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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.

No. CR2008-031021-001

**MOTION FOR MISTRIAL: JUROR
MISCONDUCT**

(Hon. Sherry Stephens)

Pursuant to the 5th, 6th, 8th, and 14th Amendments to the United States Constitution, and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution as personified by the case law cited herein, Ms. Arias, hereby requests that this court declare a mistrial due to the juror misconduct that was discovered in the sealed proceedings that took place on March 28, 2013. In the alternative Ms. Arias is requesting that Juror 5 be removed from the jury. In this motion, Ms. Arias takes the position that the statements Juror 5 made in front of her fellow jurors amounts to misconduct that inserted partiality in what is supposed to be an impartial body. In this regard, it is even more obvious that Juror 5 is neither fair or

impartial at this point in time making her removal from the jury essential to ensure the rights due Ms. Arias pursuant to the authorities mentioned above. Ms. Arias will expand on this assertion in the attached Memorandum of Points and Authorities that is incorporated herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS AND PROCEDURAL HISTORY

Jodi Arias has been indicted for First Degree Murder or in the alternative, Felony Murder. On October 31, 2008 the State filed their Notice of Intent to Seek the Death Penalty. The noticed aggravator was A.R.S. §13-703(F)(6): that Ms. Arias committed the offense in an especially heinous or depraved manner. On November 06, 2008 the State amended their notice to include the cruelty prong.

On August 7, 2009 there was an evidentiary hearing regarding Ms. Arias' Request for Determination of Probable Cause on the Alleged Aggravating Factor. At the hearing, the State asserted that in addition to cruelty, it was relying on gratuitous violence, needless mutilation, helplessness, and senselessness to support the heinous and depraved prong. After said hearing this court found that the State did not establish probable cause that the murder was senseless because it was unnecessary to achieve the criminal goal; the State did not establish probable cause that the victim was helpless; there was no showing the defendant continued to injure the victim after fatally wounding him; the evidence did not support a finding that the defendant had a separate purpose to mutilate the victim's corpse. This court also found the State failed to prove that there was

probable cause to believe the offense was committed in an especially heinous or depraved manner.

Thus, the State's lone aggravating factor is the cruelty prong found in A.R.S. §13-703(F)(6).

On March 28, 2013, a sealed in chambers meeting was held with the jurors to discuss what they may or may not have seen in relation to the State's decision to pose for pictures and sign autographs outside the courthouse. During that hearing information came out that Juror 5 had engaged in misconduct that affected more than one juror. As the details are sealed, Ms. Arias would simply refer the court back to the transcripts of these proceedings as being the factual basis for these assertions.

II. LAW AND ARGUMENT

The 6th Amendment to the United States Constitution as well as Article 2 §24 of the Arizona Constitution, mandate that Ms. Arias be tried in the guilt phase of these proceedings by a fair and impartial jury. *United States v. Angulo* 4 F.3d 843 (1993). Furthermore, "even a single partial juror violates the defendant's right to a fair trial." *Id* at 848.

Given that the State seeks to impose the death penalty upon Ms. Arias, she is entitled to have a jury decide, should it reach that point, whether or not she is to receive a sentence of death or life in prison. *Ring v. Arizona*, 536 U. S. 584, 588-589 122 S.Ct. 2428 (2002). As a corollary to this mandate is that the jury that decides between these two sentencing

options must be fair and impartial should it come to this phase of the trial. *Wainwright v. Witt*, 469 U.S. 412 (1985), *Witherspoon v. Illinois*, 391 U.S. 510 (1968)

Given the evidence that came forward on March 28, 2013, it is beyond legitimate dispute that Juror 5 is not fair and impartial making her unfit to continue as a juror. The question for which legitimate dispute can be raised centers around whether her misconduct warrants a mistrial because of the effect that this misconduct necessitates that this court declare a mistrial. In this regard, Ms. Arias will stand on the sealed record as a factual basis for this motion and direct this court's attention to the legal reality that jury must refrain from premature deliberations *Unites States v. Gianakos*, 415 F.3d 912, 8th Cir (2005).

It is with these realities in mind that, the question then becomes whether or not this misconduct is sufficient to necessitate that Ms. Arias receives a new trial. Certainly Ms. Arias understands that in seeking a new trial she must show actual prejudice or that prejudice would be presumed by the facts. *State v. Dann* 220 Ariz. 351, 207 P.3d 604 (2009).

However, given the facts that came forward on March 28, 2013, Ms. Arias asserts that she can meet this burden as prejudice can be presumed when it is known that there has been "any private communication, contact or tampering directly or indirectly, with a juror during a trial about a matter pending before the jury" *Reemer v. Untied States*, 347 U.S. 227, 229 (1954).

III. CONCLUSION

Pursuant to the authorities mentioned above as well as the 5th, 6th, 8th, and 14th Amendments to the United States Constitution, and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution and the authorities cited herein, Ms. Arias, hereby asserts that the facts which came to light on March 28, 2013, warrant that a mistrial be declared or in the alternative that Juror 5 be removed from the jury.

RESPECTFULLY SUBMITTED THIS 31st day of March, 2013.

By /s/ _____
L. KIRK NURMI
Attorney for Ms. Arias

Copy of the foregoing
E-FILED this 31st day of
March, 2013, to:

HONORABLE SHERRY STEPHENS
Judge of the Superior Court

JUAN MARTINEZ
Deputy County Attorney

By /s/ L. Kirk Nurmi _____
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