

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

STATE OF ARIZONA,)	
Plaintiff,)	
vs.)	CR 2008-031021-001
JODI ANN ARIAS,)	
Defendant.)	

Phoenix, Arizona
October 30, 2014

BEFORE THE HONORABLE SHERRY K. STEPHENS

REPORTER'S EXCERPT TRANSCRIPT OF PROCEEDINGS

COPY

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A P P E A R A N C E S

FOR THE STATE:

BY: Mr. Juan Martinez
Deputy County Attorney

FOR THE DEFENDANT:

BY: Mr. Kirk Nurmi and Ms. Jennifer Willmott
Attorneys for the Defendant

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Phoenix, Arizona
October 30, 2014

P R O C E E D I N G S

(Whereupon, proceedings beforehand were not transcribed at this time.)

(Whereupon, a bench conference is held on the record:)

THE COURT: All right. So now let's talk about the -- is your motion to turn off the cameras during her testimony or to seal the proceedings?

MS. WILLMOTT: To seal the proceedings. Turn off the cameras and seal the proceedings.

THE COURT: Okay. And the reason for sealing the proceedings?

MS. WILLMOTT: The reason for that, Judge, is she feels this will affect her testimony negatively if the public is here and if the cameras are on; that it will basically affect her testimony, the way she testifies and her ability to think and answer questions.

MR. NURMI: I also think it is consistent with the Court's order anyway. The Court's order was allowed to testify under seal and not have -- not be filmed by the cameras.

1 THE COURT: Well, not to be filmed by the
2 cameras; but to seal the proceedings, that means that I
3 need to clear the courtroom. The request is to seal
4 pending the verdict, correct? After the verdict, there
5 would be no need -- there would be -- there will be an FTR
6 and record made of the testimony. It is not available
7 until after the verdicts come in except to the parties if
8 requested. So that's --

9 MR. MARTINEZ: I think what they are asking is
10 that you clear the courtroom of all people, and I don't
11 think that they have met the criteria to seal --

12 THE COURT: I need to pull out my sheet on this
13 to see what the criteria is.

14 MS. WILLMOTT: It was also listed in the minute
15 entry with regard to the media and our ability to ask for
16 that for our witnesses.

17 THE COURT: But I have to make sure that this
18 request meets some requirements. So we are going to take
19 a recess.

20 MR. NURMI: 122, is that the Court's concern?

21 THE COURT: No. There is another test that I
22 have to -- I have to pull it up.

23 MR. NURMI: Okay.

24 MR. MARTINEZ: We will take a break for a little
25 bit?

1 THE COURT: We will take a couple minute break so
2 I can go upstairs and do that.

3 (Whereupon, bench conference concludes.)

4 (Whereupon, a short break was had.)

5 THE COURT: Counsel, please approach.

6 (Whereupon, a bench conference is held on
7 the record:)

8 THE COURT: Okay. We will make a record. Your
9 request to seal -- you are asking that the cameras be
10 turned off in the courtroom and the courtroom closed
11 during her testimony?

12 MS. WILLMOTT: That's correct.

13 THE COURT: And the reason -- the reason for the
14 request?

15 MS. WILLMOTT: The reason for that, Judge, is she
16 feels it will affect her ability to testify, nervousness
17 factor, looking out into the crowd. In particular she
18 also has described the amount of mail she gets in a week
19 due to the publicity that surrounds her during trial. A
20 lot of it is hate mail. Some of it is support mail. They
21 all -- she has been threatened that if she says certain
22 things, it will come down on her even if -- I understand
23 she is in jail. I don't know how these people will get to
24 her. It affects her ability to think and the ability for
25 her to say things she truly means versus what people have

1 said and threatened her. We know the people here today
2 currently in the courtroom include some of the people that
3 send her that mail. That's why we are asking -- that's
4 why we are asking to seal the courtroom and not allow
5 anybody in except the victims.

6 THE COURT: If there is somebody in particular
7 that we know that is in the courtroom that is harassing
8 her or has harassed her in the past if you can identify
9 that person, we can ask to have that person escorted out
10 if there is a specific person.

11 MS. WILLMOTT: There is nobody specific that I'm
12 aware of. It is the knowledge of the fact that people
13 come in for her and then send her threatening postcards.

14 MR. NURMI: Judge, I think if I might -- I think
15 the other issue that Miss Willmott needs to address is if
16 I think in any way Miss Arias' ability to testify fully
17 and fully actualize her mitigation due to the presence of
18 others, I think the Court should be concerned about it as
19 they -- as a preclusion of mitigation because mitigating
20 factors as remorse of the relationship -- mitigating
21 factors 3, 5, 6, and 9 in particular would be dampened by
22 the public presence.

23 Now, whether we can say that should be the
24 case or not, obviously I cannot say; but at the same time
25 in terms of Miss Arias, her psychological makeup, we know

1 she has been diagnosed with PTSD and we also know she has
2 been diagnosed with Borderline Personality Disorder. If
3 her psychological makeup is such that she cannot fully
4 actualize her mitigation, then I think we have problems
5 under Skipper versus South Carolina. I think the Court
6 should be cognizant of that. I think we cited in our
7 original motion to preclude the matter Smith v. Texas and
8 Estes v. Texas about the fact that the rights of the
9 Defendant trump the rights of the media and open
10 courtrooms are not -- certainly not absolute but also
11 based on all the other authorities I have cited in the
12 motion too previously -- those are the most prominent ones
13 that come to mind.

14 THE COURT: Mr. Martinez, did you want to be
15 heard?

16 MR. MARTINEZ: Yes. It appears that the reasons
17 given to you for sealing the courtroom from the public is
18 that the Defendant is nervous. That's what it all comes
19 down to, whether it is contributed to PTSD or whether it
20 is the fact that she is Tweeting or sending out stuff and
21 people react to it. It comes down to the fact that she is
22 nervous. There is nothing that any case law -- that I'm
23 aware of -- indicates that the Defendant has such a right
24 or witness has such a right to testify in sealed
25 proceedings just because they are nervous. The only case

1 I can think of off the top of my head where the
2 proceedings were sealed was in Tucson and involved some
3 gang members. I don't remember the name of it. In that
4 case the conviction was reversed because the Court didn't
5 follow -- I don't know exactly -- again, but the import
6 that I took from that case is that there has to be a
7 compelling reason to deny the public the right to be
8 there. It is not an issue of the media here. It is an
9 issue of the public.

10 Certainly if the request is made and you
11 make that determination, you can certainly indicate to the
12 media that they cannot take pictures or do that sort of
13 thing, but this is much more broad than that. This is
14 excluding the public; and that if we do that, I think --
15 well, it is my belief if we do that just because the
16 Defendant is nervous, that this would be overturned on
17 appeal.

18 MS. WILLMOTT: It is far more than just the fact
19 that she is nervous. It is. Really. Anybody would be
20 nervous taking the stand. It has much more to do with the
21 fact that she is not able to fully communicate what she
22 wants to say, communicate her remorse and go through all
23 the mitigating factors and get them out there in front of
24 the jury with having the public here given all the
25 information she has received in the jail through the

1 postcards, the different threats she received. She feels
2 it will impact her ability to say what she really needs --
3 state her needs on the stand.

4 MR. NURMI: To my recollection, the case he is
5 referring to is that the Defendant -- it was kicked out.
6 The Defendant challenged it. Here in this case the
7 Defendant is making the request. I think when we are
8 talking about the heightened level of due process -- when
9 we talk about cases like Furman versus Georgia and Gregg
10 versus Georgia, the heightened process of Miss Arias, the
11 rights of the public versus someone whose life is at
12 stake, the balance of the case law is pretty clear that it
13 favors Miss Arias.

14 THE COURT: Is it the actual physical presence of
15 the people in the gallery that is of concern because the
16 victim family -- the victim's family will be permitted to
17 remain.

18 MS. WILLMOTT: Right.

19 THE COURT: I assume she wants her own family to
20 remain?

21 MS. WILLMOTT: Yes.

22 THE COURT: Who is she concerned about in the
23 gallery that --

24 MS. WILLMOTT: Obviously she knows that the
25 victim's family will be here and her family. But no, it

1 is the public in general.

2 THE COURT: And it is the presence in the back of
3 the courtroom?

4 MS. WILLMOTT: Well, the presence and the fact
5 that they have the ability to walk away with the
6 information that she is going to say.

7 THE COURT: Okay. Well, there are four factors
8 that the Court must consider before closing court
9 proceedings. The parties seeking to close a hearing must
10 advance an overriding interest that is likely to be
11 prejudice if the proceeding is not closed. That is number
12 one. So with regard to that, I do find that the Defendant
13 is indicating that she will feel intimidated, and it will
14 affect her ability to communicate with the Jury matters
15 she thinks are significant in terms of mitigation.

16 Number two, closure must be no broader than
17 necessary to protect that interest. With regard to that,
18 the Court finds that the victim family members will be
19 allowed to remain in the courtroom. The Defendant's
20 family members will be allowed to remain in the courtroom.
21 We do have an overflow room downstairs. I don't believe
22 it is appropriate to completely close this proceeding.
23 However, I believe asking the individuals seated in the
24 courtroom -- the members of the public and the press -- to
25 go downstairs and watch the proceedings in that venue

1 would address the Defendant's concern that she is feeling
2 intimidated and she feels somehow limited in her amount to
3 communicate to the jury because of their presence in the
4 courtroom.

5 MS. WILLMOTT: Did you say the members of the
6 press and the public?

7 THE COURT: Yes, and with regard to the camera
8 and the still camera and the video camera, I'm going to
9 order that they be turned off; but as I previously said,
10 this proceeding is being recorded by FTR proceedings; and
11 those recordings will be available to the public after the
12 Jury does reach a verdict.

13 The third factor is the trial Court has
14 considered reasonable alternatives to closing the
15 proceedings, which I feel I have just done with regard to
16 the proposal I made regarding how we should handle the
17 presence of the public and the media in the courtroom, and
18 the trial Court must make findings to support the closure;
19 and I believe I have done that here in this hearing.

20 MS. WILLMOTT: I will have to inform Miss Arias
21 obviously of your ruling. I believe she will refuse to
22 testify.

23 MR. MARTINEZ: I'm sorry. I didn't hear you.

24 MS. WILLMOTT: I believe she is going to refuse
25 to testify.

1 THE COURT: She is going to refuse to testify
2 knowing that there are people downstairs who will hear
3 what she is saying?

4 MS. WILLMOTT: The media in particular but, yes,
5 the people as well.

6 THE COURT: I thought the concern was she felt
7 intimidated by their presence in the courtroom?

8 MS. WILLMOTT: Yes, that is a concern obviously;
9 but it is not just the fact that they are here. It is the
10 fact that they walk away with the information she is
11 saying and the media Tweets it all over the place, and it
12 becomes blogged; and it becomes on the TV shows tonight;
13 and she feels that knowing these things -- the threats
14 that she has received in jail, the postcards, letters --
15 she feels those will become more voluminous and that
16 ultimately affects her ability to get -- to testify to be
17 able to say what she wants to say.

18 MR. MARTINEZ: What if we seal the proceedings
19 that get reported? Obviously the State is not reporting
20 it. How is there a link between whatever correspondence
21 she is receiving and keeping the media out of the media
22 room downstairs? The point is this: They will report
23 whatever they will report; and they will say -- you know,
24 sealed proceedings, that isn't going to stop the mail.
25 That has no relation to that. So her concern is still

1 going to be there is my point. There is no way that the
2 measures that the Court is taking beyond what you have
3 already indicated are even related to the Defendant's
4 concern.

5 MS. WILLMOTT: I completely disagree with that.
6 The way it is related is the fact that by allowing media
7 to view or hear what is happening, they are Tweeting every
8 single word out. They are blogging about it, and it makes
9 their shows at night. That's how people ultimately get
10 that information, and then get the information and they
11 send threats and it comes that way. I can advise the
12 Court the simple fact that the media -- that it is not
13 being -- things have lessened because we don't have live
14 coverage. However, I'm still receiving letters, e-mails
15 because of that Tweeting because this is still public.
16 This is something that deeply affects Miss Arias and her
17 ability to testify, her ability to be truly -- to have her
18 true feelings come forward, and I'm concerned that it will
19 ultimately affect her ability to present her mitigation.

20 THE COURT: Well, the content of these
21 proceedings will at some point become public, whether it
22 is now, 2 weeks, 2 months, 3 months. It will become
23 public and there will be those individuals who wish to
24 respond and send her mail. She can always choose not to
25 open it. She can choose to ask all of her mail be

1 destroyed. I can't make a decision based upon her concern
2 that she may receive mail in the future in response to
3 something she said in these proceedings. I do believe
4 that there is a legitimate concern that she may feel
5 intimidated by the presence of those in the courtroom
6 because she is going to be talking about obviously very
7 sensitive matters. So I do believe it would be
8 appropriate to have the public and the media view the
9 proceedings from the lower floor. For that reason, I will
10 proceed in that fashion with regard to the testimony of
11 Miss Arias. You can talk to her and let me know if that's
12 going to be an issue before I tell everyone to leave the
13 courtroom.

14 MS. WILLMOTT: Yes, please if I could.

15 (Whereupon, bench conference concludes.)

16 (Whereupon, a brief pause was had.)

17 (Whereupon, a bench conference is held on
18 the record:)

19 MS. WILLMOTT: I spoke to her, Judge, and she
20 does not want to testify. She told -- she wants the Court
21 to understand that there has been specifically death
22 threats already made to her that -- that have to do with
23 depending on what she says and what she does. She feels
24 this will ultimately affect her ability to be honest on
25 the stand -- not her honesty, but being able to relay what

1 she wants on the stand. I can inform the Court that
2 yesterday I was informed by MCSO that there is a specific
3 person who was attempting to visit her. MCSO refused to
4 let him in. They determined that he was crazy.
5 Apparently he went to LBJ, another jail, and tried to get
6 in through a video visit there. He was dragged out of
7 LBJ. I then know that he --

8 MR. NURMI: Is this the same guy with the white
9 hair?

10 MS. WILLMOTT: No. We don't know who he is.

11 THE COURT: Let's go back in chambers, and I want
12 to make a record.

13 MR. MARTINEZ: Just to point out the guy with the
14 white hair, he is an individual that wears a visor cap.
15 He is actually bald and the visor cap --

16 MR. NURMI: It is a different one. I was
17 referring back to a gentleman that showed up at my
18 office --

19 MR. MARTINEZ: Then I -- sorry.

20 MR. NURMI: -- showed up at court, and MCSO had
21 to warn away and then he showed up again within the last
22 week.

23 MR. MARTINEZ: Before we get off the record here,
24 I have not moved into evidence those exhibits that were
25 shown to the jury. Let me give you the numbers, and I

1 will move them in -- I would move these into evidence.

2 THE COURT: Is there any objection?

3 MR. NURMI: No, your Honor.

4 THE COURT: Exhibits 681, 682, 683, 684, 685 and
5 686 are admitted.

6 MS. WILLMOTT: If you wanted further explanation
7 that she is --

8 THE COURT: I will give her a chance to make her
9 record.

10 MR. MARTINEZ: And the record will be made out
11 here?

12 THE COURT: Back in the other room and the
13 cameras have already -- they are breaking down both the
14 cameras but with regard to everything else -- all right.
15 We can reconvene in the robing room.

16 (Whereupon, bench conference concludes.)

17 (Whereupon, the following proceedings took
18 place in chambers:)

19 THE COURT: Let the record show the presence of
20 the Defendant in chambers with all counsel, Miss De
21 LaRosa, Detective Flores, two representatives of the
22 victim and there is court staff and the deputy.

23 Miss Arias, it has been brought to my
24 attention that you will be testifying next during this
25 penalty phase trial; and that you were objecting to the

1 presence of the cameras as well as the public in the
2 courtroom; is that correct?

3 MS. ARIAS: Well, not just in the courtroom,
4 their knowledge of my testimony at all.

5 THE COURT: Tell me what your concern is.

6 MS. ARIAS: Well, I have received several threats
7 over the last few years. A lot of crazy people come to
8 the jail and try to visit me, and some of the threats are
9 of the nature very specific as far as different things
10 that I -- if you say this, than this; and if you say that,
11 than that. I can give you some specifics if you want.

12 THE COURT: Okay.

13 THE WITNESS: Well, some are that -- you know,
14 obviously, they are very hateful and some towards me and
15 some are very hateful towards Travis and his family. So
16 they kind of go both ways. So I'm not able to testify in
17 the way -- in the way that I would need to testify as far
18 as being open and honest because of the pressure that I
19 would feel because of these threats. I also have heard
20 that one of Travis' friends said he wanted to shoot me
21 between the eyes.

22 THE COURT: Well, you are in custody. So the
23 physical threat aspect -- I would think -- would be of
24 limited concern to you. With regard to the other threats
25 that you are receiving, you can simply choose not to look

1 at any of this mail and be aware of it. But with regard
2 to the victim family members receiving threats, is there
3 any concern, Mr. Martinez?

4 MR. MARTINEZ: No. There is no concern of them
5 receiving threats. Even if they are through her, we are
6 not concerned.

7 MS. ARIAS: They are not threatening them. They
8 are threatening me.

9 MR. MARTINEZ: Sorry to interrupt, but I thought
10 she said it went both ways?

11 THE COURT: Right. That's what I --

12 MS. ARIAS: The threats fall on me but the
13 opinions are polarized. They are across the board is what
14 I mean. So I can't -- I can't say one thing or the other
15 without upsetting people, and it has been, what,
16 16 months? I have received thousands and thousands and
17 thousands of pieces of mail. Some of it -- most of it is
18 supportive but a lot of it is hateful too. So it is not
19 just -- I know I'm in custody, but that doesn't
20 necessarily negate -- I mean, people still have access to
21 me. It is just limited.

22 THE COURT: I proposed to all of the attorneys
23 that we have the cameras removed, both the still camera
24 and the video camera. There is an order -- I'm sure you
25 are aware -- in place that none of the proceedings can be

1 broadcast until after the trial is over. In addition, the
2 proceedings are being recorded by FTR. It is part of the
3 court process. It is also -- it is just going to happen
4 that those FTR recordings will be made public at some
5 point after the verdict comes in. So regardless of
6 whether or not you speak in a closed proceeding, it is
7 likely that this information will be out there; and
8 whether you personally present information during your
9 trial, you can still conceivably receive threats or be
10 harassed.

11 MS. ARIAS: Well, my understanding is that some
12 of the witnesses who will be testifying on my behalf will
13 remain under seal because a lot of them aren't willing to
14 testify unless that's the case because of the way it would
15 affect their lives. And so given the fact that after
16 trial, I will be going to a different facility, a lot more
17 people will have access to me as well. So that would
18 concern me too. I don't think I would be able to testify
19 knowing that my identity -- we all know my identity --
20 knowing that my testimony would be out there as well
21 because it could affect me in the future. Just as some of
22 my witnesses won't testify if they -- unless they are
23 given the promise that their testimony and their
24 identities won't be revealed in the future, I have similar
25 concerns.

1 THE COURT: I have not yet received any written
2 motions requesting that any of the witnesses' statements
3 be sealed or their testimony be sealed or the proceedings
4 closed. We have had discussions about those matters in
5 the past, but I haven't received any specific requests in
6 connection with the penalty phase trial. I haven't made
7 any such rulings at this point.

8 MS. ARIAS: Okay. I guess I was under a
9 different impression about my witnesses.

10 THE COURT: Well, assuming that the appropriate
11 showings can be made, the Court may seal proceedings for
12 some of those witnesses. I haven't made those rulings
13 yet. You did testify at length in the first trial.

14 MS. ARIAS: Right.

15 THE COURT: So your position is out there in
16 terms of if the public wants to write letters to you, they
17 already have a basis for doing that.

18 MS. ARIAS: I think that the fact that I
19 testified publicly like that was one of the biggest
20 motivators for people to write those things. It caused a
21 big frenzy.

22 THE COURT: So it is not just the presence of the
23 public and the media in the courtroom that you find
24 intimidating? It is the fact that they will hear what you
25 have to say, period. That is of concern to you?

1 THE WITNESS: Right, that they would have any
2 knowledge that I'm even testifying at all in this trial.

3 THE COURT: Okay. Mr. Martinez?

4 MR. NURMI: Your Honor, I would actually like
5 Miss De LaRosa to make one other point on this issue
6 because there was an issue we referenced at bench, and I
7 didn't want it lost in terms of the record we make here
8 about an individual showing up at a couple different jails
9 and, I guess, the Arizona Republic as well.

10 MS. DE LAROSA: Yesterday when I went to visit
11 Miss Arias, I was informed by the guard -- the signing
12 guard that there was an individual running around the
13 jails trying to get in to see Miss Arias; that he was
14 claiming to be her attorney and that they felt threatened
15 and that she was concerned about our safety and Miss
16 Arias' safety. They turned him away; but when I was
17 signing off, she informed me that he was coming back and
18 she was so concerned that she didn't even sign me up. She
19 gave me the paper and said "get in."

20 And then later on, I receive another message
21 from one of the reporters of the Arizona Republic saying
22 that this person came to my -- to the paper and he was --
23 sounded crazy. He sounded delusional and he was scary.
24 So I just wanted to tell you guys that -- to be careful
25 because he was claiming to be Arias' attorney, and he

1 claimed that he had pictures of her and that he sat in the
2 trial the day before. He heard about the trial the day
3 before and that he was -- that he was -- that he wanted to
4 come in and see her for whatever reasons; and he felt that
5 we were in danger. So he report --

6 THE COURT: Did you see this individual in the
7 courthouse today?

8 MS. WILLMOTT: I don't know. I never saw him.

9 THE COURT: You never saw him?

10 MS. WILLMOTT: They were so concerned so they let
11 me go in so he wouldn't see me.

12 MS. ARIAS: Their concern was great enough that
13 two officers approached my housing unit as well to warn
14 me. That doesn't happen with any visitors even if they
15 are random.

16 THE COURT: Anything else, Mr. Nurmi?

17 MR. NURMI: Other than argument on the issue or
18 brief?

19 THE COURT: Okay. Any questions from the State?

20 MR. MARTINEZ: No questions, just --

21 THE COURT: Just argument?

22 MR. MARTINEZ: Just argument.

23 THE COURT: It is your motion to close, Mr.
24 Nurmi.

25 MR. NURMI: Your Honor, I said at bench I think

1 if we are -- whatever logic the Court wants to apply --
2 and I know the Court is somewhat bound to do so -- but at
3 the same time we have to judge the concerns Miss Arias has
4 from her psychological shortcomings. Like I said at
5 bench, we have a diagnosis of Post-Traumatic Stress
6 Disorder. We have a diagnosis of Borderline Personality
7 Disorder. So we are not dealing with the mind of a
8 mentally stable woman who has these concerns. So when she
9 is advancing these concerns -- whether they may seem
10 illegitimate to all of us, they are legitimate to her; and
11 I point that out because then the legitimacy to her
12 affects her ability to move mitigation forward, to present
13 a full and complete case for her life. That's where the
14 concern comes from my part because under Eddings and under
15 Lockett and the whole line of death penalty, juris prudence
16 says she has the right to present this full case
17 mitigation. What I said at the bench as well, using Smith
18 v. Texas and Estes v. Texas, her rights to do so in the
19 heightened juris prudence of death penalty litigation is
20 such that it trumps any First Amendment right or any
21 public access right.

22 And that's really what we are talking about
23 here, the right to attend a trial or a portion of the
24 trial. And I know the Court was inclined already to clear
25 the courtroom. The issue then seems to be the remote

1 viewing room, which we objected to previously anyway; but
2 the point being if she feels somehow intimidated by that,
3 then that to me -- that is enough to grant such a motion
4 to let her proceed with her testimony. If she thus feels
5 that she cannot effectively testify and thus chooses not
6 to, I think that is ultimately a preclusion of mitigation.

7 THE COURT: Mr. Martinez?

8 MR. MARTINEZ: What they have set out for you is
9 a prospective concern of something that may happen in the
10 future. They haven't pointed to anything specifically
11 that they can use to buttress the argument. Defendant
12 claims that she may be the subject of death threats and
13 points to the Maricopa County Sheriff's Office situation.
14 That, if anything, indicates that she is safe because the
15 Maricopa County Sheriff's Office -- worked. It worked.
16 Nobody even went in there to cause her any harm; and as
17 you have pointed out, if she is concerned about any
18 letters, she doesn't have to read the letters. So I
19 think -- first of all, looking at the Defendant's concern
20 I don't see it as valid as it could be because it talks
21 about something that is in the future. That is
22 prospective.

23 Additionally, there is this issue about what
24 the media is going to say, and somehow it is the media's
25 fault that -- they are the ones that are stirring the pot

1 and because of them, bad things may in the future happen
2 to the Defendant. I will just reference my response to
3 the Defendant's motion to dismiss the allegation of the
4 death penalty where I have attached Tweets where you can't
5 on one hand say exclude the media because of something
6 that is going to happen prospectively, but let me go ahead
7 and manage what is going out there. Let me tell them what
8 is going out there. I heard that again today where Miss
9 De LaRosa indicated she got a call or something -- had
10 some contact from the -- I think it was the Arizona
11 Republic -- there is clearly a relationship there -- and I
12 don't care about it -- only as it applies to these
13 proceedings; that it is clear they are trying to manage
14 what goes out there. It is okay to receive a death threat
15 if the Arizona Republic reports on it, but not if the
16 other media report on it or if the public talks about it.

17 So from our perspective, first of all, they
18 haven't met the threshold because it is something
19 prospective. Additionally, from an estoppel point of
20 view, it just seems that you can't have it one way and
21 then want it the other way also. It is one sword, and you
22 have to -- if you pick it up, it has to -- a sharp blade
23 on both sides and what is -- what the Court has proposed
24 in terms of a solution, I think, is appropriate. You have
25 indicated that you would clear the courtroom as she

1 requested so that the immediate nervousness is not there.
2 So she can't say she is nervous. And all of the media is
3 going to be out somewhere else -- I don't know exactly
4 where the viewing rooms are -- and they will be able to
5 report on it. I think that's the only appropriate
6 solution.

7 My concern -- as I indicated at the bench --
8 was that if we close the proceedings, I have a strong
9 concern that the closing of the proceedings will result in
10 this thing coming back. To me, I don't think it warrants
11 what the Defendant is requesting. I think that your
12 solution is appropriate.

13 THE COURT: Mr. Nurmi?

14 MR. NURMI: I have just the opposite concern in
15 terms of Miss Arias' rights. Again, I think the State is
16 trying to apply logic to the feelings of, again, a woman
17 they know is mentally ill as their own expert diagnosed
18 her as such. The point of this being if she feels
19 intimidated by that, then that to me is sufficient -- we
20 are talking about the difference in what we are requesting
21 and what the Court is -- Court's previous order was
22 whether or not the viewing room would be shut down, and
23 that's really what we are talking about here. This idea
24 that harking at every corner -- every motion we make,
25 somehow the State brings up one Tweet that Miss De LaRosa

1 -- that she had with Mr. Kiefer, there is clearly a
2 relationship for that and the next stop for this
3 individual would be my office, Miss De LaRosa or Miss
4 Willmott's office because we have had people approach our
5 office as well. That has been fairly well documented
6 throughout these proceedings.

7 So, you know, the case the State referenced
8 relates to the proceedings being shut down and the
9 Defendant contesting that, not the other way around; and I
10 think that if we do prevent Miss Arias from testifying --
11 for whatever reason -- due to her mental infirmity, she
12 feels that is a prevention and we have a serious problem
13 under Eddings; and I think the State should be more
14 concerned about that then they are whatever media exposure
15 they wish to have. So we would ask the Court to comply
16 and shut down and add the remote viewing room to its
17 previous order, I guess.

18 THE COURT: All right.

19 MS. ARIAS: Can I say one more thing?

20 THE COURT: Certainly.

21 MS. ARIAS: It is not about who is sitting in the
22 courtroom. It is about the knowledge that there are
23 people privy to my testimony. Mr. Martinez said it is --
24 that I would be less nervous if we cleared the courtroom.
25 It is more about knowing, in my mind as I'm trying to

1 answer these questions, that there are people who are
2 privy to what I'm saying and should I answer one way or
3 another because of these threats -- so that was not
4 accurate. It is not about who is sitting in the
5 courtroom.

6 MR. MARTINEZ: Is the Defendant indicating that
7 she is going to be untruthful on the witness stand
8 depending on the composition of the courtroom? That
9 causes me concern because the truth is whatever it is
10 irrespective of who is in the courtroom, and I believe
11 that's what the Defendant is indicating; that depending on
12 the composition, she would change her answers.

13 MS. ARIAS: Well, I will always be truthful. It
14 is about am I able to express the truth in the way I need
15 to express it or will that be cramped because of the
16 pressure that I'm feeling because of the threats that I
17 have received.

18 THE COURT: All right. I want to think about
19 this. It is close to the lunch hour. It is 20 to 12:00.
20 Let's reconvene at 1:00 o'clock. I will have a decision
21 at 1:00 o'clock.

22 (Whereupon, in-chambers conference
23 concludes.)

24 (Whereupon, a lunch break was had.)
25

1 (Whereupon, a bench conference is held on
2 the record:)

3 THE COURT: Do you have anything else to report,
4 anything else?

5 MR. MARTINEZ: I would just note from my point of
6 view, it seems like it sets bad precedent for any
7 Defendant who comes up here and from a subjective view
8 says -- my characterization -- nervous and it will affect
9 the way I testify, it is just -- it creates problems for
10 me -- for the State actually.

11 MR. NURMI: I don't think that is a consideration
12 this Court has to give, consideration of the circumstances
13 in this case and given the fact based on those
14 circumstances -- I know consistent with the concerns,
15 minutes after getting out of chambers of course -- I
16 wasn't checking my phone in chambers -- there were Tweets
17 about Miss Arias trying to manipulate the media and that
18 sort of thing within minutes. So this obviously affects
19 her in some way, and I think just sticks with the idea of
20 her feelings. That's all I can speak to.

21 THE COURT: Well, I acknowledge that I believe
22 this is a manipulative tactic; and I have concerns about
23 the genuine reason for the request to close the
24 proceedings; however, my concern is that if I don't close
25 the proceedings, the Defendant will be precluded from

1 testifying or will refuse; and I'm not sure that under
2 these circumstances an Appellate Court will find that it
3 is a voluntary waiver of her right to present mitigation.
4 So I'm going to close the proceedings. So you are aware,
5 I will read a statement indicating my reasons.

6 MR. NURMI: I think Counsel for the media is
7 present as well so -- I saw some Tweets about that he was
8 running over. So --

9 THE COURT: Okay.

10 MR. NURMI: I'm just making you aware when he
11 jumps up.

12 THE COURT: I'm sure he will.

13 (Whereupon, bench conference concludes.)

14 THE COURT: All right. Based upon information
15 provided at a hearing earlier today, the Court finds that
16 the Defendant's next witness will not testify unless these
17 proceedings are closed to the public. Regardless of the
18 reasons provided by the witness for a requested closure,
19 the Court finds the Defendant has a need for the testimony
20 of this witness to be heard by the penalty phase jury in
21 support of the Defendant's mitigation case.

22 The Court further finds that the witness
23 will refuse to testify unless the proceedings are closed.
24 Because this is a death penalty sentencing trial, the
25 Court finds that closing the courtroom so that this

1 witness will testify is necessary to further the
2 administration of justice. The Defendant has an
3 overriding and compelling interest in presenting
4 mitigation evidence from this witness, and that interest
5 will be prejudiced if the courtroom is not closed so that
6 the witness will testify. The closure of the courtroom
7 for the testimony of this witness is no broader than
8 necessary to protect the Defendant's interest in providing
9 mitigation evidence for the penalty phase jury.

10 The Court has considered and suggested other
11 alternatives to closing the courtroom; however, the
12 witness has refused to participate unless the courtroom is
13 closed during his or her testimony.

14 It is ordered closing the courtroom for the
15 testimony of this witness. The family of the victim may
16 remain in the courtroom for the testimony. The testimony
17 of the witness will be video recorded by FTR. The Court
18 will consider unsealing the testimony of this witness or a
19 redacted portion of that testimony after the jury has
20 reached a verdict. All right.

21 MR. NURMI: Your Honor, for clarity, is this also
22 inclusive of the remote viewing room as well?

23 THE COURT: Yes. Proceedings are closed.

24 MR. MOESER: Your Honor, my name is Chris Moeser
25 from Ballard Spahr on behalf of Phoenix Newspaper, KPNX.

1 KPHO. My clients object to the closure and would ask that
2 you put those findings in writing. I would also ask the
3 Court will a transcript of that testimony be made
4 available immediately upon the ending of that proceeding
5 or when will a transcript be made available?

6 THE COURT: That is something that I will need to
7 discuss with the attorneys. There was not an order
8 closing those proceedings, but I will hear from the
9 attorneys before I make a ruling on that issue. With
10 regard to the written -- a written ruling with regard to
11 the Court's decision, you can obtain a copy of that from
12 the court reporter.

13 MR. MOESER: Your Honor, I would like to state on
14 the record that because this next portion of this criminal
15 proceeding is closed, the public and the press have a
16 presumptive First Amendment right under the Constitution,
17 under the Arizona Constitution, that says that justice
18 shall be administered openly to attend this hearing, to be
19 present while this witness testifies. The First Amendment
20 requires that the Court make a transcript of that
21 proceeding available as soon as possible. We would urge
22 the Court to do it immediately upon adjournment of that
23 hearing. And, I mean -- finally, we just ask the Court to
24 reconsider its ruling because of the important nature of
25 this case; and the fact that there is such a heavy

1 presumption that criminal court proceedings are conducted
2 in public in the forthright (sic) of day.

3 THE COURT: I'm aware of the First Amendment
4 implications. This was not an easy decision. I thought
5 about it over the lunch hour and my decision is final.
6 You certainly may take my decision up on appeal. I assume
7 you intend to do so because you are ordering a transcript.

8 MR. MOESER: Your Honor, one other question. Can
9 you provide the identity of the witness that will testify?

10 THE COURT: No, not at this time.

11 MR. MOESER: Thank you, your Honor.

12 THE COURT: All right.

13 (Whereupon, further proceedings were had
14 which were not transcribed at this time.)

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