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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
Plaintiff,

vs.

JODI ANN ARIAS,
Defendant.

No. CR 2008-031021-001DT

**MOTION FOR MISTRIAL;
PROSECUTORIAL MISCONDUCT
THAT OCCURRED DURING THE
CROSS EXAMINATION OF DR.
ROBERT GEFFNER
(SUPPLEMENTAL RELATED TO
MISCONDUCT THAT OCCURRED
ON JANUARY 26, 2015)**

(Hon. Sherry Stephens)

Ms. Arias, through undersigned counsel, pursuant to the rights due her via the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as Art. II, § 4 and Art. III of the Arizona, hereby supplements the request that she made in her original “Motion for Mistrial; Prosecutorial Misconduct that Occurred during the Cross Examination of Dr. Robert Geffner.” Ms. Arias is forced to supplement her

original motion due to the fact that when cross examination of Dr. Geffner resumed on January 26, 2015, so did the State's misconduct. In this supplement Ms. Arias documents the particulars of said misconduct to further illustrate the viability of the position she took in her original motion, that the State's:

“choice to improperly attack Dr. Geffner not only amounts to blatant prosecutorial misconduct but an intentional interference with Ms. Arias' ability to present mitigating evidence in violation the well-established dictates found in *Skipper v. South Carolina* 476 U.S. 1 (1986) *Smith v. Texas*, 543 U.S. 37, 43-45 (2004); *Tennard v. Dretke*, 542 U.S. 274, 285-86 (2004)’

In this supplement Ms. Arias also reasserts her position that the State's choice to violate this well established law necessitates that a mistrial be declared.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

On January 26, 2015, the cross examination of Dr. Geffner continued with no sanctions having been imposed by this court for the State's violation of its order not to disclose the true name of “Witness 1.”

Relevant to the motion at hand are the following portions of the State's cross of Dr. Geffner;

- The State accused Dr. Geffner of changing the test results after he reviewed them. Of note is the fact that the State did this on not one but two occasions [T.R. 1/26/15, page 27, line 25 to page 28, line 2], [T.R. 1/26/15, page 28, line 20]
- The State accused Dr. Geffner of choosing the answers for Ms. Arias [T.R. 1/26/15, page 33, line 3]
- The State accused Dr. Geffner of altering the testing results to cover for Ms. Arias' untruthful answers [T.R. 1/26/15, page 34, line 19]

- The State also chose to yell at Dr. Geffner [T.R. 1/26/15, page 75, line 13]
- The State then choose to continue to yell at Dr. Geffner and flail his arms in front of the jury [T.R. 1/26/15, page 82, line 12]
- The State purposefully mislead the jury by arguing that Ms. Arias' test results showed that she was only a little upset about the killing when the State knew very well that that was not the verbiage of the test but a word substituted for the actual wording do to copyright concerns [T.R. 1/26/15, page 81, line 19]

II. LAW AND ARGUMENT

As Ms. Arias asserted in her original motion;

[w]ell established case law which dictates that it is not proper for counsel to imply that an expert witness is conducting themselves unethically without having evidence to support the allegation. *State v. Hughes* 193 Ariz. 72, 969 P.2d 1184 (1998) citing *State v. Bailey* 132 Ariz. 472, 647 P.2d (1982). Furthermore, “a prosecutor may not insinuate that an expert is unethical or incompetent without properly admitted evidence to support it. Unfair attacks on the veracity of a witness are of particular concern when the target is a key witness *Bailey at* 480 (citations omitted).

As was pointed out in her original motion Dr. Geffner, due to the fact that Ms. Arias' mental impairments prevent her from testifying in open court, is one of only three witnesses that Ms. Arias called during her case. Furthermore, given Ms. Arias' inability to testify, Dr. Geffner can fully expound upon the domestic violence Ms. Arias suffered during her relationship with Mr. Alexander it is hard to imagine how he could not be considered as a key witness.

Additionally, the State, as was the case during the misconduct that occurred on January 21st and 22nd of 2015, offered no evidence to support the assertions it made on January 26, 2015, that Dr. Geffner was changing the tests to support Ms. Arias' claims.

Furthermore, these false assertions leave Ms. Arias in a position wherein, due to her mental illnesses, she is unable to respond to these claims about her credibility. Given that a County Attorney's comments receive extra scrutiny in a capital case and the misconduct that occurred on January 26, 2015, must be considered in conjunction with the misconduct that occurred on January 21st and January 22nd of 2015, the need for a mistrial seems even more undeniable than when her original motion was filed. *Burrows v. State* 38 Ariz. 99, 297 P.2d 1029 (1931).

In considering this motion Ms. Arias would also remind the court that the State, Pursuant to A.R.S. 13-751, is not entitled to a sentence of death, nor is the State entitled to act in a "win at all costs" manner to obtain such a sentence. *In Re Peasley* 208 Ariz. 27, 90 P.3d 964 (2004) citing *Pool v. Superior Court* 139 Ariz. 98, 103, 677 P.2d 261, 266 (1984).

III. CONCLUSION

In her original Motion Ms. Arias pointed out that the State's improper conduct would not stop unless said misconduct was met with meaningful sanctions. Sadly, time has proven her correct because the misconduct that occurred on January 21st and January 22nd of 2015, continued unabated on January 26, 2015. As described above, the tactics that the State employed on January 26, 2015, only served to further violate the rights due Ms. Arias pursuant to the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as Art. II, §4 and Art. III of the Arizona Constitution. Thus, for the reasons mentioned above and in her original motion Ms. Arias asks that the oral request she made for a mistrial on January 21, 2015, be granted.

RESPECTFULLY SUBMITTED this 7th day of February, 2015.

By: */s/ L. Kirk Nurmi*
L. KIRK NURMI
Counsel for Ms. Arias

Copy of the foregoing
E-Filed/delivered this 7th
day of February, 2015, to:

THE HONORABLE SHERRY STEPHENS
Judge of the Superior Court

JUAN MARTINEZ
Deputy County Attorney

By */s/ L. Kirk Nurmi*
L. Kirk Nurmi
Counsel for Ms. Arias

Court Chatter