

THOMAS C. HORNE
ATTORNEY GENERAL
(FIRM STATE BAR NO. 14000)

SUSANNE BARTLETT BLOMO
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CAPITAL LITIGATION SECTION
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(STATE BAR NUMBER 014328)

ATTORNEYS FOR PLAINTIFF/RESPONDENT

ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

STATE OF ARIZONA,
PLAINTIFF/RESPONDENT,
-vs-
SAMUEL VILLEGAS LOPEZ,
Defendant/Petitioner.

No. CR0000-163419
RESPONSE TO SUPPLEMENT TO
PETITION FOR POST-CONVICTION
RELIEF
(Hon. Warren J. Granville presiding)

The State of Arizona, hereby responds to Petitioner Samuel Villegas Lopez's Supplement to Petition for Post-Conviction Relief. Lopez contends that *Martinez v. Ryan*, 2012 WL 912950 (March 20, 2012), supports his request for relief. *Martinez* does not apply, however, to state PCR proceedings.

Martinez holds that in *federal habeas proceedings*, "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Id.* at *5. In other words, a federal habeas court may consider a prisoner's otherwise procedurally defaulted IAC-trial claim if the prisoner establishes: (1) his state

PCR counsel was constitutionally ineffective in failing to raise the claim in state court, and; (2) the underlying IAC-trial claim is “a substantial one.” *Id.* at *8.

The Court specifically held in *Martinez* that, “state collateral cases on direct review from state courts are unaffected by the ruling in this case.” *Id.* at *10. Thus, *Martinez* is inapplicable to state PCR proceedings and does not create an exception to state PCR rules of preclusion.

Lopez’s successive PCR claim is precluded because it was not raised in his previous PCR petition. *See* Ariz. R. Crim. P. 32.2(a)(3). Arizona’s procedural bar on successive petitions is recognized under federal law. *See Martinez*, at *6.

Arizona Rule of Criminal Procedure 32.2(b) governs whether an otherwise precluded state PCR claim may be considered by this Court. Rule 32.2(b) does not create an exception for IAC claims not previously raised due to the ineffective assistance of PCR counsel. *See State v. Diaz*, 228 Ariz. 541, 543–44, ¶¶ 7–8, 269 P.3d 717, 719–20 (App. 2012). Lopez’s claim does not meet any exception to preclusion. In particular, it does not meet Rule 32.1(e)—a claim based on newly discovered material facts that probably would have changed the sentence—or Rule 32.1(g)—a claim based on a significant change in the law that is applicable to Lopez’s case and would probably overturn his sentence.

Moreover, as explained in the response to Lopez’s successive petition, PCR counsel was not constitutionally ineffective, and the underlying IAC-trial claim Lopez alleges PCR counsel should have raised was not “a substantial one.” *See*

Martinez, at *8.

Resentencing counsel George Sterling¹ would have known from the record that, despite requests, Lopez's family had previously failed to offer any information related to Lopez's sentencing, and Lopez had expressly opposed them being subpoenaed to testify on his behalf. (R.T. 6/25/87, at 4; Exhibit C.) Nonetheless, Sterling investigated mitigation with the assistance of a court-appointed investigator, retained mental health and other experts (Dr. Bendheim, Dr. Bayless, and Dr. Keen), and subpoenaed or otherwise obtained school, medical, social service, mental health, and correctional records. (R.T. 7/13/90, at 72–73; R.T. 8/3/90, at 18; Exhibits 26; F, at 1–8; I; M; N.) He attacked the validity of the single aggravating circumstance and presented evidence supporting mitigating circumstances. (R.T. 7/13/90, at 80–81; Exhibit F.)

Sterling could not, however, change the facts of the murder. This murder was so brutal that the sentencing judge remarked that in all his professional experience, he had never seen a case “as bad as this one.” (R.T. 8/30/90, at 33–34.) Considering the facts and circumstances of the crime, it is unsurprising that, despite Sterling's diligence, the sentencing judge resentenced Lopez to death.

As explained further in the PCR response, Lopez was ably assisted by PCR

¹ Sterling is now deceased and cannot provide information regarding his investigation or insights into his strategy. It is clear that because Sterling represented Lopez on appeal from his conviction and original death sentence, he would have been familiar with the record.

counsel, Robert Doyle, who raised IAC claims, including claims that resentencing counsel was ineffective and also preserved those claims for federal habeas review. (Exhibits 9; 10; 11; G.) Thus, this case stands in sharp contrast to *Martinez* and *Maples v. Thomas*, 132 S.Ct. 912 (2012), on which Lopez relies. *Martinez*'s PCR counsel asserted *no* PCR claims; *Maples*' counsel failed to preserve *any* claims for federal habeas review. *Martinez*, at *4; *Maples*, 132 S.Ct. at 917.

Nonetheless, Lopez argues that Doyle ended his relationship with the Arizona Capital Representation Project (ACRP) and did not move for additional extensions as ACRP requested because of his ego and fear of losing his county contract. Lopez's serious allegations, particularly about Doyle's motivations, are supported only by speculation.

The record reflects that Doyle took those actions because: (1) ACRP was not helpful; (2) ACRP was undermining his relationship with his client; (3) ACRP had failed to obtain any declarations or affidavits from Lopez's family members, and; (4) the PCR judge had already ordered that further extension requests would be denied. (Exhibits 27; 33, at 2; J, at 3; K.)

Thus, Doyle, having already filed a PCR petition, filed a supplemental petition on the date set by the court—May 3, 1995. (Exhibit 10.) At that time, he also filed a motion for additional time to file another supplemental petition “should circumstances warrant,” in which he expressly noted Lopez's family's unwillingness to provide statements to counsel. (Exhibit 33.) Also, Doyle

contemporaneously filed a motion for discovery, which was granted, and thus continued to investigate possible additional PCR claims. (M.E. 6/8/95; Exhibit L.) As of May 3, 1995, Doyle was in possession of materials gathered by ACRP² and, subsequently, would have been in possession of whatever materials were provided in response to his discovery motion. (Exhibits 33, at 3; J, at 3; L.) The fact that he did not file another supplemental petition based on these materials indicates that the circumstances did not warrant it.

Doyle's performance was reasonable under the prevailing professional norms of PCR counsel in Maricopa County in 1994–1997. *See Strickland v. Washington*, 466 U.S. 668, 688 (1984). Specifically, he was not constitutionally ineffective by failing to raise an IAC claim based on Sterling's alleged failure to present the testimony of Lopez's family members or investigate his social history. Lopez's family was uncooperative, and Sterling investigated Lopez's social history by subpoenaing and obtaining records. Doyle's performance was not deficient, and the claim that Lopez now argues Doyle should have made was not "a substantial one" because it was not meritorious. *See Martinez*, at *8.

Martinez does not create grounds to grant Lopez's request for an evidentiary

² In the May 3, 1995 motion for discovery, Doyle characterized these records as "grammar school records, high school records, medical records, family member's records, and records of [Lopez's] previous employment." (Exhibit L, at 2.) The earliest declarations from family members Lopez has provided are dated 1999—4 years *after* the PCR court's deadline for a supplemental petition. (Exhibits 16–24, 38.) This contradicts Lopez's suggestion that his family members were willing to provide declarations at the time his PCR was pending.

hearing. Lopez's successive PCR claim is precluded, and this Court should summarily dismiss his petition. *See* Ariz. R. Crim. P. 32.2(a).

RESPECTFULLY SUBMITTED this 28th day of March, 2012.

THOMAS C. HORNE
ATTORNEY GENERAL

KENT E. CATTANI
DIVISION CHIEF COUNSEL

/s/
SUSANNE BARTLETT BLOMO
ASSISTANT ATTORNEY GENERAL
CAPITAL LITIGATION SECTION

ATTORNEYS FOR PLAINTIFF/
RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2012, I electronically filed the foregoing with the Clerk of the Court for the Maricopa County Superior Court.

I have also on this date provided a copy of the foregoing document by mail or electronic means to:

Denise I. Young
Attorney at Law
2930 N. Santa Rosa Place
Tucson, AZ 85712

Attorney for Defendant/Petitioner

/s/ _____
E. LEYVA

1900649

EXHIBIT L

ROBERT W. DOYLE
State Bar No. 007380
Attorney at Law
1010 E. Jefferson
Phoenix, Arizona 85034-2222
(602) 253-1010
Attorney for Petitioner

DA
19

JUDITH ALLEN
CLERK
BY *J. Allen* DEP.
FILED
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	No. CR 163419
Respondent,)	
)	MOTION FOR DISCOVERY
v.)	
)	
SAMUEL VILLEGAS LOPEZ,)	
)	
Petitioner.)	(Assigned to the Honorable
_____)	Peter T. D'Angelo, Judge)

Petitioner, pursuant to ARIZONA RULES OF CRIMINAL PROCEDURE 15 and 32, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the UNITED STATES CONSTITUTION, art. 2, 4, 13, 15 and 24 of the ARIZONA CONSTITUTION, moves that this Court order production of the materials specified below. This motion is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 3rd day of May, 1995.

By *Robert W. Doyle*
ROBERT W. DOYLE
Attorney for Petitioner

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MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner requests that this Court order the individuals named below to produce for inspection and copying the specified documents, wherever such documents may be located, with such production to be arranged with undersigned counsel within thirty days of the day that discovery is ordered.

Counsel for Petitioner requests this discovery at this time due to recent events in this case. At the time counsel was appointed, many items typically associated with the discovery process in a death penalty case were absent from the Petitioner's permanent file. Counsel contacted all previous attorneys for the Petitioner and was told that discovery efforts had yielded no results and that they currently retained no records. Later, lawyers working separately from Petitioner's counsel were able to obtain hundreds of pages of documents including grammar school records, high school records, medical records, family member's records, and records of the Petitioner's previous imprisonment. All of these records were available in 1986 and afterward. All of the records recently found were available on request without a court order or subpoena.

These events make it absolutely necessary for Petitioner's current counsel to exhaust all efforts and find any relevant documents missed in prior efforts. Having found hundreds of pages of important documents without court assistance, Petitioner now needs an order of the Court to finish the search.

DOCUMENTS REQUESTED

Petitioner requests that this Court order the Maricopa County Attorney and/or the Arizona Attorney General to disclose to undersigned counsel, and permit him to inspect, copy and photograph, the following items:

1. All statements, memoranda or utterances by Petitioner, however recorded or preserved, whether or not signed or acknowledged by Petitioner, whether made to police officers or to other people, and the names, addresses and telephone number of any and all witnesses to the making of said statements, utterances or memoranda. If such statements were oral, they shall be reduced to written form and provided to defense counsel. If any such statements were tape recorded and/or videotaped, the defense shall be permitted to copy such videotape and/or tape recording and, in addition, any transcript made thereof. Any notes of any such statements, utterances or memoranda shall be preserved, and a copy provided to the defense.

2. Any information in the State's possession or available to the State that is exculpatory or favorable to Petitioner on the issue of guilt regarding any element of the offense of first degree murder related to the death of Estefana Arguijo Holmes or regarding any element of the other charged offenses in this case, including but not limited to:

- a. All information provided by or relating to Cipriano Chayrez, including all records relating to any felony convictions, any then- or presently-pending charges, any then-pending parole or probation, any where in Arizona, both at the time of the offense and presently pending;
- b. all information provided by or relating to an individual referred to as "Angel"¹, including all records relating to any felony convictions, any then- or presently-pending charges, any then-pending parole or probation, any where in Arizona, both at the time of the offense and presently pending;
- c. all information provided by or relating to an individual named Thomas Otto Watkins, including all records relating to any felony convictions, any then- or presently-pending charges, any then-pending parole or probation, any where in Arizona, both at the time of the offense and presently pending;

¹ See Testimony of Yodilia Sabori (Record of Transcript, 4/21/87; pg. 72)

d. all information provided by or relating to an individual named Cecilia Rodriquez (or Cecilia Rodriguez), including all records relating to any felony convictions, any then- or presently-pending charges, any then-pending parole or probation, any where in Arizona, both at the time of the offense and presently pending;

e. all evidence provided by or relating to any of the following prosecution witnesses, including all records relating to any felony convictions, any then- or presently-pending charges, any then-pending parole or probation, any where in Arizona, both at the time of the offense and presently pending for;

Detective Billy F. Butler

Officer Manny Gonzalez

Robert Norman Burden

Detective Larry Martinsen

Seargeant Kenneth Johnson

Yodilia Sabori

Pauline Rodriguez

Irene Rose Powers

Mike Carillo, Sr.

Mike Carillo, Jr.

Matilda Carillo

Severo Sammy Castillo

Alfred Carson Walker

Fred Carmack

Thomas Jarvis

Ramon Moreno

Bernice Hutcherson/Hutchins/Hutchinson

Kevin Sanchez

Benita Harwood
Ray Gieszl
Officer Raw
Thomas Otto Watkins
Bertha Anderson
Detective Dan Ray
Detective John Norman
Raymond Hernandez
Officer Mike Springer
Sergeant J. Burkett
Carl Rivera
Suzanne Rivera
Isabel Rivera
Sgt. H. Miller
Officer L. Stika, #3959
Officer L. Piano, #4426
Officer J. Sutto, #4482
Officer L. Ford, #3206
Officer K. Sanchez, #4230
Detective J. Chaney
R. Davis, #A348

f any and all information including letters, reports, notes, records of telephone calls, memoranda, and any other records or documents disclosing bias or prejudice or prejudgment by citizens of Maricopa County, Arizona, against Petitioner, and the identity of the persons who appear biased, prejudice or to have prejudged the case, and/or bearing on any such witness' physical or psychological limitation on their ability to perceive, recollect or communicate

concerning the subject matter of his/her testimony; the witness' character for honesty or veracity or their opposites; the existence or non-existence of any expressed bias, interest or other motive in testifying; any admission of untruthfulness. And, all notes and reports of observations of police officers and investigators concerning the state of sobriety or mental capacity at the time of the charged offenses of those persons;

g. all reports, notes, documents, diagrams, memoranda and records, however recorded or preserved, prepared by any police officer, or at a police officer's direction, in connection with the charged offense, or any incident to be offered by the State in aggravation, including but not limited to, the investigating officers' logs, defendant's booking sheet and defendants' arrest sheet;

h. any and all other information respecting any state witness that is favorable to Petitioner on the issue of guilt regarding any element of the offenses of first degree murder or the other charged offenses in this case;

i. any and all information in any form whatsoever, that derives from any person, that is exculpatory with respect to Petitioner having committed the charged offenses, including but not limited to statements made by any prosecution witness who testified at Petitioner's trial;

j. an opportunity to view and examine all physical evidence obtained in the investigation of the charged offenses, including a copy of all property record sheets, and copies of all photographs, photographic negatives, motion pictures, videotapes, slides or transparencies taken of any physical evidence and the scene of the offense, and copies of all photographs taken of Petitioner at or near the time of the offenses; including the booking photograph of Petitioner;

k. any and all information tending to show the existence of any statutory mitigating circumstance, including but not limited to the following:

i) any and all information tending to show that at the time of the charged offenses and with regard to one or more of the charged offenses Petitioner's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, even if not so impaired as to constitute a defense to the charged offenses;

ii) any and all information tending to show that at the time of the charged offenses and with regard to one or more of the charged offenses Petitioner was under unusual and substantial duress, even if not such as to constitute a defense to the charged offenses;

iii) any and all information tending to show that Petitioner's participation in the one or more of the charged offenses was relatively minor even if not so minor as to constitute a defense to either of the charges;

iv) any and all information tending to show that Petitioner could not reasonably have foreseen that his conduct in the course of the commission of the offenses for which he was convicted would cause, or would create a grave risk of causing, death to another person;

l. any information tending to show the existence of any nonstatutory mitigating circumstance;

m. any information tending to partially or totally negate or mitigate any of the evidence offered by the state at Petitioner's trial in support of any alleged aggravating circumstance;

3. The names and addresses of experts who personally examined Petitioner or any information relating to any of the charged offenses, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with this case, including but not limited to all information relating to mental health examinations of Petitioner fingerprint analyses, weapons analyses, testing, whether chemical, biological, medical,

criminological, laboratory, or other, post-mortem or forensic examinations and related testing of Estefana Arguijo Holmes;

4. All material or information which tends to mitigate or negate the defendant's guilt as to the charged offenses, or which would tend to reduce Petitioner's punishment therefor;

5. Any written or recorded material or information within the State's possession or control or available to the state regarding:

- a. whether there has been any electronic surveillance of any conversations to which the accused was a party, or of the accused's and his family's residence;
- b. what search warrants have been executed in connection with this case;
- c. the names and current addresses of all informants involved in this case;

6. All papers, documents, photographs or tangible objects which were used at trial or were obtained from or purportedly belong to Petitioner;

7. All documents relating to Petitioner including:

- a. all juvenile detention, jail, prison, parole, probation and presentence investigation records;
- b. all sentencing reports;
- c. all arrest, conviction, and adult and juvenile criminal offense records;
- d. all records of any law enforcement authority, including any document relating to any plea negotiations between Petitioner and the State;
- e. all records of any detention or court authority;
- f. all records that the prosecution or any law enforcement official has submitted to any professional personnel for examination or analysis in connection with this case;
- g. all institutional records of any kind, including but not limited to those prepared at any Arizona Department of Corrections facility, Maricopa County

jail or detention facility, as well as any other institutional record that relates to Petitioner;

h. all psychiatric documents relating to the conduct or results of any testing, examinations or interviews of Petitioner, including but not limited to reports by the Arizona Department of Corrections, Maricopa County Hospital, the City of Phoenix Doctor's Office, Maricopa County Jail or Detention or any other agency, and any other psychiatric, psychological or mental health records concerning Petitioner; and

i. all documents relating to any tests of any kind done on Petitioner, including but not limited to any tests done on samples of Petitioner's blood, saliva, hair or semen;

8. All document relating to any State witness at Petitioner's trial, including:

a. all records regarding any inducement offered for testimony;

b. all juvenile detention, jail, prison, parole, probation and presentence investigation records;

c. all sentencing reports;

d. all arrest, conviction, and adult and juvenile criminal offense records;

e. all records of any law enforcement authority, including all documents relating to any plea negotiations between any State witness and the State;

f. all records of any detention or court authority;

g. all records of any prosecuting authority;

h. all psychiatric, psychological and mental health records;

i. all education records;

j. all documents relating to any lie detector test taken by any State witness;

k. all other records and reports;

9. All documents relating to Cipriano Chayrez including:

- a. all juvenile detention, jail, prison, parole, probation and presentence investigation records;
 - b. all sentencing reports;
 - c. all arrest, conviction, and adult and juvenile criminal offense records;
 - d. all records of any law enforcement authority, including but not limited to all documents relating to any plea negotiations;
 - e. all records of any detention or court authority;
 - f. all records of any prosecuting authority;
 - g. all psychiatric, psychological and mental health records;
 - h. all education records;
 - i. all documents relating to any lie detector test taken;
 - j. all statements related to the charged offenses in this case;
 - k. all other records and reports;
10. All documents relating to "Angel" including:
- a. all notes, memorandum, reports relevant to the location and identification of "Angel";
 - b. all juvenile detention, jail, prison, parole, probation and presentence investigation records;
 - c. all sentencing reports;
 - d. all arrest, conviction, and adult and juvenile criminal offense records;
 - e. all records of any law enforcement authority, including but not limited to all documents relating to any plea negotiations;
 - f. all records of any detention or court authority;
 - g. all records of any prosecuting authority;
 - h. all psychiatric, psychological and mental health records;
 - i. all education records;
 - j. all documents relating to any lie detector test taken;

- k. all statements related to the charged offenses in this case;
- l. all other records and reports;
- 11. All documents relating to Cecilia Rodriquez or Cecilia Rodriguez

including:

- a. all notes, memorandum, reports relevant to the location and identification of Cecilia Rodriquez/Rodriguez;
- b. all juvenile detention, jail, prison, parole, probation and presentence investigation records;
- c. all sentencing reports;
- d. all arrest, conviction, and adult and juvenile criminal offense records;
- e. all records of any law enforcement authority, including but not limited to all documents relating to any plea negotiations;
- f. all records of any detention or court authority;
- g. all records of any prosecuting authority;
- h. all psychiatric, psychological and mental health records;
- i. all education records;
- j. all documents relating to any lie detector test taken;
- k. all statements related to the charged offenses in this case;
- l. all other records and reports, including but not limited to any tape recordings, transcripts or notes of or regarding Ms. Cecilia Rodriquez or Cecilia Rodriguez, as well as all tape recordings, transcripts or notes regarding any other contact with Ms. Rodriquez/Rodriguez;

12. Each document relating to the state's use of peremptory challenges during Petitioner's trial, including but not limited to any information gathered about the jury venirepersons;

13. Each document relating to any communication between the state and any petit jury member in Petitioner's trial before, during or after the trial.

**MATERIALS IN THE POSSESSION OF THE
MARICOPA COUNTY SUPERIOR AND COURTS**

Petitioner moves that this Court order the Clerk of the Maricopa County Superior Court to disclose to Petitioner's counsel, and permit inspection, copying and photographing of all records of any proceeding from the juvenile docket of that court involving Petitioner, Cipriano Chayrez, and "Angel".

- MATERIALS IN THE POSSESSION OF**
- (1) THE MARICOPA COUNTY, ARIZONA, SHERIFF'S DEPARTMENT,**
 - (2) CITY OF PHOENIX, ARIZONA, POLICE DEPARTMENT,**
 - (3) ARIZONA DEPARTMENT OF PUBLIC SAFETY, AND**
 - (4) ARIZONA DEPARTMENT OF CORRECTIONS**

Petitioner moves that this Court order the Sheriff's Department of Maricopa County, Arizona, the City of Phoenix Police Department, the Arizona Department of Public Safety and the Arizona Department of Corrections to disclose to counsel, and permit inspection, copying and photographing of all materials referenced in paragraphs 1 through 13 (including all subparagraphs), above.

CONCLUSION

Recent discovery shows that there are serious problems with discovery undertaken by Petitioner's previous attorneys. A defendant's right to discovery is founded on an accused's fundamental and constitutional right to a fair trial and due process of law. Brady v. Maryland, 373 U.S. 83 (1963), Napue v. Illinois, 360 U.S. 264 (1959); Giles v. Maryland, 386 U.S. 66 (1967); Davis v. Alaska, 415 U.S. 308 (1974); RULE

15 of the ARIZONA RULES OF CRIMINAL PROCEDURE, and the constitutional and statutory provisions cited in the opening paragraph of this motion. Petitioner respectfully that this Court order the production of the materials specified above.

DATED this 3rd day of May, 1995.

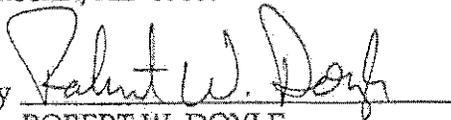
By Robert W. Doyle
ROBERT W. DOYLE
Attorney for Petitioner

COPIES of the foregoing
delivered this 3rd day of
May, 1995 to:

Hon. Peter T. D'Angelo
Judge of the Superior Court

Ms. Dawn Northup
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85003

By



ROBERT W. DOYLE
Attorney for Petitioner

EXHIBIT M

GEORGE M. STERLING, JR.
ATTORNEY AT LAW

March 30, 1990

Mr. Paul H. Ahler
Deputy County Attorney
101 West Jefferson
Phoenix, Arizona 85003

Re: State of Arizona v. Sammy Lopez, CR-163419
Re: Our agreement/stipulation concerning pre-hearing
disclosure of mental health information
Re: Defendant's discovery request under Rule 26.8(b)

Dear Mr. Ahler:

As we have previously agreed, one of the purposes of this letter is to document the stipulation and agreement between myself as attorney for the Defendant Sammy Lopez and yourself on behalf of the state that as a precondition to either party calling a mental health expert, psychologist, or psychiatrist at the 703 resentencing of this Defendant; the party calling such expert witness shall ensure that the adverse party receives a basic report or documentation of such mental health experts findings and diagnosis at least ten days prior to the witness's testimony. If such report or documentation is not timely delivered, the party calling such witness shall either forgo such witness's testimony or stipulate to a continuance or recess of the proceedings in order to provide the adverse party the ten day time period we both acknowledge as being necessary to properly prepare for adequate cross-examination. As of this date I have given you notice that my mental health expert will be Dr. Bayless and you have given me notice that your mental health expert will be Dr. Deen.

In addition to the above, I wish to take this opportunity to specifically request from you certain documentation and records which I understand are available to you but which have not been forthcoming to me or my investigator from certain state agencies. The documentation which I specifically request is: (1) a complete copy of the entire DOC file concerning Sammy Lopez upon each and every one of his prior and current incarcerations - specifically including any medical records and diagnostic testing; (2) a complete copy of the entire MCSO file concerning Sammy Lopez upon each and every one of his prior and current incarcerations - specifically including any medical records and diagnostic testing; (3) the entire juvenile

1101 WEST MCDOWELL ROAD
PHOENIX, ARIZONA 85007

TELEPHONE 602-257-0395

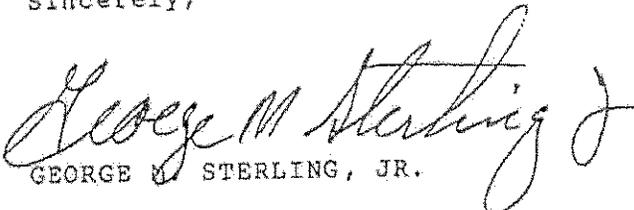
Mr. Paul H. Ahler
March 30, 1990
Page Two

court file concerning any proceedings, adjudications, or incarcerations of the Defendant as a juvenile; (4) any and all records of DES or CPS concerning the Defendant individually or any of his siblings or the Lopez family; (5) the files and records of both the State and County School Boards and Departments of Education, including the Peoria School District Board, concerning the Defendant's elementary school education, any aptitude or evaluation tests results and assignment to any special education classes; (6) any records or files concerning the Defendant maintained by the Arizona State Hospital, Maricopa County Hospital or other governmentally operated medical or mental health facility; and (7) any documents, records, files - specifically including information or intelligence files - generated, maintained, or currently available to the Phoenix Police Department, DPS or other state law enforcement agency concerning Estefana A. Homes, the victim in this case.

I make the above requests upon you under the authority of Rule 26.8(b), Brady v. Maryland, Davis v. Alaska, State v. Fowler and State v. Schreiber.

I do appreciate that my request for documentation and information upon this Defendant is extensive, but we are dealing with life and death and the trial court should make a decision only after a thorough investigation of the Defendant's entire life because we don't know where mitigation may be found.

Sincerely,


GEORGE M. STERLING, JR.

/bc

EXHIBIT N

OFFICE OF THE MARICOPA COUNTY ATTORNEY

ARIZONA TITLE BUILDING
111 WEST MONROE, SUITE 1800
PHOENIX, ARIZONA 85003
(602) 262-3411



RICHARD M. ROMLEY, COUNTY ATTORNEY

JAMES H. KEPPEL, CHIEF DEPUTY

April 5, 1990

Mr. Geroge Sterling
Attorney at Law
1101 W. McDowel Road
Phoenix, Arizona 85007

RE: State v. Samuel V. Lopez
CR 163419

George:

I am in receipt of your letter dated March 30, 1990. In regards to your request for certain documentation and records, I have enclosed a copy of the Department of Corrections records supplied to me on defendant Lopez. They encompass all three incarcerations with the Department of Corrections. As to your remaining request for items 2-7, I do not feel it is the State's responsibility to investigate these areas. I do not have any of the items you requested, nor do I intend to introduce any of the items into evidence at the sentencing hearing pursuant to 13-703. I can understand your need to attempt to find mitigating evidence, but feel that your ability to subpoena these items are just as broad as mine. To date I have discovered no exculpatory evidence involving your client which would be discoverable under either Rule 15 or pursuant to Brady v. Maryland.

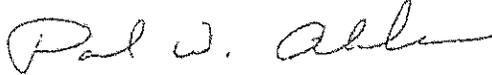
Please be advised that I have employed Dr. Dean to review the police reports and any other information connected with defendant Lopez's case. If you intend to use Dr. Bayless in mitigation, I intend at that time to ask permission to have Dr. Dean examine your client. This will undoubtedly necessitate a continuance since I will not be able to give you Dr. Dean's report within the 10 days that we had previously agreed upon.

April 5, 1990
Mr. George Sterling

Page 2

If you should have any questions concerning this letter, please
feel free to contact me.

Sincerely yours,



Paul W. Ahler
Deputy County Attorney
Chief, Criminal Trial Division

PA:bjb
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