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16 **IN THE SUPERIOR COURT**
17 **IN AND FOR THE COUNTY OF MARICOPA**

18 **STATE OF ARIZONA,**) **CR2015-144211-001**
19)
20) **Plaintiff,**) **MOTION TO MODIFY RELEASE**
21) **CONDITIONS**
22) **vs.**)
23) **(Assigned to the Honorable Warren**
24) **Leslie Allen Merritt, Jr.,**) **Granville)**
25) **Defendant**) **ORAL ARGUMENT REQUESTED¹**

26 Defendant, through undersigned counsel, pursuant to Rule 7.4(b),
Arizona Rules of Criminal Procedure, and A.R.S. §13-3967, moves this Court
for a redetermination of his present release condition that he post a

¹ This Motion is predicated, in part, upon multiple offers of proof. Should the State challenge these offers of proof, the defense invites the scheduling of an evidentiary hearing so that the Court can determine the credibility of the respective witnesses.

1 \$1,000,000.00 cash bail, and after consideration of all matters presented
2 herein, requests the Court to release him on his own recognizance in light of
3 the material changes in circumstances that are more fully set forth herein.

4 **INTRODUCTION**

5 Defendant has been dubbed the "I-10 Freeway Shooter" for his alleged
6 involvement in four separate incidents wherein he is alleged to have shot a
7 handgun at motorists travelling on Valley freeways. At the time of his arrest,
8 there were seven additional freeway shootings which law enforcement had,
9 and continue to have, no evidence to suggest any involvement on the part of
10 the Defendant. Since his arrest and incarceration, numerous additional
11 freeway shootings have occurred, though they have conveniently been
12 dismissed by law enforcement as "unrelated" to the crimes with which the
13 Defendant is charged.
14

15 The only evidence to link the Defendant to the crimes which he has
16 been charged is ballistic evidence which links bullets recovered from the
17 shootings to a handgun owned by the Defendant. The particulars of that
18 evidence, however, remain a mystery as it has not been disclosed or provided
19 to the defense as of the filing of this Motion. Given this paucity of proof, and
20 the lack of any effort by law enforcement to establish the Defendant's
21 whereabouts at the time of the shootings for which the State claims he is
22 responsible, the Defendant's bold proclamation of his innocence at his initial
23 appearance when he stated "All I have to say is I'm the wrong guy" was a
24 harbinger of what the defense has now confirmed.

25 Indeed, the defense has now done what law enforcement would not –
26 to show that the Defendant has an alibi for the dates and times of the

1 shootings with which he is charged. This constitutes not only a change in
2 circumstance, but a significant change in the weight of the evidence against
3 the Defendant, and warrants his being released from custody.

4 THE INCIDENTS

5 1. *August 29, 2015 at 11:03 a.m.*

6 A black Cadillac Escalade was travelling eastbound on the I-10 near 19th
7 Avenue when a westbound vehicle alleged shot at it. A bullet broke the
8 windshield and then struck the front passenger window, the breaking glass
9 causing a laceration to the front passenger's ear.

10 2. *August 29, 2015 at 11:05 a.m.*

11 A bus was travelling westbound on the I-10 near 43rd Avenue when the
12 driver heard a bang coming from his right side. After driving for a significant
13 period of time, he later stopped the bus and located a bullet hole on its right
14 side. Police subsequently recovered a projectile from a seat inside the bus.

15 3. *August 29, 2015 at 10:20 p.m.*

16 A Kia was travelling eastbound on I-10, east of 16th Street and
17 approaching the mini-stack. The two occupants of the vehicle heard a noise
18 and one believed the car was hit by a rock. The Kia did not stop and
19 proceeded to its destination.

20 The following business day, Monday, August 31, 2015, the owner of the
21 vehicle took it to a local dealership. A bullet was recovered from the
22 passenger door panel.

23 4. *Date and Time Unknown*

24 On August 30, 2015, the owner of a BMW returned via airplane from a
25 business trip. When he retrieved his car from an airport garage, he noticed
26

1 that the left front tire was low. When he tried to put air in the tire, he further
2 noticed that air was escaping from the left front inner sidewall.

3 The owner of the BMW took his car to a local dealership. A service
4 technician located a bullet and jacket inside the tire.

5 The date, time, and location at which the tire was punctured is unknown.
6 Law enforcement has apparently changed its theory in this regard on multiple
7 occasions. Notwithstanding the laws of physics and a trigonometric wonder,
8 law enforcement believes that someone shot at the BMW from its rear
9 causing the bullet to skip on the roadway and thereafter strike the left front
10 inner sidewall.

11 **EVIDENCE OF ALIBI**

12 The defense has located and interviewed numerous witnesses which
13 establish that the Defendant was not in remote proximity to the site of the
14 shootings with which he is charged. And insofar as the State will undoubtedly
15 try to dismiss these witnesses as less than credible, or even liars, their
16 respective testimony is bolstered by the existence of the objective and
17 independent evidence discussed herein.

18 *Incidents 1 & 2*

19 As noted in the image below, which was excised from a monthly billing
20 statement, at 10:51 a.m. on August 29, 2015, the Defendant called his
21 grandmother, Marvene Halterman.
22

23 Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.
24 8/29	10:51A	602-570-	Off-Peak	N&W	Glendale AZ	Phoenix AZ	5

25 As can be readily seen, the call originated from Glendale, where the
26 Defendant and his fiancé reside, and lasted until 10:56 a.m. Ms. Halterman

1 will testify that during the conversation, she heard the Defendant telling his 4
2 year old son to get out of the toy box and that she also heard his infant
3 daughter crying. Ms. Halterman inquired about why the baby was crying and
4 would further testify that she heard the Defendant's fiancé, Dina, talking in the
5 background. Dina will testify that she and the Defendant were at home when
6 the Defendant made the call, and that she was present for the entirety of the
7 conversation.

8 The defense proffers that Ms. Halterman would testify that the
9 Defendant needed money to pay bills and that she told him to call his
10 grandfather in Florida, even though the two had not spoken in approximately
11 two years. She told the Defendant to wish his grandfather a Happy Birthday
12 as well. After the conversation, at 11:00 a.m. on August 29, 2015, phone
13 records, depicted below, evidence that Ms. Halterman sent the Defendant a
14 text with his grandfather's telephone number.
15

16 8/29/2015 11:00 AM 480-532-**** 602-570-**** Received Domestic
17 - Text

18 At 11:02 a.m. on August 29, 2015, phone records, depicted below,
19 evidence that the Defendant attempted to text his grandfather, albeit in futility,
20 as the number provided by Ms. Halterman was a landline.

21 8/29/2015 11:02 AM 352-473-**** 480-532-**** Sent Domestic
22 - Text

23 At 11:04 a.m. on August 29, 2015, phone records, yet again depicted
24 below, confirm that following the failed text message, the Defendant called his
25 grandfather, Glenn Merritt, Sr., in Florida.
26

Date	Time	Number	Rate	Usage Type	Origination	Destination	Min.
8/29	11:04A	352-473-	Off-Peak	N&W	Glendale AZ	Keystn Hts FL	1

Once again, phone records show that the call originated from Glendale and that the call lasted one minute. The Defendant's fiancé would again testify that she and the Defendant were at home in Glendale when he placed the call.

Glenn Merritt, Sr. has been interviewed and recalls the Defendant leaving him a voice mail on his home phone wishing him a Happy Birthday. He has a specific recollection of the Defendant leaving him a voice mail as 1) they had not spoken in a significant period of time prior to the Defendant having left the voicemail, and 2) his birthday was several days before the Defendant left him the voice mail.

Incident 3

The Defendant's fiancé will testify that on August 29, 2015, she, the Defendant, and their two children spent most of the day with her family. She will testify that save for about 15 minutes when he went to a convenience store around lunch time, she was with him the entire day.

Defendant is a landscaper who is early to bed and early to rise. This night was no exception. Dina will testify that the Defendant went to bed between 9:00 and 9:30 p.m. and that he did not leave the house, let alone get out of bed, until morning.

Throughout the evening, Dina was texting her sister, Sara Garza, who had planned to stop by the Defendant and Dina's home. Sara will testify that she arrived at approximately 10:45 p.m. and saw the Defendant lying in bed in his dark bedroom. She will tell the Court that she said hello to him and that he

1 responded in kind, albeit groggily. Sara and Dina sat in the living room and
2 talked.

3 The Defendant's residence is configured in such a way that the
4 bedroom is adjacent to, and clearly visible from the living room. At no time did
5 Sara see the Defendant leave the bedroom. At the time she left briefly to go
6 to a convenience store at approximately 11:45 p.m., the Defendant was
7 asleep. When she returned a short time later, he was still asleep.

8 **ARGUMENT**

9 Based on the matters presented herein, it should be clear to the
10 objective and reasonable mind that the Defendant was not at the scene of any
11 of the shootings for which he was charged, and therefore, that he is not the I-
12 10 Freeway Shooter.

13 The uncovering of this information by the defense weighs heavily in the
14 Defendant's favor in terms of 1) the weight of the evidence against him under
15 §13-3967(A)(6), and 2) the fact that he does not pose a danger to the
16 community under §13-3967(A)(4) . These two factors undoubtedly were the
17 driving force behind a \$1,000,000.00 cash bond being set at the time of the
18 Defendant's initial appearance.
19

20 And as will be borne out by the Pretrial Services report that is being
21 requested contemporaneously with the filing of this Motion, Defendant lacks a
22 criminal history, has stable ties to the community, has a lengthy employment
23 history (that has already been verified by law enforcement during the course
24 of its investigation), and in no way, shape, or form presents as a flight risk.
25
26

1 The Defendant's prophetic words at his initial appearance have been
2 shown to be true. The wrong guy should not remain behind bars for crimes
3 he did not commit.

4 Respectfully submitted this 13th day of October, 2015.

6 /s/ Jason D. Lamm

Jason D. Lamm

8 /s/ Ulises Ferragut

Ulises Ferragut

Attorneys for Defendant

10 Original efiled with copy provided
11 electronically this same date to:

12 Judge Warren Granville
13 Maricopa County Superior Court

14 Ed Leiter
15 Deputy County Attorney

16 By: /s/ Kathryn A. Miller