

the United States Constitution, as well as Art. II, § 4 and § 24 of the Arizona Constitution, filed a pleading requesting that the charges against her be dismissed with prejudice due to the fact that Ms. Arias has recently discovered that the State has purposely destroyed evidence that was clearly exculpatory and/or mitigating. In this motion, Ms. Arias also sought out the alternative remedy of asking this Court to dismiss the “State’s Notice of Intent to Seek the Death Penalty” that the State filed against her on October 31, 2008. In this Motion Ms. Arias also requested that “given the ever changing nature of the case and the evolving scope of the State’s misconduct, Ms. Arias reserves the right to supplement this motion as circumstances currently unforeseen dictate.” This motion is necessitated by the fact that a circumstance unforeseen on November 10, 2014, has now arisen that demonstrates the widening scope of the misconduct undertaken by the State in this case. In this regard, Ms. Arias would point to the fact that the State never disclosed the image of the hard drive contained in Mr. Alexander’s computer (item #390633) they made on June 11, 2008, to Ms. Arias. In the attached Memorandum of Points and Authorities Ms. Arias will expand upon how the widening scope of the State’s misconduct further illustrates the need for the case against her to be dismissed with prejudice or in the alternative that the “State’s Notice of Intent to Seek the Death Penalty” filed against Ms. Arias, by the State on October 31, 2008 be dismissed. In making this present assertion, Ms. Arias relies upon the authorities she mentioned in her original motion filed on or about November 10, 2014, the evidence produced at the evidentiary hearings related to the original motion and the authorities contained herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS

Subsequent to Ms. Arias' original filing related to the hard drive (item #390633) the State, without any support for doing so blamed Ms. Arias' former counsel for destroying evidence. (Phase1). This claim was ultimately negated by the testimony of Ms. Schaffer and Gilbert McReynolds, both of whom worked on Ms. Arias' prior legal team, and both of whom testified that Counsel for the State was touching the computer in an effort to find either pornography or nude images of Ms. Arias.

Phase 2 of the State's attempt to cover up what they had done involved claiming that a virus had put this pornography on the computer, not Mr. Alexander. In so doing the State ultimately confessed to egregious misconduct of another types because the State admitted that there was both log links to pornography and viruses on the computer at a time when Detective Melendez had already testified that no such evidence existed during the first trial. In conjunction with Phase 2, during oral arguments the State then claimed that Ms. Arias was backing off her original claims of purposeful destruction when in reality Ms. Arias only expanded her claims to account for the gross incompetence of the Mesa Police Department's Computer Forensic Unit.

Phase 3 of the State's attempt to cover up its misconduct involved making spurious and unsubstantiated claims that Ms. Arias' defense expert Bryan Neumeister tampered with the evidence, even going so far as to claim he tried to destroy evidence by using an "incinerator" program or that he added evidence to the hard drive. Of course

none of these allegations were true, Mr. Neumeister was doing an investigation of the State's wrongdoings on a working copy of the hard drive referred to as a clone. The "evidence copy" is something that the Mesa Police Department has had all along, thus they were aware not only that Mr. Neumeister didn't destroy evidence but that he couldn't destroy evidence because the evidence itself i.e. the hard drive is being held by the Mesa Police Department, though they made claims that they didn't have it. To further illustrate the false and spurious nature of the claims made against Mr. Neumeister evidence came to light during an interview with Detective Smith on December 10, 2014 and during the evidentiary hearing held on December 11, 2014. It was learned that the Mesa Police Department had a mirror image of the hard drive made on June 11, 2008, that they had not previously provided to Ms. Arias and that found on this drive Mesa Police Department discovered the log links related to porn sites were on that image as was evidence of Mr. Alexander's computer having a virus. Thus, the State, at the time they were making these allegations against Mr. Neumeister, knew that they were false. However, Ms. Arias fully aware that the allegations were false, for other reasons, did not know that the image made on June 11, 2008, contained the very evidence they claimed that Mr. Neumeister had created and/or destroyed thus she was unable to present to the court how farcical the claims the State was making against Mr. Neumeister actually were. Other motions will deal with the legal viability of these baseless attacks made upon Mr. Neumeister being presented to the jury but at issue herein is the State's failure to produce this drive years ago as it would be obligated to and the State's current attempt to hold this drive hostage in exchange for the opportunity to interview Mr. Neumeister.

The importance of this drive as a piece of exculpatory evidence that Ms. Arias had not had access to is illustrated by the fact that in December of 2009, when an image of the drive was made for Mr. Dworkin that image contained the events of June 19, 2009. Meaning the image provided to Ms. Arias was not the most pristine available, that would have been the image made on June 11, 2008, and while this image was damaged the day prior by Detective Flores, the damage was certainly less extensive than that which was done to the image made after the events of June 19, 2009. Of course the reality if Ms. Arias was aware there was a difference both would have been sought, but as case law dictates, this factual distinction is without import.

What is of import is that, as it now stands, Ms. Arias has been convicted of a crime based in large part on the State's attacks on her credibility and now, having been convicted of First Degree Murder, she is attempting to defend her life during a sentencing phase retrial and is learning that not only did the State engage in malfeasance or gross misconduct that the State also did not provide her with all the exculpatory evidence.

II. LAW AND ARGUMENT

In her initial motion Ms. Arias cited to Rule 15.1, Arizona Rules of Criminal Procedure, *Giglio v. United States*, 405 U.S. 150 (1972) and *Brady v. Maryland* 373 U.S. 83, 83 S. Ct. 1194 (1963) for the general proposition that she was unable to present exculpatory evidence to her jury because she was not aware of its existence. Of course now Ms. Arias is now aware that not only was evidence destroyed based on the conduct of the Mesa Police Department but that the evidence on the mirror image made by the

Mesa Police Department was intentionally withheld, when the State's legal obligation required its automatic disclosure.

On December 11, 2014, Division 1 of the Arizona Court of Appeals issued its opinion in *Milke v. Mroz/State* (No. 1 CA-SA 14-0108). At issue in this opinion was if Ms. Milke could be re-tried for the crime of first degree murder after the case against her had been dismissed for prosecutorial misconduct. Obviously, Ms. Arias is not yet in a position where double jeopardy is at issue but the correlation between the misconduct in the *Milke* case and the misconduct that has infested her own case should be highly instructive to this court as the patterns of State conduct are eerily similar and are not only relevant to the withholding of the mirror image made of evidence item #390633 back on June 11, 2008, but of the claims Ms. Arias made in her original motion.

In this regard the *Milke* Court, like Ms. Arias, cited to both *Brady and Giglio* as authority for the legal reality that the "prosecution is required to unilaterally disclose any impeachment or exculpatory evidence" and further emphasized that suppressing favorable evidence is a violation of due process. *Id. at 4*. The *Milke* court went on to note the particular importance of this disclosure when the credibility of a witness is at issue and that the credibility of that witness may very well determine guilt or innocence. *Id. at 4*. Of course as was laid out in her previous motion, the credibility of Ms. Arias was a huge issue throughout the trial and was used as a weapon by the State against every witness whom testified on her behalf.

Later in the opinion, the *Milke* Court went on to discuss how the State's choice to litigate against Milke's Subpoena of Saldate's personnel file was akin to active

concealment (citations omitted). Of course in the case at hand, not only did the State actively tamper with evidence but they did not provide Ms. Arias' expert with the most pristine image of the hard drive. Furthermore, the State offered testimony that no evidence of pornography or viruses was found on the hard drive. It would be hard to fathom how such behavior would not also be deemed "active concealment."

Of further import to the motion at hand is the fact that the *Milke* Court went on to deem this similar behavior as "egregious prosecutorial misconduct that raise serious concerns regarding the integrity of our system of justice" *Id. at 5 (citations omitted)*. This passage is important because history is repeating itself because, like Ms. Milke, Ms. Arias was forced to defend herself "without crucial information she is entitled to have." The court further pointed out that the State's failure to produce evidence is akin to suppression. *Id. at 8*.

III. CONCLUSION

During oral arguments on December 11, 2014, the State implied that Ms. Arias and her counsel were gleeful about discovering the evidence that the State had mishandled, deleted, or destroyed evidence, however, nothing could be further from the truth. Instead, what the State has done in this case should be repulsive to this Court and any citizen of this country who respects the Bill of Rights. The actions of the State in this case, as documented in the numerous motions for prosecutorial misconduct Ms. Arias has been forced to file, document a plethora of actions undertaken by the State that stand in direct contrast to the rights due Ms. Arias via the Fifth, Sixth, Eighth and Fourteenth

Amendments of the United States Constitution, as well as Art. II, § 4 and §24 of the Arizona Constitution. Accordingly, for the reasons mentioned above and those in her original motion related to the hard drive issue, the charges against Ms. Arias should be dismissed with prejudice. In the alternative, for the reasons mentioned above any sense of justice that comports with the death penalty jurisprudence detailed in her motion dated November 10, 2014, would require that this Court dismiss the “State’s Notice of Intent to Seek the Death Penalty” with prejudice.

RESPECTFULLY SUBMITTED this 14th day of December, 2014.

By: /s/ L. Kirk Nurmi
L. KIRK NURMI
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Copy of the foregoing
Filed/delivered this 14th
day of December, 2014, to:

THE HONORABLE SHERRY STEPHENS
Judge of the Superior Court

JUAN MARTINEZ
Deputy County Attorney

By /s/ L. Kirk Nurmi
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