented, and testimony via experts has been received by the court,
24 but no finding has been made. Mr. Hill's conviction cannot stand if he was incompetent.
25

1 Based on the above, undersigned counsel respectfully requests that the court vacate the
2 judgment and sentence or hold a hearing to determine if Mr. Hill was incompetent at the time of
3 trial so the record will be complete. Mr. Hill is entitled to a finding on this issue under the 5th 8th
4 and 14th Amendments to the Constitution of the United States as well as Article 2, Section 4 of
5 the Arizona Constitution.
6
7

8 **RESPECTFULLY SUBMITTED** this 15th day of July 2024.
9

10 **BRANSCOMB WILHITE LAW FIRM**

11 By: /s/ Monique Branscomb Wilhite 013775
12 Monique Branscomb Wilhite
13 *Attorney for Frederick Jerome Hill*
14

15 **ELECTRONICALLY** filed with the Clerk of
16 the Maricopa County Superior Court and Copy
17 of the foregoing delivered via efile this 15th this
18 of July 2024 to:

19 The Honorable Frank Moscovitz
20 Judge of the Maricopa County Superior
21 Court

22 Chris Sammons, Deputy County Attorney
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Appendix I

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

STATE OF ARIZONA

Plaintiff,

V.

FREDERICK JEROME HILL, JR
Defendant.

CASE NO. CR2018-006863-001

**MOTION TO CONTINUE SENTENCING
AND REQUEST FOR COMPETENCY
HEARING.**

(Hon. Frank Moskowitz)

RELIEF SOUGHT: Undersigned counsel hereby requests this court continue the sentencing currently scheduled for June 9, 2022, set a status hearing, and set a competency hearing.

GROUND: A defendant may not be tried, convicted, or sentenced while that defendant is incompetent. Ariz. R. Crim. P. 11.1.

1 Mr. Hill was convicted of first -degree murder and other crimes on or about April
2 21, 2021. Shortly after the trial, undersigned counsel met with the defendant in person
3 to discuss various matters and discovered serious issues that required additional
4 mitigation investigation before Mr. Hill could be sentenced. The COVID -19
5 pandemic and several quarantine events in the jail where Mr. Hill is housed prohibited
6 and delayed the examination of Mr. Hill. Two experts have now had the opportunity to
7 examine Mr. Hill and are of the opinion that he is not competent to proceed.

8 Therefore, Undersigned counsel hereby requests the court continue sentencing set
9 for June 9, 2022, set a status conference, and set a competency hearing.

10 **RESPECTFULLY SUBMITTED this 2nd day of June 2022.**

11
12 /s/ Monique Branscomb Wilhite
Monique Branscomb Wilhite 01377

13
14 **ORIGINAL** e-filed this 2nd day of
June, 2022, and copies sent via email to:

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