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

STATE OF ARIZONA,

Plaintiff,

v.

**JAVIER LORENZANO-NUNEZ
(001),**

Defendant.

No. CR2020-002309-001-DT

**MR. LORENZANO-NUNEZ'S
MOTION TO CHALLENGE
THE GRAND JURY FOR A
NEW FINDING OF PROBABLE
CAUSE**

(Honorable Aryeh Schwartz)

Javier Lorenzano-Nunez, through undersigned counsel, respectfully moves this Court to remand this case to the Maricopa County Grand Jury for a re-determination of probable cause. The State did not present evidence to the Grand Jury in a fair and impartial manner; thus, Mr. Lorenzano-Nunez was denied a substantial procedural right. The denial of such right violated Rule 12.9 of the Arizona Rules of Criminal Procedure, and Mr. Lorenzano-Nunez's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution as well as Article II, Section 4 of the Arizona Constitution.

This Motion is supported by the attached Memorandum of Points and Authorities, a copy of the Indictment, and a copy of the Grand Jury transcript.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

a. The Indictment:

On December 8, 2020, the Maricopa County Grand Jurors indicted Mr. Lorenzano-Nunez of Count 1: First Degree Murder, a Class One dangerous felony, alleging on or about July 9, 1998, Mr. Lorenzano-Nunez intending or knowing that his conduct would cause death, with premeditation did cause the death of Sarah James Carr, in violation of A.R.S. §§13-1101, 13-1105, 13-701, 13-702, 13-703, and 13-801. A copy of the Indictment is attached for this Court's review (Appendix 1). A copy of the Grand Jury transcript is also attached for this Court's review. (Appendix 2).

b. Summary of Relevant Information Disclosed by the State as of Today's Date:

On July 10, 1998, the Phoenix Police Department responded to a 911 call reporting a shooting in the area of East Brill Street in Phoenix. Upon arrival, officers found the named victim, Ms. Carr, deceased inside of a home from a shot gun blast to the face.

On scene, officers interviewed an eyewitness to the shooting, Shannon Fisher. Ms. Fisher informed officers she and Ms. Carr went to the East Brill Street address to purchase crack cocaine from two Hispanic men. The women did not have any money, so instead an agreement was made to exchange a sexual act

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for the cocaine. Upon completion of said act, the men did not give the women the agreed upon cocaine. When Ms. Carr began to argue with one of the men, he shot her in the face with a shotgun. Ms. Fisher ran down the street to a neighbor's house to call 911 and the two Hispanic men fled on foot from the scene. The shotgun was never recovered.

According to Officer Ira Williams' departmental report, Ms. Fisher was distraught over the incident and "drowsy" during their conversation. Ms. Fisher's attention had to be regained by the officer numerous times during the conversation. Ms. Fisher told Officer Williams the person who shot Ms. Carr was known to her by the nickname of "G" and the women had been to the house on East Brill Street daily for approximately one month prior to the shooting.

While on scene, Ms. Fisher was presented with a neighbor, Charles Chambers. Ms. Fisher positively identified Mr. Chambers as being present at the East Brill Street house at the time of the shooting. During the investigation, PPD determined that to be inaccurate.

Officer Laura Liuzzo also had contact with Ms. Fisher on scene. In her report, Officer Liuzzo noted Ms. Fisher was almost asleep in the backseat of the police van and indicated Ms. Fisher appeared to be under the influence or either alcohol and/or drugs at the time.

There were several cars parked outside the East Brill Street home. One of those vehicles was registered to a person named Gilbert Noel Sanchez Rosado. Inside the home, PPD located numerous documents with the name Gilbert Sanchez listed on them. PPD was able to locate an MVD photograph for the

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name Gilbert Noel Sanchez Rosado. PPD also spoke with witness Bernard Gard, the owner of the East Brill Street home, who confirmed Gilbert Sanchez was a tenant there. Mr. Gard informed PPD that Mr. Sanchez had rented other properties from him in the past. Mr. Gard identified Mr. Sanchez through his MVD photograph.

On July 10, 1998, Ms. Fisher was presented a photographic line-up by PPD. Upon review, Ms. Fisher identified the MVD photograph of Gilbert Noel Sanchez Rosado from that line up as the person who shot and killed Ms. Carr.

On July 15, 1998, PPD issued an arrest warrant for Gilbert Noel Sanchez Rosado on the charge of first-degree murder. Listed on at warrant was a date of birth and social security number for Mr. Sanchez Rosado. Officers attempted to located Mr. Sanchez Rosado through potential work or employment leads but were unsuccessful and the case went cold.

On September 7, 2007, Officer John Cleary authored a departmental report noting PPD had been contacted by the Puerto Rico Police Department informing them they had a person in custody by the name of Gilbert Noel Rosado with the same date of birth and social security number as listed in the PPD warrant. Officer Cleary sent a photograph to the Puerto Rico police of Mr. Sanchez Rosado. No additional information regarding this contact has been provided to defense counsel to date.

On November 2, 2007, Officer Ira Williams authored a departmental report noting she provided a copy of the MVD photograph to the MSCO-ACTIC (Arizona Counter-Terrorism Information Center) facial recognition unit. Officer

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Williams requested the MVD photograph of Mr. Sanchez Rosado be run in their database for any possible leads. On November 5, 2007, Officer Williams was informed that MSCO-ACTIC was unable to obtain a match with the suspect photograph in their system. The case again went cold.

The next report is from November 4, 2016, which notes the Arizona Department of Public Safety Facial Recognition Unit received a request from PPD to run the MVD photograph of Ms. Sanchez Rosado into their system. The report indicates that on November 23, 2016, the photograph was run through facial recognition software (Morpho Face Expert) to compare the “probe image” (the MVD photograph) with known subjects in the DPS and FBI Next Generation Identification databases.

The report notes the facial recognition software returned with **200 possible matches** from the DPS database and **50 possible matches** from the NGI database. Of those 250 possible matches, Sergeant Heltemes from DPS identified one possible lead from the NGI database, a person identified as Javier Lorenzано-Nunez. The MVD photograph was taken in 1997 and the image of Mr. Lorenzано-Nunez was taken in 2011. During the comparison, Sgt. Heltemes noted 7 similarities between the two images. DPS Criminal Intent Research Unit Specialist Steffani Skelton was assigned to conduct follow up research on Mr. Lorenzано-Nunez, during which she found no known ties to Arizona.

On August 8, 2017, PPD requested a search warrant for an email address with Google seeking all personal information associated with an email address that belonged to Mr. Lorenzано-Nunez. In that warrant, for the first time, PPD

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lists the name of Gilbert Noel Sanchez Rosado as an alias for Mr. Lorenzano-Nunez.

The timeline of what happened next is unclear to defense counsel as documentation has not been provided by the State. However, Mr. Lorenzano-Nunez was ultimately arrested in Tijuana, Mexico and was extradited to the United States for these charges.

c. Detective Roestenberg's Grand Jury Testimony

Detective Roestenberg from the PPD Cold Case Unit testified to the Grand Jury in this matter. During his testimony, Detective Roestenberg gave a summary of the investigation to the grand jurors. However, the Detective omitted numerous important details during his testimony, thus rendering the presentation fundamentally unfair.

First, no mention of Ms. Fisher's intoxication and false identification of a suspect on scene is ever mentioned. Second, when the detective is describing Ms. Fisher's photograph line-up, his testimony is as follows:

Q: Did she pick, was she shown a photo lineup of different people's photos to see whether she recognized anyone in it?

A: She was.

Q: Did she recognize anyone?

A: Yes.

Q: Who was that?

A: She selected Javier Lorenzano-Nunez from the lineup presented to her.

(See Grand Jury transcript, page 12, lines 13-21).

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At no time is the Grand Jury told Ms. Fisher actually identified a person named Gilbert Noel Sanchez Rosado. The Grand Jury is not told that Ms. Fisher informed them the suspect's nickname was "G." The Grand Jury is also never told about the facial recognition software portion of the investigation – they are only told the eyewitness identified Mr. Lorenzano-Nunez.

Further, the Detective continues his testimony by saying that a vehicle located at the residence came back to "an occupant inside the home." At no time is the name Gilbert Noel Sanchez Rosado said by the Detective.

The Detective further testifies that pay stubs, bills, and other miscellaneous items bearing the name of one of the occupants was found inside the home. At no time is the name Gilbert Noel Sanchez Rosado said by the Detective.

The Detective then tells the Grand Jury the owner of the home, Mr. Gard identified Javier Lorenzano-Nunez is a photograph line up. At no time is the name Gilbert Noel Sanchez Rosado said by the Detective.

This presentation to the Grand Jury was extremely misleading and incomplete. The DCA and Detective purposefully omitted all information regarding Gilbert Noel Sanchez Rosado – and approximately 18 years of investigation – during their presentation by telling the Grand Jury that Ms. Fisher and Mr. Gard identified Javier Lorenzano-Nunez.

And members of the Grand Jury seemed suspicious. They asked numerous questions of the Detective as to what took so long to bring an indictment. The Detective was extremely vague in his responses and said, "We do periodic systematic reviews of these investigations, and like I said, he fled the scene so it

was just a matter of following up and doing additional follow up to attempt to locate him.” (See Grand Jury transcript, page 17, lines 20-23).

II. LAW AND ARGUMENT:

a. Mr. Lorenzano-Nunez is Entitled to a New Determination of Probable Cause

A criminal defendant is entitled to due process during grand jury proceedings. See *State v. Emery*, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982) and *Crimmins v. Superior Court*, 137 Ariz. 39, 668 P.2d 882 (1983). Remand of an indictment is appropriate when the defendant is denied a substantial procedural right under Arizona law. See *State ex rel. Woods v. Cohen*, 173 Ariz., 497, 502, 844 P.2d 1147, 1152 (1992). If the state resorts to the grand jury procedure, the due process and equal protection clauses of the Fourteenth Amendment require an impartial presentation of the evidence. See *Id*; see also *Herrell v. Sargeant*, 189 Ariz. 627, 629, 944 P.2d 1241, 1244 (1997). The interests of the prosecutor and the state are not limited to indictment but include serving the interests of justice; as a result, the prosecutor’s obligation to make a fair and impartial presentation to the grand jury has long been recognized. See *Trebus v. Davis*, 189 Ariz., 621, 624, 944 P.2d 1235, 1238 (1997). Here, Mr. Lorenzano-Nunez’s due process rights were violated, and he was not afforded a fair and impartial presentation to the Grand Jury.

b. The State Failed to Present Exculpatory Information to the Grand Jury Thus Denying Him Due Process of Law

The presentation of evidence in this case was not done in a fair and impartial manner. Detective Roestenberg deliberately withheld critical

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information – and critical weaknesses – about this case to the Grand Jury. Detective Roestenberg failed to ever say the name Gilbert Noel Sanchez Rosado, despite the fact the vehicle registered at the East Brill Street address was under that name. Detective Roestenberg failed to ever say the name Gilbert Noel Sanchez Rosado despite the fact that is the name associated with the photograph in the MVD system that was used in the photo lineup for witness identification. Detective Roestenberg failed to ever say the name Gilbert Noel Sanchez Rosado despite the fact that is the name of the person who was identified by Ms. Fisher and Mr. Gard.

Detective Roestenberg omitted the part of the investigation where DPS ran the photograph of Gilbert Noel Sanchez Rosario through their facial recognition database and received 250 possible matches and DPS somehow narrowed it down to Mr. Lorenzano-Nunez.

Instead, Detective Roestenberg told the Grand Jury the person the witnesses identified was Javier Lorenzano-Nunez, which is inaccurate and misleading. The witnesses identified Gilbert Noel Sanchez Rosado. The two men were only connected – 18 years later – through facial recognition software by DPS, a fact the Grand Jury is never told. Further, Detective Roestenberg failed to tell the Grand Jury the DPS investigation showed no ties between Mr. Lorenzano-Nunez and Arizona.

Detective Roestenberg's failure to inform the Grand Jury of all this exculpatory evidence violates Mr. Lorenzano-Nunez's rights to due process and a fair and impartial presentation to the Grand Jury.

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III. CONCLUSION:

Mr. Lorenzano-Nunez respectfully moves this Court to remand this case to the Maricopa County Grand Jury for a re-determination of probable cause. The State did not present evidence to the Grand Jury in a fair and impartial manner. Thus, Mr. Lorenzano-Nunez was denied a substantial procedural right. The denial of such right violated Rule 12.9 of the Arizona Rules of Criminal Procedure, and Mr. Lorenzano-Nunez's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution as well as Article II, Section 4 of the Arizona Constitution.

RESPECTFULLY SUBMITTED this 13th day of December, 2024.

STEVE KOESTNER
LEGAL ADVOCATE

By /s/ Jessica Valdivia-Luna
Jessica Valdivia-Luna
Deputy Legal Advocate

Copy of the foregoing e-filed /
e-mailed this 13th day of
December, 2024, to:

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By: /s/ KK