

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

Juan M. Martinez
Deputy County Attorney
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Attorney for Plaintiff

MICHAEL K. JEANES, CLERK
BY *E. Aguilar* DEP.
FILED

08 JUL -9 PM 4: 36

DR 20081610844 - Mesa Police Department
CA2008028412

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

JODI ANN ARIAS,

Defendant.

CR 2008 -0 31 02 1 -001 SE

449 GJ 443

INDICTMENT

**COUNT 1: FIRST DEGREE MURDER,
A CLASS 1 DANGEROUS FELONY
(PREMEDITATED MURDER)
(JODI ANN ARIAS)
OR IN THE ALTERNATIVE
FIRST DEGREE MURDER,
A CLASS 1 DANGEROUS FELONY
(FELONY MURDER)
(JODI ANN ARIAS)**

The Grand Jurors of Maricopa County, Arizona, accuse JODI ANN ARIAS, on this 9th day of July, 2008, charging that in Maricopa County, Arizona:

COUNT 1:

JODI ANN ARIAS, on or about the 4th day of June, 2008, intending or knowing that her conduct would cause death, with premeditation caused the death of TRAVIS V. ALEXANDER, in violation of A.R.S. §§ 13-1101, 13-1105, 13-702, 13-703, 13-703.01 and 13-801.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a .25 caliber handgun and/or knife, a deadly weapon or dangerous instrument and/or the intentional or knowing infliction of serious physical injury upon TRAVIS V. ALEXANDER, in violation of A.R.S. § 13-604(P).

OR IN THE ALTERNATIVE

JODI ANN ARIAS, on or about the 4th day of June, 2008, acting either alone or with one or more other persons, committed or attempted to commit Burglary, Second Degree, and in the course of and in furtherance of such offense, or immediate flight from such offense, JODI ANN ARIAS or another person caused the death of TRAVIS V. ALEXANDER, in violation of A.R.S. §§ 13-1105, 13-1101, 13-702, 13-703, 13-703.01 and 13-801.

The State of Arizona further alleges that the offense charged in this count is a dangerous felony because the offense involved the discharge, use, or threatening exhibition of a .25 caliber handgun and/or knife, a deadly weapon or dangerous instrument and/or the intentional or knowing infliction of serious physical injury upon TRAVIS V. ALEXANDER, in violation of A.R.S. § 13-604(P).

A True Bill
("A True Bill")

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

Date: July 09, 2008

/s/ *Juan M. Martinez*
/s/ JUAN M. MARTINEZ
DEPUTY COUNTY ATTORNEY

Shirley Jean Alfano
SHIRLEY ALFANO
FOREPERSON OF THE GRAND JURY

JMM:ar/OK

COURT INFORMATION SHEET (CIS)

County Attorney Case Number: CA2008028412

STATE v. JODI ANN ARIAS

Defendant's Last Known Address: [REDACTED] jon Street
Yreka, CA 96097

Defendant's Employer: UNKNOWN

Defendant's Attorney: Public Defender

DEFENDANT'S DESCRIPTION:

Race: W Sex: F Hair: BRO Eyes: BRO Hgt: 504
Wgt: 115 DOB: 7/9/1980 Soc Sec #: [REDACTED]

Old LEJIS #: UNKNOWN FBI #: UNKNOWN SID #: UNKNOWN
JMS Booking #: UNKNOWN JMS LEJIS #: UNKNOWN

FILING STATUS:

Grand Jury Indictment

Court #: [REDACTED] Filing Court: Superior
Date Complaint Filed: [REDACTED]

Grand Jury #: **449 GJ 443** Service Type: **WARRANT**
Date Indictment Filed: 7/9/2008

Superior Court #: _____ (Court Use Only)

CR 2008 - 0 31 02 1 - 0 0 1 SE

Adult/Statutory Juv/Juv Transfer
(Circle Appropriate Choice)

ATTORNEY: JUAN M. MARTINEZ Bar ID: 009510 Location: DOWNTOWN

PRELIMINARY HEARING/GRAND JURY CHARGES:

COUNT 1: FIRST DEGREE MURDER, A CLASS 1 DANGEROUS FELONY (PREMEDITATED MURDER)
(JODI ANN ARIAS)

OR IN THE ALTERNATIVE: FIRST DEGREE MURDER (FELONY MURDER), A CLASS 1 DANGEROUS FELONY
(JODI ANNARIAS)

Count	ARS	ARS Literal	Date of Crime
1	13-1105	Grand Jury Hearing	6/4/2008
OR IN THE ALTERNATIVE	13-1105	Grand Jury Hearing	6/4/2008

DEPARTMENTAL REPORTS:

DR 20081610844 - Mesa Police Department

EXTRADITE: OK

ANDREW P. THOMAS
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MCAO Firm #: 00032000
Attorney for Plaintiff

FILED
7/23/08 8:26 AM
MICHAEL K. JEANES, Clerk
By A. Bigby
Deputy

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

THE STATE OF ARIZONA,

Plaintiff,

vs.

JODI ANN ARIAS,

Defendant.

CR 2008 - 0 31 02 1 - 0 0 1 SE

449 GJ 443

WARRANT FOR ARREST

TO ALL PEACE OFFICERS OF THE STATE OF ARIZONA:

An Indictment has been filed in this Court against the above-named defendant charging that in Maricopa County, Arizona, on or about the 4th day of June, 2008, the crimes of **COUNT 1: FIRST DEGREE MURDER, A CLASS 1 DANGEROUS FELONY (PREMEDITATED MURDER) (JODI ANN ARIAS), OR IN THE ALTERNATIVE FIRST DEGREE MURDER, A CLASS 1 DANGEROUS FELONY (FELONY MURDER) (JODI ANN ARIAS)**, have been committed.

The Court has found probable cause, upon oath or affirmation, to believe that such offenses were committed and that the defendant committed them, and reason to believe that the defendant will not appear in response to a summons, or that a warrant is otherwise appropriate. [] The court further finds that the proof is evident or presumption is great that the offense(s) was committed.

YOU ARE THEREFORE COMMANDED to arrest the defendant and bring said defendant before this Court to answer the charges. If this Court is unavailable, or if the arrest is made in another county, you shall take the defendant before the nearest or most accessible magistrate. You may release defendant if said defendant posts a secured appearance bond in the amount of TWO MILLION DOLLARS (\$2,000,000.00). [] Defendant is to be held not bailable.

Given under my hand and seal on this 9th day of July, 2008, at the direction of the Court.

By [Signature]
Judge of the Superior Court

MICHAEL K. JEANES
CLERK OF THE SUPERIOR COURT
[Signature]
Deputy Clerk

DEFENDANT'S DESCRIPTION:

DOB: 7/9/1980 Race: W Sex: F Hgt: 504
Wgt: 115 Hair: BRO Eyes: BRO
Defendant's Address: [REDACTED]
Yreka, CA 96097

DR No.: DR 20081610844 - Mesa Police Department

MCSO No.: _____ PPD No.: _____

CERTIFICATE OF EXECUTION

I certify that I arrested _____ at _____ a.m/p.m.
on _____, and presented him/her before Judge _____ at

Agency

Deputy Sheriff, Officer

ORDER OF COMMITMENT

_____, having been brought before me at _____
a.m./p.m. on _____, is committed to the custody of the Sheriff of Maricopa County,
Arizona, to be detained until he/she complies with the conditions of release order of this date, or any amendment or
modification thereof.

Magistrate

Title

JMM:ar/OK

**ORIGINAL WARRANT RETURNED FOR
EXEMPLIFIED COPY PURSUANT TO
EXTRADITION PROCEEDINGS.
 IN CUSTODY NOT IN CUSTODY
ASSS [Signature]
FUGITIVE DETAIL/MARICOPA COUNTY SHERIFF**

IN THE EAST MESA JUSTICE COURT
STATE OF ARIZONA, COUNTY OF MARICOPA

RELEASE QUESTIONNAIRE

Information to be supplied by a prosecutor or law enforcement officer

STATE OF ARIZONA vs Jodi Ann Atlas DOB 7-9-80 CASE / BK NO 20081610644

A. GENERAL INFORMATION

- Charge and Class:
ARS 13-1105 A.1 First Degree Murder - a CLF
- Offense Location: 11428 F. Queenborough Ave.
City: AZ 85312
Date: 01-08 Time: 2:30 hours
- Arrest Location:
Date: _____ Time: _____

B. CIRCUMSTANCES OF THE OFFENSE

- Was a firearm or other weapon used?
 YES NO
Type of weapon: 25 caliber handgun
- Was anyone injured by the defendant?
 YES NO
Was medical attention necessary?
 YES NO
Nature of injuries: _____
- Was anyone threatened by the defendant?
 YES NO
Nature and extent of threats: _____
- Is property stolen, value of property taken or damaged?
N/A
Was the property recovered?
 YES NO

C. CIRCUMSTANCES OF THE ARREST

- Did the defendant attempt to avoid arrest?
 YES NO
Resistant?
 YES NO
Explain: _____
- Was the defendant armed when arrested?
 YES NO
Type of weapon: _____
- Was evidence of the offense found in the defendant's possession?
 YES NO
Explain: _____
- Was the defendant under the influence of a controlled substance at the time of the offense?
 YES NO UNKNOWN

D. CRIMES OF VIOLENCE

- Relationship of defendant to victim:
Former girlfriend
Do the victim and defendant reside together?
 YES NO
- How was the situation brought to the attention of police?
 Victim
 Third party
 Officer observed
- Have there been any previous incidents involving these same parties?
 YES NO
Explain: _____
- Is defendant currently the subject of:
 An order of protection
 Injunction against harassment
 Any other court order
Explain: N/A

E. OTHER INFORMATION

- Is the defendant presently on probation, parole or any other form of release involving other charges or convictions?
 YES NO
Explain: _____
- List any prior arrests, convictions, and/or F.T.A.'s
None
- Is there any indication the defendant is:
 An alcoholic? An addict?
 Mentally disturbed? Physically ill?
 Any other court order?
- Is the defendant currently employed?
 YES NO
With whom: Working at 99 cent store at unknown hrs
How long: 1 wk
Nature of employment: Barista
- Where does the defendant currently reside?
11428 F. Queenborough Ave. CA 90007
With whom: Parents
How long: Unknown
- What facts indicate the defendant will not be released?
Explain: None
- What facts does the State have to oppose an innocent release? Explain: type of crime

Probable cause statement.

Mesa Police DR# 20081610844

On 6-9-08 at 2227 hours, the Mesa Police Department was called to a death investigation at 11428 E. Queensborough Ave. in Mesa AZ. The reporting party stated they had found the owner of the home deceased in the master bathroom of the home and it was unknown how long he had been there.

Officers responded and found the victim, later identified as Travis Alexander, deceased lying naked in the shower. It was unknown how long Travis had been deceased, but his body was well into the decomposition process. Officers also found large amounts of blood throughout the master bathroom floors, walls and sink area. The initial injury detected by officers, was a large laceration to Travis' throat, which appeared to be from ear to ear.

The friends of the victim told officers, that Travis was scheduled to go on a trip to Cancun Mexico on Tuesday the 10th of June. Marie Hall said she was going to Mexico with Travis, but she had not been able to get a hold of him over the phone since the week of June 1st. While in the house, they contacted Travis' roommate, Zachary Billings and asked if he had seen Travis. Zachary told them he thought Travis had gone to Mexico and hadn't seen him in several days.

They checked Travis' bedroom door and found it locked. They were able to find a key to the bedroom door and opened it only to discover what appeared to be blood on the carpet leading into the master bathroom. They also discovered large amounts of dried blood throughout the bathroom floor and walls. After a closer look in the bathroom, they found a body of a deceased male sitting in the shower with the door open.

Detectives from the Mesa Police Homicide Unit responded to investigate and confirmed that Travis was the victim of a homicide. Travis had two roommates, identified as Zachary J. Billings and Enrique Cortez. They both rent rooms from Travis, but rarely see him on a daily basis. Both Zachary and Enrique stated they last saw Travis in the home approximately four to five days earlier and he was acting normally.

After interviewing all parties involved at this point, I obtained an investigative lead identified as Jodi Arias. According to friends and family of the victim, Jodi Arias was Travis' former girlfriend, who he had broken up with sometime last year. Jodi had moved to Arizona from California, because of Travis and lived in Travis' home for a few months while they were dating. Once they broke off their relationship, Jodi would continue to hang around the house and even enter Travis' home without his permission. Jodi was described as being completely obsessed with Travis, by his family and his closest friends.

On June 10th, 2008 a search warrant was obtained for Travis' home. The search warrant was executed at 0953 hours. Investigators from the Maricopa County Medical Examiner's Office arrived to assist with the investigation. Travis' body was removed from the shower after being photographed. His body appeared as though it had been rinsed off in the shower sometime after he was killed. He had numerous injuries and trauma to his body, which indicated he had attempted to fight back his attacker or attackers. The initial examination at the scene showed he had injuries consistent with multiple stab wounds to his torso, upper back and head. The most prominent wound was to his throat, which had been cut open almost from ear to ear. All of his injuries could not be documented at the scene, because of the amount of trauma, dried blood and decomposition to his body.

During the search of the master bathroom, a spend .25 caliber casing was located on the tile floor near the sink. The casing was found in a pool of dried blood near the sink across from the shower. No gun was ever located in the home during the search.

During the search, I noted that Travis' bedding was missing from his bed. A search of the entire bedroom and closets was done, but no bedding was located.

Several items of evidence were collected from the home. Some of these items of evidence included blood swabs for DNA typing, fingerprints and hair samples found in the dried blood on the bathroom floor and baseboards. During the search for fingerprints, a small latent print was found at the entrance of the bathroom hall at waist level. The print was in blood and was near several blood swipe marks in that same general area. The section of the wall containing the latent blood print was cut out and seized so it could be analyzed in the controlled environment of the police identification and crime laboratories.

A digital camera was also found in the washing machine in the downstairs laundry room. The camera appeared as though it had been run through a wash cycle with several articles of clothing in the machine. The camera had severe water damage, but the digital card was intact. We also discovered that all of Travis' bedding had been washed and was found in the dryer. The camera was later identified as belonging to Travis

Travis' cellular phone was located in the downstairs office of the home. The last outgoing or incoming call was made at 1213 hours on 6-4-08. There were other incoming calls and text messages into the phone after that, but none were ever answered. After interviewing Travis' closest friend and associate, Chris Hughes, it was determined that Travis missed a very important telephone conference call on 6-4-08 at 1900 hours.

A Laptop computer identified as belonging to Travis was found in the same office. The Mesa Police Computer Forensic Unit determined the first activity on that laptop was on 6-4-08 at 1619 hours. This consisted of email activity.

At the Medical Examiners autopsy, it was found that Travis had multiple lacerations and punctures and one gunshot wound. Travis sustained approximately 27 punctures and

lacerations and one gunshot wound to the right brow. The .25 caliber projectile was located in his left cheek.

On 6-10-08 at 1435 hours, I contacted Jodi Arias via phone for an interview. Jodi stated she last saw Travis in April of 2008. She admitted they had been seeing each other as boyfriend and girlfriend for over five months, but had officially broken up in June of 2007 after some jealousy issues on the part of both of them. After the break up, they continued to have a sexual relationship, but kept it quiet from the people they knew. She said she last spoke to Travis on Tuesday 6-3-08. She states she called him on the phone between 2000 and 2100 hours, as she was driving to Utah from her home in northern California. She mentioned she was on her way to a conference in Salt Lake City.

On 6-17-08 Jodi Arias came to the Mesa Police headquarters Building at 130 N. Robson to be voluntarily fingerprinted. She also gave a voluntary sample of saliva for DNA typing.

On 6-19-08 I received the images located on the memory card found in Travis' digital camera. The digital card had several pictures on it, including some, which had been deleted. The deleted pictures were of Travis naked in the shower, just before his death. The first one was time stamped on 6-4-08 at 1722 hours. There were several pictures of Travis as he was clearly posing for the camera. The last picture taken of Travis alive was at 1730 hours. Some of the following pictures were of a subject on the floor of the bathroom bleeding profusely

There were other unallocated photos on the digital card that would have to be retrieved. Once retrieved, were time stamped starting on 6-4-08 at 1340 hours. The first retrieved photo was of Jodi Arias lying nude on Travis' bed posing for a picture. There were eight pictures total, six of Jodi Arias and two of the victim Travis Alexander. All were nude pictures and some in provocative sexual poses.

The date and time of these photos is consistent with the date and time of Travis' death. This also indicates, Jodi was lying about not seeing Travis since April of 2008. This also proves that Jodi was the last person I can prove had contact with Travis prior to his death.

On 6-25-08, I contacted Jodi Arias via phone for interview. She stated she left her home in northern CA on Tuesday 6-3-08 en route to Salt Lake City Utah for a conference. She was alone during the trip which took her over 48 hours to complete. During 20 hours of that time, she was out of contact with everyone, because her cellular phone had died. By the time she reached Salt Lake City Utah, it was late morning on Thursday, 6-5-08. She participated in the last day of the conference then drove back home to Yreka CA.

On 6-26-08, the latent print left on the bathroom wall in blood had been identified. It was individualized to Jodi Arias' left palm. This was conclusive evidence that Jodi was present at the time of Travis' death or at least at the time of his initial injury. The print was left either by Jodi touching a bloody wall with her left palm or she touched the wall with a bloody hand.

20081610844

On 7-3-08, the Mesa Police Crime Lab contacted me with some initial DNA typing results. The initial results of the DNA test surrounding the bloody palm print indicated it was in fact blood. The DNA typing indicated it was a mixture of DNA from two individuals. One was from the victim, Travis and the other was from Jodi Arias.

On the same date, using DNA typing, a hair recovered from the bloody hallway wall, was also identified belonging to Jodi Arias.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

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Mjcl-Homicide@mcao.Maricopa.Gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JODI ANN ARIAS,)	CR 2008-031021-001
)	
Defendant.)	REPLY TO DEFENDANT'S RESPONSE;
)	MOTION TO PRECLUDE LETTERS
)	PURPORTEDLY WRITTEN BY TRAVIS
)	ALEXANDER TO DEFENDANT
)	
)	(Assigned to the Honorable
)	Sally Duncan, Div. M, Crj13)

The State of Arizona, by and the undersigned Deputy County Attorney, requests that the court grant its motion to preclude the ten letters. This reply is supported by the attached Memorandum of Points and Authorities.

Submitted July _____, 2010.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY: /s/ _____
/s/ Juan M. Martinez
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On July 9, 2008, defendant Jodi Arias was indicted on one count of first degree premeditated murder, or in the alternative, felony murder, for an offense that occurred on or about June 4, 2008. The victim was Travis Alexander, with whom defendant had a relationship. On November 6, 2008, the State filed its amended notice of intent to seek the death penalty and aggravating factors.

On June 1, 2010, defendant disclosed to the State copies of ten handwritten letters purportedly written by Mr. Alexander during the period from November 27, 2006, to May 27, 2008. On June 10, 2010, the State filed a motion to preclude the letters, arguing that they were hearsay not covered by any exception and were not relevant evidence in this case.

On June 18, 2010, the State made an oral motion for disclosure of the original handwritten letters. Defense counsel indicated that Ms. Arias had received copies of the letters electronically from a third person. This court ordered additional briefing on that issue.

On June 22, defendant filed a Notice of Defenses, noticing that she intended to assert justification defenses under A.R.S. §§ 13-405 and 13-415. Defendant had previously attributed the crime to intruders. She now argues that all of the letters must be admitted to support her domestic violence defense. However, the letters remain hearsay and remain irrelevant, regardless of defendant's change in defense strategy.

II. LAW AND ARGUMENT

Defendant argues that the letters are relevant to her claim of self-defense and that she was a victim of previous "sexual and physical abuse" by Mr. Alexander. The specific letters defendant cites mention sexual acts and fantasies, the victim's feelings for defendant, and the victim's dissatisfaction with some of his own behavior. They do not contain any corroborated acts of "abuse." The fact that defendant now apparently regrets certain acts that she consensually engaged in with Mr. Alexander does not elevate those acts to abuse or domestic violence. Admitting the letters into evidence would primarily have the effect of tainting the victim's character with his alleged sexual proclivities or fantasies, which did not justify his murder. The State did not and does not concede that the letters would be relevant to a self-defense strategy.

Defendant argues that Rule 404, Ariz.R.Evid., does not bar the letters, because they show her state of mind and her awareness of prior acts of violence. She cites *State v. Fish*, 222 Ariz. 109, 121, 213 P.3d 258, 270 (App. 2009). But *Fish* did not involve the admissibility of hearsay. "At trial, Defendant argued he was acting in self-defense when he shot the Victim. Although Defendant did not testify at trial, his wife and daughter testified, as did numerous character witnesses who offered general opinions as to the Victim's and the dogs' propensity for aggression and violence." *Id.* at 113, 213 P.3d at 262. Likewise, in *State v. Connor*, 215 Ariz. 553, 161 P.3d 596 (App. 2007), the defendant himself testified. The court stated that a defendant could offer "reputation or opinion

evidence" that the victim had a violent or aggressive character trait, or could introduce specific acts of violence of which defendant was aware. *Id.* at 559, 161 P.3d at 602. That opinion does not discuss hearsay and in fact cites Rule 405, which states that evidence of a character trait is presented by *testimony*.

Defendant argues that "not all of the content" of the letters "is even hearsay," and she will not be offering it for the truth of the matter asserted. She then goes on to describe the victim's alleged "confession" to having "assaulted" her. She clearly would be using the victim's out-of-court statements to attempt to prove that he had committed a prior violent act to bolster her self-defense claim. That is the very definition of hearsay in Rule 801(c). The State is not claiming a Sixth Amendment right of confrontation, as defendant alleges, but the State has an equal right to confront and cross-examine witnesses. "The primary justification for the exclusion of hearsay is the lack of any opportunity for the adversary to cross-examine the absent declarant whose out-of-court statement is introduced into evidence." *Anderson v. U. S.*, 417 U.S. 211, 220 (1974). Here defendant is trying to admit the content of highly questionable letters purportedly written by the deceased victim.

Defendant also makes the novel argument that the letters contain statements against interest under Rule 804(b)(3), because the victim theoretically could have been charged with unrelated assaults or sexual offenses. In *State v. Tankersley*, 191 Ariz. 359, 956 P.2d 486 (1998), and similar cases defendant

cites, the usual scenario is that a third person (often an accomplice or codefendant) admits or implies that he committed the crime, thus exculpating the defendant. There is no evidence here that the victim was being investigated for any crime or that any of his statements tended to subject him to criminal liability. The statements could have been mere fantasy. They do not meet the "against penal interest" prong nor the trustworthiness prong of the rule. The State was unable to find any Arizona case law that applies the rule to unrelated alleged offenses as defendant attempts to do here.

State v. Damper, 223 Ariz. 572, 225 P.3d 1148 (App. 2010), addressing present sense impression, also is not on point. In *Damper*, the court concluded that text messages sent by the victim during a fight with the defendant just before she was shot fell within the present sense impression exception of Rule 803(1), which states: "A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." The letters that defendant seeks to admit in this case refer to certain past events, with no indication of if or when those events occurred. The letters clearly were not written during or immediately after an event and thus are not present sense impressions. In addition, the events described do not apply to this crime — *i.e.*, the victim is not describing events that occurred immediately before he was murdered.

Defendant further argues that she can authenticate the handwriting in the letters through a forensic document examiner pursuant to Rule 901. However, defendant has indicated that she

does not have the original letters and received copies of the letters electronically. She has thus far failed to disclose the whereabouts of the originals and who sent the electronic transmission. Rule 1002 requires an original document unless otherwise provided by the rules. Rule 1003 states that a duplicate is admissible unless "(1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." In this case, a genuine question is raised as to authenticity, because of the possibility that the originals were forged, photoshopped, cut-and-pasted or otherwise altered before being electronically transmitted. In addition, because the State cannot have an expert examine the originals, admission of duplicates would be unfair. Therefore, duplicates would not be admissible under Rule 1003.

The unfair prejudice to the State's case under Rule 403 would arise from the tendency of jurors to be shocked by the sexual nature of the letters and perhaps show sympathy for defendant or disdain for the victim. The State is not arguing that the deceased victim is a "party" to the proceedings, only that he should not be subject to gratuitous character assassination. Defendant argues that the letters are highly probative, because every aspect of her relationship with the victim could give rise to a sudden quarrel, heat of passion, or belief that she needed to defend herself. However, many of the letters were dated months before the crime and do not relate to any sudden event in June 2008. Furthermore, defendant was hundreds of miles away and "safe" from the victim when she chose

to drive to his home, where she killed him. Her current version of events is that he became angry when she dropped his camera, which is unrelated to any prior conduct she describes. The letters are not highly probative of what occurred the day of the murder.

Lastly, defendant argues that she will not receive a fair trial unless all ten letters are admitted. The letters she has disclosed are letters she selected and are of questionable origin. We do not know if the victim wrote dozens of letters or none at all. Defendant has produced only those letters that show her in a good light and disparage the victim. They are irrelevant, cumulative and hearsay. However, if this court is inclined to admit some portions of the letters, the State requests that defendant identify which specific portions she intends to use, how they are relevant and which hearsay exception applies. She should not be permitted to simply introduce pages of self-serving hearsay.

III. CONCLUSION

The ten letters purportedly written by victim Travis Alexander and disclosed by defendant are inadmissible for numerous reasons. They are hearsay, and no exception applies; they are irrelevant, or if relevant, are unfairly prejudicial; and they do not qualify as character or other acts evidence. The fact that defendant has changed her strategy to allege self-defense does not make the letters admissible. Therefore, the State requests that this court grant its motion to preclude the ten letters.

Submitted July _____, 2010.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY: /s/ _____
/s/ Juan M. Martinez
Deputy County Attorney

Copy mailed\delivered
July _____, 2010,
to:

The Honorable Sally Duncan, Div. M, Crj13
Judge of the Superior Court

Laurence Kirk Nurmi
620 W. Jackson St., Ste. 4015
Phoenix, AZ 85003

BY: /s/ _____
/s/ Juan M. Martinez
Deputy County Attorney



Maricopa County Attorney

ANDREW P. THOMAS

301 WEST JEFFERSON STREET
PHOENIX, AZ 85003
www.maricopacountyattorney.org

April 26, 2010

Kirk Nurmi
Maricopa County Public Defender
620 West Jackson Street, Suite 4015
Phoenix, AZ 85003

RE: State v. Jodi Ann Arias
CR 2008-031021

Dear Mr. Nurmi:

As part of its duty of discovery under the Arizona Rules of Criminal Procedure, Rule 15.1 and 15.6, the State has discovery materials to supply to you. Those materials comprise the following:

- Az DPS Scientific Examination Report (Bates Stamp Numbers 001707 -- 001708)

Please have your authorized representative make arrangements to pick up the materials at the Office of the Maricopa County Attorney, 301 West Jefferson, Fourth Floor (reception desk), Phoenix, Arizona. Thank you.

Sincerely,

Richard F. Dempsey
Legal Assistant to
Juan Martinez
Homicide Bureau

FILED

11-18-10 8:49am
MICHAEL K. JEANES, Clerk

By M. Carral
Deputy

CL 2008-031021-001
State v. Arias

Ph. (602) 506-5780
TDD (602) 506-4352
FAX (602) 506-7950



Maricopa County Attorney

ANDREW P. THOMAS

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Ph. (602) 506-5780
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FAX (602) 506-7850

(Please return to Rich Dempsey – Homicide Bureau)

RECEIPT OF DISCOVERY MATERIALS

April 26, 2010

On behalf of Kirk Nurmi, I accept the following as part of disclosure in State v. Jodi Ann Arias, CR 2008-031021:

- Az DPS Scientific Examination Report (Bates Stamp Numbers 001707 – 001708)

Signature  Date 4/26/10

Please Print Name: Tim Ritten

NOTE: If any discovery consists of video or audio tapes, or compact discs, there **must** be a video, audio, or CD exchange brought in before discovery can be received.



Maricopa County Attorney

ANDREW P. THOMAS

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April 27, 2010

Kirk Nurmi
Maricopa County Public Defender
620 West Jackson Street, Suite 4015
Phoenix, AZ 85003

RE: State v. Jodi Ann Arias
CR 2008-031021

Dear Mr. Nurmi:

On April 26, 2010, the State supplied you with materials as part of its duty of discovery under the Arizona Rules of Criminal Procedure, Rule 15.1. Those materials comprised the following:

- Az DPS Scientific Examination Report (Bates Stamp Numbers 001707 – 001708)

Tina Rittenhouse signed for the discovery on April 26, 2010. Unless timely written notification is made to the contrary, we will consider this discovery as provided to you under the rules.

Please call me at [REDACTED] if you have any questions. Thank you.

Sincerely,

Richard F. Dempsey
Legal Assistant to
Juan Martinez
Homicide Bureau



ARIZONA DEPARTMENT OF PUBLIC SAFETY

SCIENTIFIC EXAMINATION REPORT

AGENCY Mesa Police Department
Mesa, AZ 85201
FILE NO. 20081610844
OFFICER Flores, #10477
DATE April 07, 2010
NAME(S) ARIAS, JODI A.

DR NO. 2010702841
Page 1 of 2

ITEMS:

- #1. Twelve pages of requested known writing from Jodi Arias
#2. One purple journal bearing handwritten entries dated 6/5/07 - 7/23/07
One black journal with a snap closure bearing handwritten entries dated 7/25/07 - 1/1/08
One black journal bearing handwritten entries dated 1/1/08 - 4/9/08
#3. One black journal bearing handwritten entries dated 4/13/08 - 7/14/08
#3a. Derivative ESDA lifts from item #3

EXAMINATION REQUESTED:

Forensic Document Examination

RESULTS / INTERPRETATIONS:

Examination and comparison of questioned items #2 and #3 with known item #1 resulted in the following conclusions:

- It is the opinion of the undersigned that the writing in items #2 and #3 was executed by the writer of item #1, Jodi Arias.

[Handwritten signature]

ALAN M. KREITL, #4823
Criminalist
Central Regional Crime Laboratory
P. O. Box 6638
Phoenix, AZ 85005
(602) 223-2375

CUSTODY OF EVIDENCE

RECEIVED D.P.S. Property
DISPOSITION D.P.S. Property

001707

Laboratory System Accredited by ASCLD/LAB - International (ISO)

Any notes, photographs, charts, or graphs generated during the examination are retained in the laboratory.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

SCIENTIFIC EXAMINATION REPORT

AGENCY Mesa Police Department
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Page 2 of 2

Pages 30 and 31 of item #3 were processed for indented writing. The sources of the developed indented writing on page 31 are the writings present on the preceding pages. Some discernible indented writing was developed on page 30 of item #3 whose source is unknown. Derivative item #3a, indented writing lifts, are being returned with the submitted items. Copies are being retained in the case file.

ALAN M. KREITL, #4823
Criminalist
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(602) 223-2375

CUSTODY OF EVIDENCE

RECEIVED D.P.S. Property
DISPOSITION D.P.S. Property

001708

Laboratory System Accredited by ASCLD/LAB - International (ISO)

Any notes, photographs, charts, or graphs generated during the examination are retained in the laboratory.

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Attorneys for DEFENDANT

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

STATE OF ARIZONA,

CR2008-031021-001

Plaintiff,

**DEFENDANT'S RESPONSE; MOTION IN
LIMINE TO PRECLUDE THE
INTRODUCTION OF HEARSAY
STATEMENTS (TEXT MESSAGES,
GOOGLE MAIL AND INSTANT
MESSAGES)**

v.

JODI ARIAS,

Assigned to Hon. Sherry Stephens

Defendant.

Capital Complex Case

In response to the assertions made in the State's Motion In Limine To Preclude
The Introduction Of Hearsay Statements (Text Messages) and those made in the State's

Motion In Limine To Preclude The Introduction Of Hearsay Statements, (Google mail and Instant Messaging) Ms. Arias would ask that both motions be denied, as not only do the assertions made therein not comport with prevailing law but they show complete disregard for the rights due Ms. Arias pursuant to the Fifth, Sixth, Eighth and Fourteenth amendments to the United States Constitution as well as Article 2 § 4 of the Arizona Constitution. In further contradiction to the assertions made in State's Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) and the State's Motion In Limine To Preclude The Introduction Of Hearsay Statements (Google Mail and Instant Messages), Ms. Arias, in the incorporated Memorandum of Points and Authorities, herein files a consolidated response to both these motions as the legal reality that underlies both these motions is the same, in that, most, if not all of the electronic communications at issue, are not even hearsay to begin with and that in order to manage the issue at hand, the court need only enforce the Arizona Rules of Evidence as the need arises.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

Ms. Arias stands accused of committing the crime of First Degree Murder on June 4, 2008. To support this charge, the State has asserted that Ms. Arias is guilty of said crime under the dueling theories of felony murder and premeditated murder. Also of note, is the fact that, in previous motions, the State has asserted that underling the felony

murder theory is the assertion that Ms. Arias committed the crime of burglary and that the crime underlying the burglary is murder.

In defense to both these theories, Ms. Arias has asserted the defense of Justification, Self-Defense pursuant to A.R.S. § 13-415 which alters the reasonable person standard to a reasonable person who has experienced abuse at the hands to his or her attacker. Ms. Arias also asserts that lesser included offenses of First Degree Murder are applicable to the case at hand.

The evidence that will likely come forth during trial is that on June 4, 2008, Ms. Arias and Mr. Alexander were far from being strangers. In fact, the evidence will likely show, that the couple meet back in the fall of 2006 in Las Vegas and that the relationship continued from that point forward until Mr. Alexander's death. It is also likely that the evidence will show that during the course of their relationship, the couple communicated through several different mediums, including but not limited to e-mails, text messages and instant messaging.

Included amongst these various forms of communication are e-mails and text messages that Mr. Alexander sent to Ms. Arias or that Ms. Arias sent to Mr. Alexander which are sexual in nature. Examples of the communications from Mr. Alexander to Ms. Arias include an instant message wherein Mr. Alexander calls Ms. Arias a "three whole wonder." Text messages wherein Mr. Alexander states "send me a naughty picture" (text #12788 sent to Ms. Arias on 4/21/2008) and that "I am at a club right now and it has helped me to come to the conclusion that you are one of the prettiest girls on the planet" (text #12370, Sent to Ms. Arias on 4/20/2008). Now certainly, these are but a few of the

many written communications Mr. Alexander sent to Ms. Arias that are of a sexual nature, however, there are hundreds and to detail all of them herein would be unnecessary to the Court's consideration of the motion at hand. Likewise, during the course of their relationship Ms. Arias also communicated with Mr. Alexander concerning sexual matters sending Mr. Alexander text messages such as "Ahh!! I fell asleep! But to answer your question, yes I want to grind. And I want to be LOUD. And I want to give you a nice, warm "mouth hug" too. =)" [text #1277, Sent on January 8, 2008] "My pussy is SO WET" [text #1580, Sent on January 18, 2008].

There are also text messages that can be characterized as emotionally abusive, such as a text message Mr. Alexander sent Ms. Arias on May 10, 2008, which stated "Why don't you have him come and fuck you in the woods, I can only imagine you are so worried about me reading. You are paranoid because you have no respect for people privacy and you dare insult me of all people. Someone you have should through your actions you hate more than love by denying me a human right of privacy countless times. You have a lot of freaking nerve. We are all not like you in that aspect." [#14086]

In a motion filed on August 24, 2011, the State seeks to preclude Ms. Arias from seeking to introduce the content of the numerous text messages exchanged between to couple as well as other electronic correspondence the couple used to communicate. As a whole, these motions seem to rely on the premise outlined in the concluding section of the State's Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) wherein the State asserts that "[c]onversations conducted by text message are hearsay and should be precluded since they do not fall within any hearsay exception."

[State's Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages), page 4]. The State' Motion In Limine To Preclude The Introduction Of Hearsay Statements, (Google mail and Instant Messaging) contains the same concluding statement but simply replaces text message with "Google Mail or Instant Messaging." *Id* at page 4]. As a precursor to these statements the State's motions makes the assertion that the statements are not relevant thus they are hearsay. The State's motions further asserts that prior to trial Ms. Arias "should be required to show for each statement why it is relevant, why it is not hearsay, or why a hearsay exception applies." *Id*. In going beyond the area of text messages, the State goes onto assert that "[u]nless those requirements are satisfied, she should be precluded from otherwise eliciting testimony or testifying herself about such communications unless she first obtains a ruling from the court regarding admissibility." *Id*.

Thus, the State seems to be arguing that the relevancy of the text messages somehow relates to whether or not the text messages at issue are hearsay and that before testifying and/or presenting her case Ms. Arias will need to clear every piece of evidence she presents to the court before doing so rather than following the customary process of the parties making objections per the Rules of Evidence and having the court rule on said objections while having the benefit of the context of the questioned evidence.

II. LAW AND ARGUMENT

A. CONVERSATIONS CONDUCTED VIA TEXT MESSAGES AND/OR ANY OTHER WRITTEN FORMS OF COMMUNICATION ARE NOT HEARSAY SIMPLY BECAUSE OF THE MEDIUM USED TO CONVERSE

Before addressing the issue of whether or not the text messages and the other electronic correspondence at issue in this case are hearsay, it is important to address the State's unsubstantiated assertion that all text messages and/or electronic communications are hearsay. To that end, Ms. Arias would refer the court to *State v. Damper* 223 Ariz. 572 (Div. 1, 2010). In *Damper*, the defendant, who was convicted of second degree murder, asserted, amongst other legal arguments, that the text messages the court admitted into evidence against him were hearsay. In determining that it was not error of the trial court to admit the messages at issue, the court made some legal conclusions that are relevant to the consideration of this motion. As the *Damper* court concluded that "[l]ike any other form of communication, a text message may be testimonial or non-testimonial, depending upon the circumstances and purpose for which it was made." (id at 576). Thus, the current state of the law stands in direct contrast to the State's assertion that all text messages, and or electronic communications are hearsay.

Also of note on this issue is the fact that in reaching the aforementioned conclusion, the court dismissed the defendant's assertion that "because a text messages "is a purposeful document typed by hand by the author over the course of some time" a text message is by nature testimonial." (id at 575). Instead, the court examined the statement at issue and analyzed whether or not the sender "intended or believed it might

be later used in a prosecution or a trial. (id) referencing *Davis v. Washington*, 547 U.S. 813 (2006).

Of further note is that the aforementioned holding seems to be well grounded precedent as in *State v. Chavez*, 225 Ariz. 442 (App. 2010), the idea that text messages were by the nature, hearsay, was not even contemplated, instead the Chavez court analyzed the content of the text messages at issue to determine if they were hearsay. Ultimately, lending credence to the legal reality that it is the content and context of the communication, not its form, that determines whether or not a particular statement is hearsay as defined by Rule 801 Arizona Rules of Evidence.

B. MOST, IF NOT ALL OF THE ELECTRONIC COMMUNICATIONS AT ISSUE ARE NOT HEARSAY

Pursuant to Rule 802, Arizona Rules of Evidence, hearsay is generally not admissible. Rule 801, Arizona Rules of Evidence, defines hearsay as, "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ariz. R. Evid. 801(c). Of further note to the issue at hand is the fact that a "statement" is further defined as either "an oral or written assertion" or "non-verbal conduct of a person, if it is intended by the person as an assertion." Ariz. R. Evid. 801(a).

In seeking to preclude all the text messages, the State does not offer any explanation for why any of the messages at issue fall under the purview of hearsay based on the aforementioned definition. Instead, the State alludes to the idea that Ms. Arias, intends to introduce them to "disparage the victim's character and imply that defendant's

conduct was justified.” [State’s Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) at page 3]. Like many of the other assertions made in the State’s motion, such an assertion lacks support, primarily because these assertions have nothing to do with a hearsay analysis. As it relates to hearsay, the only claim made by the State that actually touches on an issue relevant to hearsay is when they assert that self-serving exculpatory statements are hearsay when offered by a defendant. Ms. Arias is not attempting to argue this point primarily because it has nothing to do with the issue at hand in that she is not attempting to introduce this type of statement in that she is not attempting to deny the fact that she caused Mr. Alexander’s death.

This being said, proper hearsay analysis begins with an assessment of whether or not the verbiage contained in the various pieces of electronic correspondence at issue meet the definition of hearsay quoted above. If so, then the analysis shifts to whether or not a hearsay exception applies. Again, Ms. Arias takes the position that this ultimately requires the court to conduct an analysis at the time that a part seeks to admit the evidence. However, given the State’s assertion that a sort of blanket prohibition be applied, Ms. Arias will demonstrate herein that such a position is absurd.

Demonstrating the absurdity of the State’s position ultimately begins with an analysis of the definition of a statement

A "statement" is further defined as either "an oral or written assertion" or "non-verbal conduct of a person, if it is intended by the person as an assertion." Ariz. R. Evid. 801(a). The advisory committee note to the federal rule defining hearsay, from which the Arizona rule was adopted verbatim, [fn4] explains: "The effect of the definition of `statement' is to exclude from operation of the hearsay rule all evidence of conduct, verbal or nonverbal, not intended as an assertion. The key to the definition is that nothing is an assertion unless intended to be one." *Chavez at 444.*

The Chavez court went on to point out that “Put simply, words or conduct not intended as assertions are not hearsay even when offered as evidence of the declarant's implicit belief of a fact. *See generally United States v. Zenni*, 492 F.Supp. 464 (E.D.Ky. 1980)” *Id*

Without repeating the detail of the electronic correspondence at issue, Ms. Arias takes the position that the sexual expressions made in these messages are not hearsay in that they are not assertions. Furthermore, even if assessed as assertions the reality is that they are not being offered for the truth of the matter asserted. Put another way, if the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay. *Emich Motors Corp. v. General Motors Corp.*, 181 F.2d 70 (7th Cir. 1950). Thus, in large part, it is Ms. Arias’ position that the evidentiary significance of the text messages and/or their content rests in the mere fact that they were made, hence the text messages and/or electronic correspondence as a whole are not hearsay, making the blanket prohibition that the State is seeking invalid. Further support for Ms. Arias’ contention can be found in *United States v. Zenni*, (492 F. Supp. 464 (1980), wherein the issue of what constitutes an assertion is discussed by making reference to the commentary to Rule 802 of the Federal Rules of Evidence.

"Assertion" is not defined in the rules, but has the connotation of a forceful or positive declaration.

The Advisory Committee note concerning this problem states:

"The definition of 'statement' assumes importance because the term is used in the definition of hearsay in subdivision (c). *The effect of the definition of 'statement' is to exclude from the operation of the hearsay rule all evidence of conduct, verbal or*

the evidence.” Rule 402, Arizona Rules of Evidence dictates that evidence that does not meet the aforementioned criteria, is inadmissible.

The State in asserting that the text messages are states that the text messages “do not show either the victim’s or defendant’s state of mind at the time of the offense or who was the first aggressor” [State’s Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) at page 3]. However, such an assertion ignores several key facts, the most prominent fact being that Ms. Arias’ claim of self-defense is made to A.R.S. §13-415, which allows the jury to assess Ms. Arias’ actions as those of a reasonable person who has suffered abuse at the hands of Mr. Alexander regardless of its form. Thus, statements Mr. Alexander made to Ms. Arias, be they verbal, or through electronic communications, that could be seen as exploitive and/or abusive are relevant in this regard. Furthermore, it is not just a matter of this defense. The charge of First Degree Murder can also be defended by assertions that a lesser included offense was committed. In this regard, any evidence that speaks to whether or not Ms. Arias’ acted without premeditation or under heat of passion is relevant pursuant to the dictates of Rule 402, which are quoted above.

Thus, the correspondence at issue are not as a whole irrelevant pursuant to Rules 401 and 402. Instead the relevancy of each communication, rests upon all of the evidence presented by both parties and the context in which the admission of these statements is sought. Leading to the prevailing assertion that Ms. Arias’ has made repeatedly herein; to manage the issue at hand, the court need only enforce the Arizona Rules of Evidence as the need arises.

D. ANALYSIS OF THE ELECTRONIC CORRESPONDENCE PURSUANT TO RULE 403 ARIZONA RULES OF EVIDENCE DOES NOT AFFECT THE HEARSAY ANALYSIS REQUIRED BY RULE 801 ARIZONA RULES OF EVIDENCE

The State cites no authority for its seeming attempt to correlate the dictates of Rule 403, Arizona Rules of Evidence with the sort of analysis that Rules 801 and 802 Arizona Rules of Evidence require this court to make. However, given that the State has indirectly raised the issue of relevancy, Ms. Arias will address it herein.

Ms. Arias, assuming that the State is raising issues related to Rule 403 because the States makes the assertion that Ms. Arias “most likely seeks to introduce certain text messages to disparage the victim’s character and imply the defendant’s conduct was justified.” [State’s Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) at page 3]. In making this statement the State makes no attempt to demonstrate how the admission of any of the correspondence at issue would violate the dictates of Rule 403, which dictates in relevant part that, relevant evidence “may be excluded if its probative value is outweighed by the danger of unfair prejudice.”

Having demonstrated that at least some of the correspondence at issue are not irrelevant and hence probative in the preceding section, the issue at hand in this section relates to whether or not the admission of any text messages would be unfairly prejudicial the State has not pointed to any particular message in making their assertion so it is difficult to argue against this blanket assertion, however, Ms. Arias would point this court to *State v. Schurz*, 176 Ariz. 46, 859 P.2d 156 (1993) wherein the Arizona Supreme Court stated;

not all harmful evidence is unfairly prejudicial. After all, evidence which is relevant and material will generally be adverse to the opponent. The use of the word "prejudicial" for this class of evidence, while common, is inexact. "Prejudice," as used in this way, is not the basis for exclusion under Rule 403. *Dollar v. Long Mfg. Co.*, 561 F.2d 613, 618 (5th Cir. 1977). *Id at page 52.*

Of further note is the fact that as the Schurz court pointed out "[u]nfair prejudice "means an undue tendency to suggest decision on an improper basis," Fed.R.Evid. 403, Advisory Committee Note, such as emotion, sympathy or horror." *Id.* In their companion motions, the State makes no assertions as to why any of the electronic communications they seek to preclude would cause the jury to render a verdict on an improper basis. Ultimately, it seems unlikely that the State could make such a case, thus it is Ms. Arias' position that the evidence complained of by the State is simply adversely probative which does not warrant preclusion.

III. CONCLUSION

The assertions made within the State's Motion In Limine To Preclude The Introduction Of Hearsay Statements (Text Messages) and the State's Motion In Limine To Preclude The Introduction Of Hearsay Statements, (Google mail and Instant Messaging) do not comport with prevailing law. Furthermore, they show complete disregard for the rights due Ms. Arias pursuant to the pursuant to the 5th, 6th, 8th and 14th Amendments to the United States Constitution as well as Article 2 § 4 of the Arizona Constitution. Thus, for the reasons mentioned above both motions should be denied as the proper method to deal with issues is for the court to enforce the Arizona Rules of Evidence as the need arises.

RESPECTFULLY SUBMITTED this 14th day of August, 2011.

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

Copy of the foregoing
E-FILED this 14th
day of September, 2011, 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

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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 DT

MOTION TO WITHDRAW

(Hon. Reyes)

Jodi Arias moves this Court for an order, pursuant to E.R. 1.6, 1.7, 1.9 and 1.10, Arizona Rules of Professional Conduct, to allow the Maricopa County Public Defender's Office ("Public Defender's Office" or "the office") to withdrawal as counsel for the accused. This motion is based upon the grounds that the office has previously represented an individual in this case and further representation of Ms. Arias would run the serious risk of violating and/or disclosing confidential information obtained from our former client, may be directly adverse to the former client and may involve the use of information relating to the representation of the former client that would be to their disadvantage.

This motion is further based upon the Memorandum of Points and Authorities attached to this motion, confidential files in the Public Defender's Office and oral argument to be presented at the hearing on this motion if required.

DATED this 16th day of December, 2011.

Maricopa County Public Defender

By _____
Victoria Washington
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITES

I. LEGAL DISCUSSION:

E.R. 1.6 provides that a lawyer has an ethical obligation not to disclose confidential information received from clients. A fundamental principle of the client-lawyer relationship is that a lawyer maintains confidentiality of information relating to his representation. A lawyer may disclose certain information relation to representation only in special situations, none of which are applicable to this case, e.g. revealing information concerning a future criminal act.

E.R. 1.7 prohibits a lawyer from undertaking representation directly adverse to a former client without the client's consent. In this case, any representation of Ms. Arias would be directly adverse to our former client and neither Ms. Arias nor the other client have granted consent to any such representation or disclosure of information.

In any interview or trial of this case the accused's counsel would have access to information adversely affecting the former client's credibility. E.R. 1.8 prohibits a lawyer from using information gained from previous representation to the former client's disadvantage.

E.R. 1.9 provides that a lawyer who has previously represented a client in a matter shall not thereafter:

(b) Use information relating to the representation to the disadvantage of the former client except as ER1.6 would permit with respect to a client or when the information has become generally know.

In this case, the information at issue is not generally known and in fact is confidential.

Additionally, this does not impact Co-counsel Mr. Nurmi. Mr. Nurmi is no longer with this law firm and he has no imputed knowledge under E.R. 1.10.

Lastly, our Arizona Supreme Court has held that when a conflict of interest exists, counsel must promptly reveal it to the Court. Rodriquez v. State of Arizona, 129 Ariz. 67, 628 P.2d 950 (1981). Counsel became aware of this conflict on December 15, 2011 and could not have known of it at an earlier time.

II. CONCLUSION:

For the foregoing reason, undersigned counsel respectfully requests the Office of the Maricopa County Public Defender withdraw from continued representation in the instant case.

RESPECTFULLY SUBMITTED this 16th of December, 2011.

MARICOPA COUNTY PUBLIC DEFENDER

By/s/Victoria Washington
Victoria Washington
Deputy Public Defender

Copy of the foregoing mailed/
delivered this 16th day of
December, 2011, to:

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Presiding Criminal Judge of the Superior Court
Central Court Building
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