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THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

JODI ARIAS

Defendant.

CR- 2008-031021-001

**MOTION FOR MISTRIAL ; INABILITY
TO PROVIDE EFFECTIVE
ASSISTANCE OF COUNSEL DUE TO
PROSECUTORIAL MISCONDUCT**

**(ORAL ARGUMENT AND
EVIDENTIARY HEARING
REQUESTED)**

(Hon. Sherry Stephens)

COMES NOW, Ms. Arias, by and through undersigned counsel to request that a mistrial be declared based on the prosecutorial misconduct that has infested these proceedings with a level of unfairness that cannot be cured by any other means. Ms. Arias bases this assertion on the fact that the circus like atmosphere inside the courtroom that to date has included counsel for the State yelling at witnesses, attacking witnesses on

a personal level and throwing evidence. Not content with confining his misconduct to inside the courtroom counsel for the State, pursuant to his own admissions, chose to release evidence that was not coming into evidence at trial to the media and to pose for pictures with his so called fans on the courthouse steps has turned what is supposed to be a trial that comports with the rights due Ms. Arias pursuant to the 5th, 6th and 14th Amendments to the United States Constitution and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution into something that more closely resembles a modern day equivalent to the Salem Witch Trials which ended in 1693. This State of affairs has placed counsel for Ms. Arias in a position that they cannot fulfill the duties they owe Ms. Arias, pursuant Arizona Rules of Criminal Procedure, Rule 6.8. Counsel's inability to fulfill these duties would thus result in Ms. Arias not having the benefit of the rights she is due pursuant to the 5th, 6th and 14th Amendments to the United States Constitution. Support for this Motion can be found in the attached Memorandum of Points and Authorities that is incorporated herein by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

Opening statements in this matter were made on January 2, 2013. Since that time the State has thrown evidence and his pen, yelled at nearly every witness who took the stand in support of Ms. Arias and has hurled personal insults at defense counsel. In response to this behavior Ms. Arias has had to make several oral motions for mistrial that have been

summarily denied by this court. More recently Ms. Arias has had to make mistrial motions because the State has not confined its misconduct to inside the courtroom. Most prominent amongst this extra-curricular misconduct is his decision to pose for photographs with his “fans” outside the courthouse steps where jurors could potentially see him so doing. In further efforts to prove his case in the court of public opinion rather than a court of law on April 4, 2013, the State unapologetically admitted that it had released a plethora of damning evidence that would not otherwise come into trial to the media. Pending before this court is a motion for mistrial based on the former, Ms. Arias’ motion for mistrial based on the latter was summarily denied.

Note should also be made of the fact that the conduct described above has ramifications that effect the ability of Ms. Arias to present her defense as the public response to this unprofessional conduct has involved berating witnesses via e-mail, telephone and in various internet forums. Said action has not only caused personal distress to these witnesses but has made it difficult for them to provide effective testimony for Ms. Arias.

II. LAW AND ARGUMENT

In 2003 the American Bar Association created the standard that defense counsel must meet in order to be effective, when the State seeks to impose death on an accused, these standards are entitled Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. (henceforth ABA Guidelines) Wiggins v. Smith 539 U.S. 510, 123 S. Ct. 2527(2003). Of further note is the fact that, Arizona has also

imposed the guidelines upon counsel as well through the dictates of Arizona Rules of Criminal Procedure, Rule 6.8(b)(1)(iii). Thus, consideration of this motion means considering whether or not, as it now stands, counsel can meet these standards. In this regard a few guidelines stand out; Guideline 2.1(C) which mandates that counsel be able to operate in an environment that allows them to provide zealous advocacy, Guideline 4.1 B(1) and B (2) which mandates that Ms. Arias receive the effective assistance of experts. As the facts above indicate, counsel for Ms. Arias cannot meet the dictates of these guidelines when defense experts are being harassed inside the courtroom by the prosecutor and outside the courtroom by those who chose to mimic his behavior in other public forums.

In considering this motion, Ms. Arias also asks the Court to consider the constitutional ramifications that arise when her attorneys cannot provide her with a full and complete defense to which she is entitled during the guilt phase, California v. Trombetta 467 U.S. 479 (1984) and cannot present any and all mitigation evidence which could mean the difference between life or death such a state of affairs is not constitutionally permissible Eddings v. Oklahoma 436 U.S. 921 (1978). Ultimately then, counsel for Ms. Arias cannot provide her with effective assistance of counsel, to which she is due pursuant to Strickland v. Washington 466 U.S. 668 (1984). Furthermore, "[A] trial is unfair if the accused is denied counsel at a critical stage of his trial." *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).

