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Attorneys for Defendant **ARIAS**

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

THE STATE OF ARIZONA	)	No. CR 2008-031021-001DT
	)	
Plaintiff,	)	<b>MOTION FOR MISTRIAL;</b>
	)	<b>SENTECING PHASE</b>
vs.	)	
JODI ANN ARIAS,	)	
	)	
Defendant.	)	(Hon. Sherry Stephens)
	)	

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Pursuant to the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States Constitution, and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution, Ms. Arias requests that the court declare a mistrial of the “sentencing phase” proceeding now being held against Ms. Arias due to the fact that key mitigation witness, Patricia Womack, has been threatened to the point that she is no longer willing to provide testimony on Ms. Arias’ behalf. In the alternative, Ms. Arias requests that this court advise the jury that the reason why Ms. Womack is not testifying for Ms. Arias due to these threats. 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**

On May 8, 2013, Ms. Arias was convicted of first degree murder. On May 15, 2013, the same jury who convicted her found that the State had proven that the murder at issue was done in an especially cruel manner, making her eligible for the imposition of a death sentence. On May 16, 2013, Ms. Arias made her Opening Statement in which the jury was advised of the several mitigating factors that she sought to prove and how witness Patricia Womack would, with her testimony, support the existence of some of these factors (listed on the jury instructions as factors #3,4 and 5). Also on May 16, 2013, victim impact evidence was presented after which Ms. Womack was scheduled to testify. For reasons unrelated to this motion, Ms. Womack did not testify on May 16, 2013, and was instead scheduled to testify on May 20, 2013. However, after returning home Ms. Womack began receiving threats, threats that included threats on her life if she were to testify on Ms. Arias' behalf. On May 19, 2013, Ms. Womack contacted counsel for Ms. Arias that she is no longer willing to testify due to these threats. It should also be noted that these threats follow those made to Alyce LaViolette, a record of which was made ex-parte and under seal.

### **II. LAW AND ARGUMENT**

When limitations are placed upon the type of mitigating information a defendant can present a death sentence cannot stand. *Lockett v. Ohio* 438 U.S. 586 (1978). Furthermore, this court must be mindful of the fact that a sentence of death is

qualitatively different than a term of years. *Woodson v. North Carolina* 428 U.S. 280 (1976). This difference is of import because it requires the sentencing body to give individualized consideration to Ms. Arias. *Id.* Given that Ms. Womack's testimony related to three important mitigating factors, one of which demonstrates a clear nexus to the crime, cannot be heard it seems difficult to conceptualize any sentence of death could comport with the rights due Ms. Arias pursuant to the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States Constitution, and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution.

Any sentence of death would also stand in contrast to well established Supreme Court precedent which dictates that the 8<sup>th</sup> Amendment dictates that the death penalty be reserved for the worst of the worst *Kansas v. Marsh* 548 U.S. 163 (2006). Certainly, the State is asserting that Ms. Arias is the worst of the worst and the crux of this motion is that Ms. Arias cannot show this to be untrue because her ability to present mitigating evidence is being limited by the sort of harassment that Ms. Arias sought to avoid when she sought to keep cameras out of the courtroom and to prevent the prosecutor from engaging in personal attacks upon witnesses in front of those cameras. The fact that Ms. Arias' pleas for a constitutional trial went ignored by this court has now placed her in a position where her ability to present mitigating evidence is being restricted in violation of the dictates of *Roper v. Simmons* 543 U.S. 551 (2005).

In deciding this motion, Ms. Arias asks this court to be cognizant to the fact that the current state of affairs interferes with Ms. Arias' undisputed right to present mitigating evidence. *See Penry v. Lynuagh*, 492 U.S. 302(1989); *California v. Brown* 479 U.S.

538 (1987); *Eddings v. Oklahoma* 455 U.S. 104 (1982).

Finally, Ms. Arias asks this court to be mindful of the fact that in contrast to the constitutional rights due Ms. Arias, the death penalty is not a constitutional imperative to which the State has a right, or is such a sentence a statutory requirement; far from it. It's merely a sentencing option that is itself alleged optionally. It can be easily discarded to uphold the United States and Arizona Constitutions' actual guarantees of a speedy trial, the effective assistance of counsel, due process, Rule 8 strictures, and even victim's rights under Arizona Const. Art. 2.2—which notably does not include the right to a death sentence. The laws of the State of Arizona are always satisfied by a life sentence for the crime of First Degree Murder. Thus, its elimination as a sentencing option should not be seen as a severe infringement upon the State's interest. Instead the dismissal of this Notice should be seen as a plausible solution to preclude Ms. Arias from facing a violation of her constitutional rights; whichever violation she determines is the lesser of two evils.

As an alternative to declaring a mistrial Ms. Arias requests that the jury be advised that;

MS. ARIAS HAD INTENDED TO PRESENT THE TESTIMONY OF MS. WOMACK TO YOU. MS. WOMACK WOULD HAVE TESTIFIED REGARDING THE ABUSIVE ENVIRONMENT MS. ARIAS GREW UP IN AS WELL AS THE ABUSE SHE SUFFERED AS AN ADULT. HOWEVER, MS. ARIAS WILL NO LONGER BE ABLE TO PRESENT THE TESTIMONY OF MS. WOMACK BECAUSE HER LIFE HAS BEEN THREATENED MERELY BEAUSE SHE SEEKS TO TESTIFY ON MS. ARIAS' BEHALF

### III. CONCLUSION

In prior motions, Ms. Arias asked this court to prevent this trial from devolving into a modern day version of the Salem Witch Trials. The court failed to take action in that regard and time has proven Ms. Arias to be correct in that the proceedings against Ms. Arias bore little resemblance to a trial that comports with the rights due Ms. Arias pursuant to the 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States Constitution, and Art. 2, §§ 4, 15, 23, and 24 of the Arizona Constitution. Based on these same authorities and those cited herein Ms. Arias once again comes before this court hoping that this court will realize that these “sentencing phase” proceeding are not supposed to be a “public stoning” reminiscent of days gone by, but instead, a capital sentencing proceeding that must comport with the constitutional dictates cited above because if the court realizes this legal imperative declaring a mistrial as to this “sentencing phase” must be granted.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of May, 2013.

By /s/: L. Kirk Nurmi  
L. KIRK NURMI  
Attorney for Defendant

Copy of the E-FILED  
delivered this 19<sup>th</sup> day of  
May, 2013, to:

Hon. Sherry Stephens  
Judge of the Superior Court

Juan Martinez  
Deputy County Attorney

By /s/:L. Kirk Nurmi  
L. Kirk Nurmi  
Attorney for Defendant