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Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

v.

RICARDO LORENZO GARCIA,

Defendant.

NO. CR20230574-001

NOTICE OF DEFENDANT'S THIRD
SUPPLEMENTAL RULE 15.2
DISCLOSURE

[Assigned Judge: Hon. J. Alan Goodwin]

The defendant, Ricardo Garcia, by and through his undersigned counsel, pursuant to Rule 15.2, Arizona Rules of Criminal Procedure, provides the following notice to the state:

Witnesses:

1. The defendant may call Special Agent Desiree Urbina, of the Arizona Attorney General's Office. SA Urbina would be called to testify regarding her investigation of the Pima County Sheriff's Department's handling of the investigation of the present case. This testimony would support the defenses of failure of proof beyond a reasonable doubt and failure to prove the elements of the alleged offense.

Documentary Evidence:

1. The Defense may use records located within the documents received in

1 relation to the Arizona Attorney General's Office ("AGO") investigation of
2 the Pima County Sheriff's Department's investigation in this case, disclosed
3 by the Court to the parties following its *in-camera* inspection.
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- 5 2. The Defense may use a copy of the KOLD article entitled "Pima County
6 sheriff's deputy on administrative leave amid sexual assault investigation,"
7 located at [https://www.kold.com/2022/12/23/pima-county-sheriffs-deputy-](https://www.kold.com/2022/12/23/pima-county-sheriffs-deputy-administrative-leave/?outputType=amp)
8 [administrative-leave/?outputType=amp](https://www.kold.com/2022/12/23/pima-county-sheriffs-deputy-administrative-leave/?outputType=amp).
9

10 RESPECTFULLY SUBMITTED this 5th day of November, 2024.

11 PICCARRETA DAVIS KEENAN FIDEL PC

12 By: /s/ Louis S. Fidel
13 Louis S. Fidel
14 *Attorney for Defendant*

15 Original of the foregoing e-filed
16 this 5th day of November, 2024.

17 Copy of the foregoing electronically delivered
18 this 5th day of November, 2024, to:

19 Mathew Cannon, Esq.
20 Santa Cruz County Attorney's Office
21 2150 N. Congress Drive, Suite 201
22 Nogales, Arizona 85621
23 Email: mcannon@santacruzcountyaz.gov

24 Greg Stoltz, Esq.
25 G Stoltz Law, LLC
26 100 N. Stone Avenue, Suite 702
27 Tucson, Arizona 85701
28 Email: greg@gstoltzlaw.com

By: /s/ Melissa Hahn

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

v.

RICARDO LORENZO GARCIA,

Defendant.

NO. CR20230574-001

ORDER

Upon motion of defendant, and good cause appearing,

IT IS ORDERED extending the page limitation for the defendant's Motion to
Dismiss Indictment to 20 pages.

DATED this 7th day of November, 2024.


HON. J. ALAN GOODWIN
(ID: eb3eb521-2828-4608-89a7-358e083603ad)

The Honorable J. Alan Goodwin

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

v.

RICARDO GARCIA,

Defendant.

NO. CR20230574-001

MOTION TO DISMISS INDICTMENT

[Assigned Judge: Hon. J. Alan Goodwin]

The defendant, Ricardo Garcia, by and through his undersigned counsel, hereby respectfully requests this Court, pursuant to Ariz. R. Crim. P. 16.4(b), to issue its order dismissing his Indictment with prejudice due to the state's repeated due process violations and prosecutorial misconduct. This motion is based on the legal reasoning and authorities set forth in the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 6th day of November, 2024.

PICCARRETA DAVIS KEENAN FIDEL PC

By: /s/ Louis S. Fidel
Louis S. Fidel
Jefferson Keenan
Attorneys for Defendant

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1 location to speak with Deputy Aquino in person. At that point, Deputy Aquino contacted the
2 PCSD communications division to request a uniformed deputy to respond.

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4 Under these circumstances, the need for an independent law enforcement agency to
5 investigate this matter was immediately apparent up and down the PCSD chain of command.
6 PCSD Sergeant Brian Kunze, one of the two first-responding deputies at the outset of the
7 investigation, immediately “felt pretty strongly” that another agency should be handling the
8 investigation, due to the involvement of Department members, and he raised that concern
9 first with his direct supervisor, Lieutenant Guy Quaintance, and later with Sergeant Charles
10 Garcia (no relation), the supervisor of the sex crimes detectives who responded to begin the
11 investigation.¹ Lieutenant Quaintance shared Sergeant Kunze’s concerns and notified him
12 that “we are probably going to outsource this” because “typically, if a Department member
13 is involved, then the outsourcing of an investigation would happen because we would want
14 there to be no appearance of impropriety.”² Sergeant C. Garcia confirmed that, at the outset
15 of the investigation, there was “some debate as to whether or not this was going to be a TPD
16 [Tucson Police Department] case,” and he was advised by his own supervisor that command
17 staff was “still looking into” whether another agency should properly be investigating the
18 incident.³ PCSD Detective Jonathan Siress, who was tasked with interviewing Deputy
19 Aquino and G.R., also “voiced concern of our agency being involved at all just because I felt
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25 ¹ Interview of PCSD Sergeant Brian Kunze, December 13, 2023, pp. 32-33, 35.

26 ² Interview of PCSD Lieutenant Guy Quaintance, December 20, 2023, p. 11.

27 ³ Interview of PCSD Sergeant Charles Garcia, December 13, 2023, pp. 9, 11.

1 it was more appropriate to be handled by an outside agency.”⁴ In addition, PCSD Captain
2 Luis Cornidez, who Deputy Aquino contacted first about the incident, directly told PCSD
3 Chief Joseph Cameron “I think we need to get a different agency to come in
4 and...investigate.”⁵ PCSD Sheriff Chris Nanos ignored all these concerns, and PCSD
5 continued to be the investigating law enforcement agency.
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7 The validity of these obvious concerns was born out by the events that actually
8 transpired. As noted above, the allegations in this matter are based upon the purported
9 observations of Deputy Aquino, who was admittedly heavily intoxicated at the time. Despite
10 the acknowledgement from PCSD Chief Harold Janes that “drunken perspectives aren’t
11 reliable,”⁶ the state continues to rely on Deputy Aquino’s purported observations of the
12 conduct of other intoxicated individuals, even where his claims are contradicted by other
13 evidence in the case. For her part, G.R. has admitted drinking heavily and has accepted
14 responsibility for her own actions in the course of the evening’s events and denied that any
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25 ⁴ Interview of PCSD Detective Jonathan Siress, October 25, 2023, p. 4.

26 ⁵ Interview of PCSD Captain Luis Cornidez, October 25, 2023, p. 29.

27 ⁶ Text Message from Chief Harold “Buddy” Janes to Captain Luis Cornidez, December 18,
28 2022 at 2:31 a.m.

1 improper activity or non-consensual conduct had occurred.⁷

2 The failure to have an independent law enforcement agency investigate this matter
3 resulted in repeated improper contact and communications between members of PCSD and
4 the alleged victim in an ongoing criminal investigation. When PCSD Deputy Blanca Paiaina
5 responded to the residence on the night of the incident, G.R. consistently maintained that
6 nothing improper had occurred. When G.R. persisted in these statements, Deputy Paiaina
7 then improperly “fed” G.R. information based on the purported observations of Deputy
8 Aquino. G.R. nevertheless maintained that nothing improper had occurred.
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11 Despite these clear statements, G.R. was contacted again by PCSD detectives on the
12 afternoon of the day following the party, December 18, 2022. She again denied sustaining
13 any injuries or feeling any pain, soreness, discomfort, or anything “odd” anywhere on her
14 body, denied that any improper or non-consensual activity had occurred, denied that Mr.
15 Garcia had done anything improper, accepted responsibility for her own actions in the course
16 of the evening’s events, and refused to provide a DNA sample or meet with Victim Services
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20 ⁷ G.R. stated that, due to her voluntary alcohol consumption, she had no memory of any
21 events after approximately 11:00 p.m. on December 17, 2022. Bates No. 88. Nonetheless,
22 footage from the doorbell camera video at Mr. Garcia’s residence shows G.R. engaging in
23 amorous and flirtatious behavior with both Mr. Garcia and Deputy Aquino after that point,
24 demonstrating the well-established fact that individuals in an alcoholic “blackout” state can
25 still appear to be functioning normally and appear to be capable of engaging in consensual
26 activity. G.R. stated truthfully that “when drinks are flowing...people do not usually make
27 an agreement...things just happen,” and “if that happened then it happened.” Bates No. 90.
28 She added that “I don’t feel like anything bad happened,” and if something happened, she
“would not label it as unwanted” and “wouldn’t label that situation as bad, or rape, which is
kinda what it feels like right now the way you guys are talking to me about.” Bates Nos. 90-
91, 94.

1 representatives who had accompanied detectives. She also refused to participate in a forensic
2 medical examination, noting that “if it was something bad, like, somebody that I didn’t want
3 nothing to happen with, or some random person, absolutely, I would do it, but not in this
4 situation.”⁸ The evidence shows that members of PCSD would not accept G.R.’s
5 characterization of the events and continued to contact her, improperly supply her with
6 information, and were eventually successful in getting G.R. to change her story. The
7 evidence shows that, after G.R.’s interview with the detectives on December 18, 2022,
8 Deputy Aquino improperly contacted her and, during an approximately 35-minute telephone
9 conversation, “supplied” her with additional detailed information about his interpretation of
10 the events of the previous evening.⁹

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13 The following day, December 19, 2022, PCSD Sheriff Chris Nanos improperly
14 requested a meeting with G.R. This meeting was not documented in any notes, memoranda,
15 or reports, and was only discovered through pretrial interviews of PCSD personnel.
16 Evidently, G.R. did not want to meet with Sheriff Nanos, but the Sheriff was insistent.
17 Detective Hilborn, the primary detective handling the investigation, was instructed to
18 persuade G.R. to come to the meeting, and Detective Hilborn and his supervisor, Sergeant
19 C. Garcia, escorted her through a back door to PCSD headquarters and up a staircase to the
20 floor outside Sheriff Nanos’ office.¹⁰ At the top of the staircase, a PCSD Captain stopped
21 Sergeant C. Garcia and Detective Hilborn from going further with G.R., instructing them
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25 ⁸ Bates No. 99.

26 ⁹ Bates No. 153.

27 ¹⁰ Interview of PCSD Sergeant C. Garcia, December 13, 2023, pp. 40-42.

1 “that she was going to go from there.”¹¹ G.R. did not want to meet with Sheriff Nanos alone
2 and requested that Detective Hilborn be allowed to accompany her, which he did.¹² The full
3 list of attendees at the “secret” meeting is unknown, as there was no documentation, but it
4 appears to have included Sheriff Nanos, G.R., and Detective Hilborn.¹³ The precise details
5 of the discussion are similarly unknown, but the meeting occurred late in the afternoon on
6 December 19, 2022,¹⁴ and early in the morning the following day, December 20, 2022, G.R.
7 contacted Detective Hilborn, changed her story, made her first claims that something
8 improper had occurred, repeated the information the Deputy Aquino had supplied to her on
9 December 18, and claimed for the first time that Mr. Garcia had told her in a separate phone
10 call on December 18 that they had had sex the night before.

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14 Members of PCSD continued their improper behavior in other areas. Shortly after the
15 start of the investigation, Mr. Garcia retained undersigned counsel to represent him along
16 with a private investigator to attempt to interview witnesses who had attended the off-duty
17 party at Mr. Garcia’s house. On December 21, 2022, PCSD Captain Cornidez called the
18 investigator and instructed him that he could not contact PCSD employees related to the
19 investigation. Captain Cornidez specified that he was acting on orders from PCSD Chief
20 Deputy Richard Kastigar. At the same time, PCSD Lieutenant Bernstein sent a text message
21 to the deputies who were present at the party, ordering them that they were not permitted to
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25 ¹¹ *Id.*

26 ¹² *Id.*; Interview of PCSD Detective Ryan Hilborn, January 24, 2024, p. 99.

27 ¹³ *Id.*, pp. 100.

28 ¹⁴ *Id.*, p. 102.

1 speak to the defense investigator.¹⁵ These efforts to limit Mr. Garcia's ability to
2 independently investigate allegations that he adamantly denies and to develop exculpatory
3 evidence from eyewitnesses when their memories were fresh were clearly improper and
4 raised immediate concerns about violations of Mr. Garcia's due process rights.¹⁶ PCSD then
5 engaged in further improper conduct demonstrating its bias and prejudice against Mr. Garcia
6 by denying his due process right to a fair trial through repeated and prejudicial leaks of
7 information to the media.¹⁷
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10 The due process violations continued from there, this time in the form of the state's
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12 ¹⁵ Lieutenant Bernstein wrote: "It has come to my attention that Sgt. Garcia has hired a
13 private investigator (calling from phone 520-[xxx-xxxx]), who has reached out to at least one
14 SRO [School Resource Officer]. Sgt. Garcia's investigation is criminal and still in its early
15 stages. For those reasons we may not speak with anyone about the incident except for PCSD
investigators, in an official capacity." Bates No. 2190.

16 ¹⁶ The Arizona Supreme Court has made it clear that the state cannot discourage witnesses,
including police officers, from communicating with defense attorneys or investigators. *See*
17 Correspondence to PCSD Captain Luis Cornidez, December 22, 2022, attached hereto as
18 Exhibit A; Correspondence to Assistant Santa Cruz County Attorney Mathew Cannon, Esq.,
January 27, 2023, attached hereto as Exhibit B.

19 ¹⁷ On December 23, 2022, Mr. Garcia was identified by name as a suspect in the incident,
20 and his photograph was published in the media even though the investigation was in its early
21 stages and he had not yet been charged with any crime. In this article, Sheriff Nanos stated
22 "we stand with the victim," abandoning any semblance of impartiality with respect to the
23 case. *See* KOLD article, December 23, 2022. When counsel for Mr. Garcia was later
24 contacted in connection with Mr. Garcia's arrest, counsel made arrangements for Mr. Garcia
25 to turn himself in at the main PCSD station. When counsel and Mr. Garcia arrived, two
camera crews from local news stations were already present, with their cameras positioned
26 directly outside the front door, waiting to film Mr. Garcia's arrival. The arrest decision and
27 the time and location of Mr. Garcia's self-surrender were not public information, so it is clear
28 that someone within PCSD had leaked this information to the media. While Mr. Garcia was
in the jail, a PCSD Corrections Officer took an unauthorized photograph of Mr. Garcia in
the jail's standard-issue orange jumpsuit, and distributed that to the media, in a further
attempt to prejudice Mr. Garcia.

1 repeated refusals to comply with its disclosure obligations under the applicable rules of
2 criminal procedure and established case law. Even though it is clear that the prosecutor's
3 office (in this case, the Santa Cruz County Attorney's Office) is responsible for the
4 information contained within the investigating law enforcement agency's files (here, PCSD),
5 the prosecutor initially refused to acknowledge his office's disclosure obligations, requiring
6 Mr. Garcia to file his initial Motion to Compel Disclosure and, later, numerous other related
7 pleadings, including Mr. Garcia's Motion for the State to Certify Compliance with
8 Disclosure Obligations, an additional Motion to Compel Disclosure, and a Motion for
9 Sanctions for the State's Violation of Court's Disclosure Order.¹⁸ The most flagrant example
10 is encapsulated in defense counsel's specific request for documents relating to Captain
11 Cornidez's purported order to Mr. Garcia's private investigator not to contact witness and
12 Lieutenant Bernstein's concurrent order to those witnesses not to communicate with the
13 investigator. First, PCSD simply ignored a public records request and failed to respond; next,
14 Santa Cruz County Attorney's Office sought to avoid its disclosure obligations; then, when
15 it relented and requested Detective Hilborn to look for responsive records, Detective Hilborn
16 prepared a document falsely stating that no such records existed, only for those records later
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22 ¹⁸ See Motion to Compel Disclosure and Supporting Exhibits, filed April 14, 2023;
23 Defendant's Motion for State to Certify Compliance with Disclosure Obligations and
24 Supporting Exhibits, filed November 9, 2023; Motion to Compel Disclosure of
25 *Brady/Henthorn* Material and Supporting Exhibits, filed January 25, 2024; Reply to
26 Response to Motion to Compel Disclosure of *Brady/Henthorn* Material and Supporting
27 Exhibits, filed February 7, 2024; Motion for Sanctions for State's Violation of Court's
28 Disclosure Order, filed March 19, 2024; Reply to Response to Motion for Sanctions, filed
March 22, 2024. All of these pleadings and exhibits are incorporated herein by reference
pursuant to Rule 1.15(B) of the Local Rules of Practice for the Pima County Superior Court.

1 to be unearthed during pretrial interviews. These records included Lieutenant Bernstein's
2 order to the witness deputies and contemporaneous text messages and emails, in which
3 Captain Cornidez and Lieutenant Bernstein discussed with Chief Janes their initial
4 communications with Deputy Aquino and Chief Janes' candid assessment that "drunken
5 perspectives aren't reliable."¹⁹
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7 Again, many of these improprieties and due process violations are the direct result of
8 the fact that these events were not investigated by an independent outside law enforcement
9 agency. Even before Mr. Garcia's indictment by a grand jury, and prior to learning of the
10 chorus of concerns raised by PCSD's own members, counsel for Mr. Garcia wrote to the
11 prosecution to "express[] concerns about the Pima County Sheriff's Department's ('PCSD')
12 ability to conduct an unbiased investigation in the present case" and "request that this matter
13 be transferred immediately out of PCSD's control to an outside law enforcement agency for
14 independent review and further investigation."²⁰ The improprieties in the investigation are
15 so blatant that even Sheriff Nanos has recognized the need for an Internal Affairs
16 investigation into the conduct of PCSD personnel in this matter. However, Sheriff Nanos has
17 steadfastly refused to conduct any such Internal Affairs investigation until the criminal
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25 ¹⁹ See, e.g., Motion for State to Certify Compliance with Disclosure Obligations, filed
26 November 9, 2023, pp. 3-6.

27 ²⁰ Correspondence to Assistant Santa Cruz County Attorney Mathew Cannon, Esq., January
28 27, 2023, p. 1., Exhibit B hereto.

1 prosecution of Mr. Garcia has run its course.²¹

2 The improprieties associated with the investigation did, in fact, result in an
3 independent criminal investigation by the Arizona Attorney General's Office ("AGO") into
4 the conduct of Sheriff Nanos and PCSD. This Court has recognized the importance of the
5 information relating to the AGO's investigation: "The court and counsel have concluded that
6 the criminal trial cannot proceed until after the AGO investigation is complete and the parties
7 have received and evaluated its results and conclusions."²² The Court thereafter conducted
8 its *in-camera* review of the materials relating to the AGO investigation into PCSD's
9 investigation of the allegations in the present case, and ordered disclosure of those materials
10 to the parties.²³

11 Mr. Garcia has now learned that PCSD withheld critical information from the AGO,
12 thus resulting in the AGO's inability to conduct a complete and thorough investigation.
13 Special Agent Desire Urbina was assigned by the AGO to investigate PCSD's conduct in
14 this matter. In her interview with defense counsel on October 17, 2024, SA Urbina learned,
15 for the first time, that PCSD withheld information important to her investigation in all of the
16 following areas:

- 17 • PCSD did not tell SA Urbina about the "secret" meeting between G.R. and Sheriff
18 Nanos on December 19, 2022, and she was not aware that there were no reports,
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21 ²¹ See, e.g., Correspondence from Nicholas Klingerman, Chief Counsel, Criminal Division,
22 Arizona Attorney General's Office, to Pima County Administrator Jan Leshner, August 29,
23 2024, p. 1 ("We note that an Internal Affairs (IA) investigation into this incident has yet to
24 be completed, and that Sheriff Nanos has indicated a plan to wait until the end of the criminal
25 trial to begin the IA investigation").

26 ²² Order, April 17, 2024, p. 1.

27 ²³ Order, August 9, 2024; Order, August 19, 2024.
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1 notes, or other documentation of what transpired in the meeting. Interview of SA
2 Desire Urbina, October 17, 2024, pp. 20-21. SA Urbina stated that this was significant
3 to her because “the document of the conversation, have it being as a victim and a case
4 detective. If -- if you’re involved in any type of case activity, I mean, it’s police 101.
5 You have to document it.” *Id.*, p. 21. SA Urbina would have included the failure to
document this secret meeting in her report, documenting potential failures in the
investigation. *Id.*, p. 22.

- 6 • PCSD did not tell SA Urbina that PCSD Captain Cornidez called the defense
7 investigator, Ray Pacheco, and ordered him not to talk to the PCSD members who
8 were witnesses present at Mr. Garcia’s residence, nor did PCSD inform SA Urbina
9 that there was an order communicated through the chain of command, and ultimately
10 from PCSD Lieutenant Bernstein, to the members of PCSD who were present at the
off-duty party not to speak to the investigator who was looking into the case. SA
Urbina stated that this should have also been documented. *Id.*, pp. 24-25.
- 11 • Although SA Urbina had specifically requested PCSD to provide all documentation
12 regarding complaints about the investigation into the incident, PCSD never advised
13 her that, on January 19, 2023, defense counsel sent a letter to Sheriff Nanos notifying
14 him and his office of concerns about leaks to the media on January 18, 2023, in
15 connection with the investigation, specifically Mr. Garcia’s arrest. SA Urbina did not
16 receive any of the email communications from PCSD to defense counsel in which
17 PCSD acknowledged that this was considered a complaint. *Id.*, pp. 10-11, 26. PCSD
18 also never notified SA Urbina of defense counsel’s complaint on January 20, 2023
19 about a photo of Mr. Garcia from within the jail, not a booking photo, being released
20 to the media. SA Urbina was not aware that, in response to this complaint from
counsel, Sheriff Nanos refused to investigate that complaint. *Id.*, p. 27. SA Urbina
stated these communications are something she would have expected to receive from
PCSD. SA Urbina stated that Nicholas Klingerman, Chief Counsel, Criminal
Division, Arizona Attorney General’s Office, may be interested in having her
investigate these matters further. *Id.*, pp. 27-28.
- 21 • SA Urbina was not aware that the defense counsel specifically requested all text
22 messages, memos, or other written materials documenting the involvement of PCSD
23 Lieutenant Bernstein and Captain Cornidez in the investigation. SA Urbina was not
24 aware that PCSD falsely told Santa Cruz County Attorney’s Office and defense
25 counsel that no such materials existed. SA Urbina was not aware that there were, in
26 fact, such memos and text messages that defense counsel learned of later, such as the
27 aforementioned order from Lieutenant Bernstein to potential witnesses. SA Urbina
28 expected that all of this documentation would have been produced to her. This is
information that she would have wanted for her investigation, but PCSD did not
provide it to her. *Id.*, pp. 28-31.

- SA Urbina acknowledged the obvious importance of having an outside agency conduct the investigation when the allegations involve members within the same department. *Id.*, p. 32. SA Urbina was never informed of all of the communications from all of the members of PCSD expressing concerns about whether PCSD should even be doing the investigation. *Id.*, pp. 32-33.
- When defense counsel asked SA Urbina about the letter from AGO Chief Counsel Klingerman noting that additional information will be developed during an Internal Affairs investigation by PCSD and the AGO “would welcome the opportunity to review the IA investigation,” SA Urbina stated “it looks like the AG’s investigation may not be done.” *Id.*, pp. 40-41.

PCSD’s obstruction of the AGO’s investigation by withholding information in all of these areas is the last straw, thus prompting Mr. Garcia’s filing of this motion to dismiss at the present time. PCSD’s, and thus the State’s, repeated acts of misconduct, failure to investigate, and refusal to cooperate with investigations are so pervasive as to irreparably taint this case. Mr. Garcia cannot possibly receive a fair trial at this time, and his Indictment must be dismissed.

II. DISCUSSION

Mr. Garcia’s Indictment Should Be Dismissed With Prejudice Due To The State’s Repeated Due Process Violations And Prosecutorial Misconduct.

Under Ariz. R. Crim. P. 16.4(b), “[o]n a defendant’s motion, the court must order a prosecution’s dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.” A motion to dismiss under the rule “can be based on any ground recognized by law.” *State v. Young*, 149 Ariz. 580, 587 (App. 1986) (quoting former Comment to rule). “Therefore, the court can dismiss with prejudice an indictment which is the result of a violation of due process.” *Id.* at 586. *See also State v. Huffman*, 222 Ariz. 416, 420 ¶ 10 (App. 2009) (“dismissal can be based on any legally recognized ground”).

1 Moreover, “[i]t is widely recognized that the court has the authority to dismiss an indictment
2 because of prosecutorial misconduct” and “[d]ismissals with prejudice occur” when “there
3 exists a pattern of misconduct that is prevalent or continuous.” *Young*, 149 Ariz. at 585. The
4 history of this case is riddled with due process violations and misconduct from the outset.
5 This is precisely the “pattern of misconduct that is prevalent or continuous” and warrants
6 dismissal with prejudice. *Id.*

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8 The due process violations started from the outset with PCSD’s improper interference
9 with Mr. Garcia’s right to conduct an independent investigation and collect exculpatory
10 evidence. PCSD Captain Cornidez, acting on behalf of PCSD Chief Deputy Kastigar,
11 contacted Mr. Garcia’s private investigator, Ray Pacheco, and “ordered” Mr. Pacheco not to
12 have any contact with PCSD members who were witnesses present for the incident. At the
13 same time, PCSD command staff issued orders to the PCSD members present at the party
14 not to have any contact with the defense.²⁴ These actions constitute a clear violation of Mr.
15 Garcia’s due process right to conduct an independent investigation and to collect exculpatory
16 evidence.
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20 It has long been settled under Arizona law that “[a] witness... is not the exclusive
21 property of either the prosecution or the defendant,” and “[a]lthough a witness may refuse to
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24 ²⁴ In instructing PCSD members not to communicate with defense counsel or his
25 investigator, Sheriff Nanos even threatened the defense with witness tampering. Sheriff
26 Nanos incorrectly stated that defense counsel “has no concern in this matter until charges are
27 filed...if they are ever filed” and added “any effort on their [Mr. Garcia’s defense lawyer’s]
28 part will be construed as witness tampering.” Email Communication from Sheriff Nanos to
Harold “Buddy” Janes, PCSD Chiefs, and PCSD Legal Advisor Sean Holguin, December
22, 2022 at 1:22 p.m.

1 be interviewed by defense counsel, the prosecution has no right to interfere with or prevent
2 a defendant's access to a witness, absent any overriding interest in security." *Mota v.*
3 *Buchanan*, 26 Ariz. App. 246, 249 (1976). The court explained:

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5 the district attorney has no legitimate interest in preventing the witness from
6 aiding the defendant. A public prosecutor is entrusted with an awesome duty
7 which requires him to serve the interest of justice in every case. For this
8 reason, a witness who may have information which is favorable to the defense
9 must be made available to the defense. Unquestionably, we cannot force a
10 district attorney to approve of such questioning; however, we may certainly
11 bar him from communicating his disapproval to the witness. We are not
12 hereby saying that the witnesses themselves may be compelled to speak with
13 defense counsel prior to trial. We merely intend to prevent the prosecuting
14 attorney from interfering with this aspect of the defendant's preparation for
15 trial.

16 *Id.* (citation omitted). The court emphatically rejected the prosecutor's claim "that the police
17 are not independent witnesses and are 'the prosecutor's partners in the fight against crime
18 and criminals.'" *Id.* (citation omitted).

19 As stated in *State v. Draper*, 158 Ariz. 315 (App. 1988), *vacated in part on other*
20 *grounds*, 162 Ariz. 433 (1989):

21 While a witness does not have to talk to defense counsel, it is improper for the
22 state to interfere with the right of the defense to attempt to talk to witnesses.
23 In *State v. Moncayo*, 115 Ariz. 274 [] (1977), our supreme court observed:

24 A defendant and his counsel certainly have a right to talk with
25 any witness having knowledge of matters which may be
26 beneficial or detrimental to the defense.

27 *Id.* at 277.

28 *Id.* at 318. *See also State v. Chaney*, 5 Ariz.App. 530, 535 (1967) (holding that "State's
counsel was guilty of improper conduct in discouraging police officers from discussing the
case with the defendant's attorney"). Indeed, The ABA Standards for Criminal Justice state

1 the duties as follows:

2 Attorneys for the parties and their staff should not advise persons (other than
3 the defendant) who have relevant information or material to refrain from
4 discussing the case with opposing counsel or showing opposing counsel any
5 relevant material, nor should they otherwise impede opposing counsel's
6 investigation of the case.

7 ABA Standards for Criminal Justice: Discovery, Standard 11-4.4 (4th ed. 2020). It is
8 especially noteworthy that the prosecution's duties arise *prior to* the filing of formal charges.
9 The "Standards should be applied in all criminal cases," and "[c]ase' means the prosecution
10 of the crimes charged, including sentencing, *and the investigation leading to those charges.*"
11 *Id.*, Standard 11-11.1(a) (emphasis added); Standard 11-1.3.

12 The state's due process violations continued with its exhibition of bias and prejudice
13 against Mr. Garcia and its efforts to deny him his due process right to a fair trial through the
14 intentional and improper leaks of prejudicial information and images to the media, as set
15 forth above.²⁵ *See State v. Tison*, 129 Ariz. 526, 534 (1981) ("Appellant urges that he was
16 deprived of a fair trial guaranteed by the Due Process Clause of the Fifth and Fourteenth
17 Amendments of the United States Constitution because of the pre-trial publicity in this
18 matter"); *State v. Bible*, 175 Ariz. 549 (1993) (recognizing defendant's argument that
19 prejudicial publicity denied defendant's due process right to a fair trial); *see generally*
20 *Sheppard v. Maxwell*, 384 U.S. 333 (1966) (adverse media publicity denied defendant's due
21 process rights).

22 In addition to these due process violations and repeated instances of misconduct, the
23
24

25
26
27 ²⁵ *See supra*, p. 8 and n. 17.
28

1 state's misconduct regarding its disclosure obligations also dates back to the beginning of
2 the case. Given the improper involvement of members of PCSD in this investigation, defense
3 counsel made a detailed request for supplemental disclosure. Among the items requested
4 were "Any reports, memoranda, emails, notes, text messages, or other writings prepared by"
5 members of PCSD who were involved in the early stages of the investigation.²⁶
6

7 The state initially responded that the requested materials were "not in possession of
8 investigation team and they have no plans to obtain it. Defense advised to seek it through
9 requests made directly to PCSD as part of its investigation." Counsel for Mr. Garcia then
10 filed his Motion to Compel Disclosure, which he withdrew after assurances from the state
11 that PCSD's lead detective would seek out the requested items. Several weeks later, the state
12 provided a document via email that constituted an "updated SO response to your original
13 request," which specified that there were "No reports, memos, notes or text messages" from
14 these PCSD members. Defense counsel later learned through pretrial interviews that this was
15 false, and that text messages and memos did exist, including from Captain Cornidez and
16 Lieutenant Bernstein contemporaneous with their early involvement in the investigation, and
17 the order to witnesses not to speak to the defense investigator.²⁷
18
19
20

21 As noted in Mr. Garcia's initial Motion to Compel Disclosure, the disclosure of these
22 materials was *mandated* under the rules of criminal procedure.²⁸ The rules also make it clear
23

24
25 ²⁶ See Defendant's Motion for State to Certify Compliance with Disclosure Obligations, p.
26 3, incorporated herein by reference as noted above.

27 ²⁷ *Id.*, pp. 3-4.

28 ²⁸ See Ariz. R. Crim. P. 15.1(a)(1) and (b)(3).

1 that the prosecutor bears the ultimate responsibility to ensure that these materials are
2 disclosed by the investigating law enforcement agency.²⁹

3
4 While it is important to recognize that these materials are subject to mandatory
5 disclosure under these specific provisions of the rules of criminal procedure, they are also
6 separately subject to disclosure pursuant to the state's due process obligation to produce
7 exculpatory information under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the
8 rules of criminal procedure codifying the state's *Brady* obligations, and Arizona case law
9 interpreting these provisions. Courts have long recognized the prosecution's due process
10 duty to disclose information relating to flaws or defects in the investigation of the case. The
11 United States Supreme Court has specifically recognized that information that might "have
12 raised opportunities to attack...the thoroughness and even good faith of the investigation"
13 constitutes exculpatory, material evidence that must be disclosed to the defense. *Kyles v.*
14 *Whitley*, 514 U.S. 419, 445 (1995). *See also Bowen v. Maynard*, 799 F.2d 593, 613 (10th
15 Cir. 1986) (exculpatory material includes evidence that "raises serious questions about the
16 manner, quality, and thoroughness of the investigation that led to [defendant's] arrest and
17 trial. A common trial tactic of defense lawyers is to discredit the caliber of the investigation
18 or the decision to charge the defendant"); *United States v. Howell*, 231 F.3d 615, 625 (9th
19 Cir. 2000) (even information that "may seem inculpatory on its face in no way eliminates or
20 diminishes the government's duty to disclose evidence of a flawed police investigation").
21
22
23
24

25 In the *Brady* context, too, a law enforcement agency's failure to comply with its
26

27 ²⁹ See Ariz. R. Crim. P. 15.1(f).
28

1 obligations is imputed to the prosecutor. *Kyles*, 514 U.S. at 437-38. Moreover, a prosecutor's
2 unexplained failure to comply with the rules of criminal procedure governing disclosure
3 constitutes prosecutorial misconduct. *State v. Killean*, 185 Ariz. 270, 271 (1996)
4 ("unexplained failure to do what the rules require" constitutes "willful misconduct"). It is
5 unequivocally the prosecutor's obligation to comply with disclosure obligations. *Giglio v.*
6 *United States*, 405 U.S. 150, 154 (1972) ("whether the nondisclosure was a result of
7 negligence or design, it is the responsibility of the prosecutor").
8
9

10 Which brings us back to PCSD's most recent disclosure violation by withholding
11 information necessary for the AGO to conduct its investigation into the conduct of Sheriff
12 Nanos and PCSD in this matter. As set forth above, SA Urbina has specifically noted the
13 importance of the information that PCSD withheld from her and the need to evaluate that
14 information in completing the AGO's investigation. Again, as also noted above, this Court
15 has recognized the importance of the AGO's investigation and has ordered the results of that
16 investigation to be disclosed to the parties. PCSD's failure to disclose essential information
17 to the AGO is simply the last episode in the pattern of due process violations and misconduct
18 set forth above. This is precisely the pattern of prevalent and continuous misconduct that
19 warrants dismissal with prejudice. *Young*, 149 Ariz. at 585.
20
21

22 **III. CONCLUSION**

23 For the foregoing reasons, Mr. Garcia, pursuant to Ariz. R. Crim. P. 16.4(b),
24 respectfully requests this Court to issue its order dismissing his Indictment with prejudice
25 due to the state's pattern of prevalent and continuous due process violations and misconduct.
26 In the alternative, at a minimum, the Indictment should be dismissed without prejudice,
27
28

1 which would permit Sheriff Nanos to authorize an Internal Affairs investigation in this
2 matter, which he has repeatedly indicated will proceed only after the criminal case is
3 complete, and divulge the results of said investigation the AGO, and any and all *Brady*
4 material to the prosecution. PCSD must also provide the AGO with the information PCSD
5 has improperly withheld. In this manner, the AGO can complete its investigation, and the
6 resulting exculpatory information can be disclosed to Mr. Garcia pursuant to this Court's
7 orders and Mr. Garcia's due process rights to enable him to effectively prepare his defense
8 for trial.
9
10

11 RESPECTFULLY SUBMITTED this 6th day of November, 2024.

12 PICCARRETA DAVIS KEENAN FIDEL PC

13
14 By: /s/ Louis S. Fidel
15 Louis S. Fidel
16 Jefferson Keenan
17 *Attorneys for Defendant*
18
19
20
21
22
23
24
25
26
27
28

1 Original of the foregoing e-filed
2 this 6th day of November, 2024.

3 Copy of the foregoing emailed
4 this 6th day of November, 2024 to:

5 The Honorable J. Alan Goodwin
6 Pima County Superior Court
7 110 W. Congress Street
8 Tucson, Arizona 85701
9 Email: mamolina@sc.pima.gov

10 Mathew Cannon, Esq.
11 Santa Cruz County Attorney's Office
12 2150 N. Congress Drive, Suite 201
13 Nogales, Arizona 85621
14 Email: mcannon@santacruzcountyaz.gov

15 Greg Stoltz, Esq.
16 G Stoltz Law, LLC
17 100 N. Stone Avenue, Suite 702
18 Tucson, Arizona 85701
19 Email: greg@gstoltzlaw.com

20 By: /s/ Melissa Hahn

EXHIBIT A

PICCARRETA DAVIS KEENAN FIDEL PC
LAWYERS

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JEFFERSON KEENAN
LOUIS S. FIDEL
MARIE M. PICCARRETA

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BARRY M. DAVIS
(1948-2016)

December 22, 2022

VIA EMAIL: Luis.Cornidez@sheriff.pima.gov
AND U.S. FIRST CLASS MAIL

Captain Luis Cornidez, #1373
Pima County Sheriff's Department
1750 E Benson Highway
Tucson, AZ 85714

Re: Sergeant Ricky Garcia, PCSD Case No. 221218031

Dear Captain Cornidez:

I represent Pima County Sheriff's Department Sergeant Ricky Garcia with respect to an ongoing criminal investigation. It is my understanding that yesterday you contacted the private investigator assisting me in this matter, Ray Pacheco, told him that he could not contact any witnesses in the matter, and further stated that you were acting on behalf of Chief Deputy Rick Kastigar. This instruction constitutes a clear violation of Sergeant Garcia's due process right to conduct an independent investigation to collect exculpatory evidence.

It has long been settled under Arizona law that "[a] witness... is not the exclusive property of either the prosecution or the defendant," and "[a]lthough a witness may refuse to be interviewed by defense counsel, the prosecution has no right to interfere with or prevent a defendant's access to a witness, absent any overriding interest in security." *Mota v. Buchanan*, 26 Ariz. App. 246, 249, 547 P.2d 517, 520 (1976). The court explained:

the district attorney has no legitimate interest in preventing the witness from aiding the defendant. A public prosecutor is entrusted with an awesome duty which requires him to serve the interest of justice in every case. For this reason, a witness who may have information which is favorable to the defense must be made available to the defense. [citations omitted]. Unquestionably, we cannot force a district attorney to approve of such questioning; however, we may certainly bar him from communicating his disapproval to the witness. We are not hereby saying that the witnesses themselves may be compelled to speak with defense counsel prior to trial. We merely intend to prevent the prosecuting attorney from interfering with this aspect of the defendant's preparation for trial.

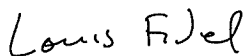
Id., 26 Ariz. App. at 249. The court emphatically rejected the prosecutor's claim "that the police are not independent witnesses and are 'the prosecutor's partners in the fight against crime and criminals.'" *Id.* (citation omitted). This fundamental due process principle is well settled. *See, e.g., State v. Guzman*, 71 P.3d 468, 470

(Idaho App. 2003) (“the rule is well established that witnesses to a crime do not ‘belong’ to either the prosecution or the defense and that both sides should have equal access for witness interviews.... This right of defendants to interview witnesses without prosecutorial interference is grounded in the constitutional guarantee of due process and notions of ‘elemental fairness.’”) (citations omitted).

In addition, the fact that a matter is under investigation cannot be used as an excuse to deny an individual suspected of wrongdoing his due process right to conduct an investigation and obtain physical evidence and witness statements in support of his defense because “[d]ue process requires that defendants have a fair chance to obtain potentially exculpatory evidence.” *Montano v. Superior Court*, 149 Ariz. 385, 389 (1986) (quotation marks and citation omitted).

The “order” to Mr. Pacheco is especially disturbing because it was coupled with wholly unsupported and inaccurate accusations of ethical wrongdoing and possible interference with a criminal investigation. Mr. Pacheco has not engaged in any such behavior. I hope that there has been some misunderstanding, and the Pima County Sheriff’s Department is not undertaking to prohibit Sergeant Garcia from conducting his own investigation and gather exculpatory information, which we believe is substantial, in violation of his constitutional right to due process.

Sincerely,

A handwritten signature in black ink that reads "Louis Fidel". The script is cursive and somewhat stylized.

Louis S. Fidel

cc: Detective Ryan Hilborn (via email)
Ricky Garcia (via email)

EXHIBIT B

PICCARRETA DAVIS KEENAN FIDEL PC
LAWYERS

MICHAEL L. PICCARRETA
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BARRY M. DAVIS
(1948-2016)

January 27, 2023

VIA EMAIL: MCannon@santacruzcountyaz.gov

Mathew Cannon, Esq.
Santa Cruz County Attorney's Office
2150 N. Congress Drive, Suite 201
Nogales, Arizona 85621

Re: State of Arizona v. Ricardo Lorenzo Garcia
Pima County Consolidated Justice Court Case No. CR23-000810-FE

Dear Matt:

I have previously expressed concerns about the Pima County Sheriff's Department's ("PCSD") ability to conduct an unbiased investigation in the present case, and I would like to address those concerns more fully here. Upon reflection, I request that this matter be transferred immediately out of PCSD's control to an outside law enforcement agency for independent review and further investigation. In the meantime, I propose that the case be dismissed without prejudice, allowing your office to refile the matter at a later date, if you feel it is appropriate upon completion of that independent investigation.

Sergeant Ricky Garcia is a PCSD deputy,¹ the alleged victim and the complaining witness who initiated the call to law enforcement are PCSD deputies, the alleged incident occurred at a holiday party hosted by Sergeant Garcia for members of his PCSD squad, and the witnesses who attended the party were almost exclusively PCSD deputies. These mixed professional and personal relationships create a clear conflict of interest with respect to PCSD's ability to investigate the case, and they create tangible obstacles for witnesses, including the alleged victim, to openly discuss the personal sexual matters at the heart of this case with their professional colleagues who are conducting the investigation.

Pima County Sheriff Christopher Nanos determined at the outset of the investigation that the Pima County Attorney's Office had a conflict of interest in this matter and could not be involved in its review. The attached news article from December 23, 2022, less than a week after

¹ Sergeant Garcia was served on January 25 with a notice of intent to terminate, but no final discipline has been imposed and he has not begun the process of appealing any such discipline.

the alleged incident, noted that “The case, [Sheriff Nanos] said, will be handed over to the Attorney General’s office due to a conflict of interest with local prosecutors.” See attached KVOA article, December 23, 2022. If the Sheriff has concluded that the Pima County Attorney’s Office has a conflict of interest, then certainly it must be recognized that PCSD, which is awash in conflicts, is doubly conflicted.

PCSD’s ongoing communications with the media about the investigation, both formally and informally, have also raised alarms. In a different article, also dated December 23, 2022, the media was able to identify Sergeant Garcia by name as the suspect, and include his photograph, even though the investigation was in its early stages and he had not yet been charged with any crime. See attached KOLD article, Dec. 23, 2022. In that same article, Sheriff Nanos stated “we stand with the victim,” abandoning any semblance of impartiality with respect to the case.

On January 18, 2023, I was contacted by PCSD at approximately 1:00 p.m., and notified that the investigation had developed probable cause to arrest Sergeant Garcia, and he needed to turn himself in at the front door of the main PCSD station. At approximately 4:00 p.m., I notified the detective that Sergeant Garcia was en route, and would be at the station within the hour. At approximately 4:45 p.m., I and Sergeant Garcia arrived, and found that two camera crews from local news stations were already present, with their cameras positioned directly outside the front door, waiting to film Sergeant Garcia’s arrival. The arrest decision, and the time and location of his self-surrender were not public information, so it is clear that someone within PCSD had leaked this information immediately to the media, allowing them to arrive before Sergeant Garcia and myself.

An even more troubling event occurred while Sergeant Garcia was held at the Pima County Jail the night after his arrest. Sergeant Garcia was booked into the jail on January 18, and had his initial appearance the next morning. While he was in the jail, a PCSD Corrections Officer took a photo of him in the jail’s standard-issue orange jumpsuit, and then sent that to the media. This unauthorized photo has now been published in numerous subsequent news articles. As you know, when I contacted Sheriff Nanos about this alarming breach of protocol, he expressed unwillingness to taking any action to address the matter. See attached email correspondence, January 20, 2023.

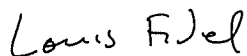
It is also my understanding that PCSD has learned that *dozens* of its employees who have no role in the present investigation have inappropriately accessed files related to the case in the PCSD investigatory database. This raises clear concerns about the reliability of witness statements, as the overwhelming majority of witnesses in the case are PCSD members, and confidential case-related information evidently has been flowing within the department. PCSD’s inability, or unwillingness, to immediately investigate and address these breaches erodes all faith in its ability to impartially investigate.

The most alarming action taken by PCSD occurred on December 22, 2022, just four days after the alleged incident. Upon becoming involved in this case, I retained a private investigator to assist with contacting individuals who were present at the holiday party and other potential witnesses. On December 22, the investigator received a phone call from PCSD Captain Luis Cornidez, who instructed him to cease contacting any witness. He further stated that he was acting at the direction of PCSD Chief Deputy Rick Kastigar. This was a flagrant violation of Sergeant Garcia's due process right to conduct an independent investigation and collect exculpatory evidence. *Mota v. Buchanan*, 26 Ariz. App. 246, 249 (1976); *Montano v. Superior Court*, 149 Ariz. 385, 389 (1986). In light of PCSD's effort to obstruct Sergeant Garcia's right to investigate this matter, an independent investigation should also seek to determine any efforts by PCSD to influence such witnesses' statements.

It is essential for both Sergeant Garcia and the State that the investigation of this matter be conducted in a manner that is fair and impartial. It is clear that PCSD has a conflict of interest in this case, and that it cannot serve in that role. We believe that a fair and unbiased investigation, looking at the exculpatory evidence, will lead to a decision that there has been a rush to judgment and no charges should ever have been filed, especially without your office's careful consideration of all of the evidence. Sergeant Garcia has a due process right to a fair and independent investigation, and to date those rights have been violated. Accordingly, I request that this case be dismissed without prejudice at this time, and that the investigation be transferred immediately to an independent law enforcement agency to conduct its own independent review of the matter.

I would like very much to discuss this with you at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Louis Fidel".

Louis S. Fidel

Enclosures

HOLIDAY SEASON | **Santa Tracker** | **Holiday Light Finder**

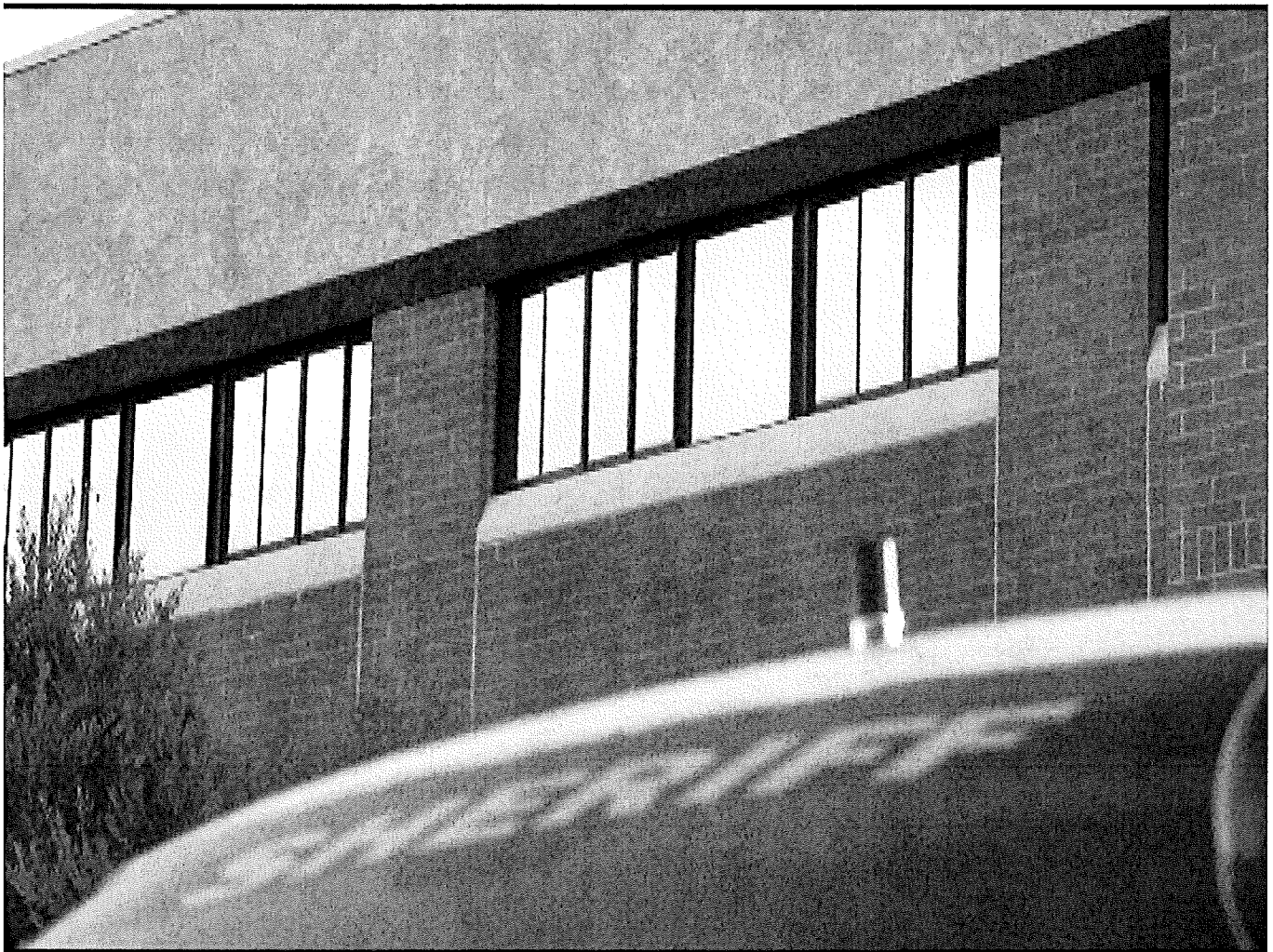
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https://www.kvoa.com/news/pima-county-sheriffs-department-criminally-investigating-employee-after-incident-with-other-staff-member-off-duty/article_cc63e5c0-830c-11ed-b187-83076ab03c3a.html

Pima County Sheriff's Department criminally investigating employee after "incident" with other staff member off-duty

Chorus Nylander

Dec 23, 2022



TUCSON (KVOA) - The Pima County Sheriff's Department has confirmed to News 4 Tucson that it's investigating one of its own employees after an incident over the weekend.

PCSD is releasing few details about what took place.

News 4 Tucson spoke with Sheriff Chris Nanos, who wasn't available for an interview, but told us there is an ongoing criminal investigation with a member within his department.

Nanos said they will let the investigation run its course. He is concerned about the allegations and is also concerned for the victim. He said the victim is receiving counseling services. The employee involved in the criminal investigation has been placed on administrative leave with pay. The case, he said, will be handed over to the Attorney General's office due to a conflict of interest with local prosecutors.

News 4 Tucson spoke to multiple sources with knowledge of the situation, one source who wouldn't go on camera told us it all stemmed from a house party a deputy threw at their house last weekend. The source said on Sunday morning after the party a

deputy witnessed the deputy who threw the party sexually assaulting another female subordinate deputy.

The source said the witness tried to intervene but then called 911 for assistance.

The Department would not confirm that chain of events and said they are releasing no further information at this time.

News 4 Tucson is withholding the identity of the deputy under investigation because he has not yet been charged with a crime.

News 4 Tucson has made multiple public records requests in an effort to learn more.

We will update you as we receive more information.

If you have a story you'd like us to investigate, email us at investigators@kvoa.com or call our tip line at 520-955-4444.

Tags

[Tucson](#)[Chris Nanos](#)[Work](#)[Law](#)[News](#)[Pima County](#)[Employee](#)[Deputy](#)[Department](#)

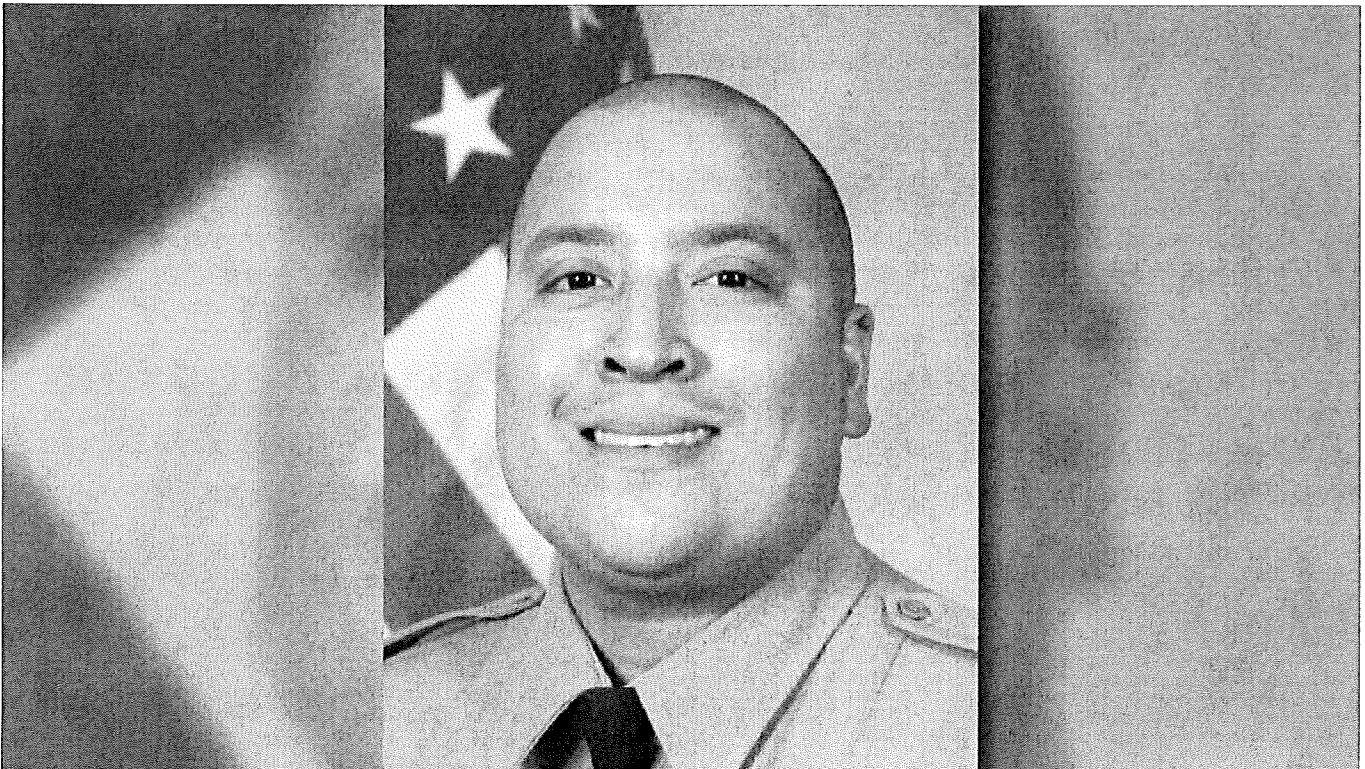
Chorus Nylander

Chief Investigative Reporter

Chorus Nylander is the Chief Investigative Reporter for News 4 Tucson. He is focused on giving the voiceless a voice and holding the powerful accountable.

≡ News Email Alerts

Pima County sheriff's deputy on administrative leave amid sexual assault investigation



Ricardo Garcia (Pima County Sheriff's Department)

By KOLD News 13 Staff and Shelby Slaughter

Published: Dec. 23, 2022 at 4:38 PM MST | Updated: Dec. 23, 2022 at 5:19 PM MST

TUCSON, Ariz. (KOLD News 13) - A criminal sexual assault investigation is underway after an incident involving a Pima County sheriff's deputy happened last weekend.

Sheriff Chris Nanos said Sergeant Ricardo Garcia, a school resource officer, hosted a house party when the incident took place.

Very few details about what happened are being released. The incident involved another off-duty employee with the department. Garcia has since been placed on administrative leave with pay.

"We take these matters very seriously and we stand with the victim," Nanos said.

As of Friday, no charges had been filed.

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Deejo

Man fatally shoots himself in the groin while attempting U-turn, police say

Alex Hutcheson

From: Chris G. Nanos <Chris.Nanos@sheriff.pima.gov>
Sent: Friday, January 20, 2023 4:48 PM
To: Louis Fidel
Cc: Caroline G. Vargas; Ryan E. Hilborn; mcannon@santacruzcountyaz.gov; Alex Hutcheson; Sean Holguin
Subject: Re: Sergeant Ricardo Garcia, Pima County Sheriff's Department Case No. 221218031; Letter from Louis Fidel

Mr. Fidel,
Since your client has been charged, I am going to ask that you address these issues with the prosecutor handling the case. We have your complaint and we'll handle as previously explained. Thanks...

Chris Nanos
Pima County Sheriff
520-465-4052

On Jan 20, 2023, at 2:07 PM, Louis Fidel <lfidel@pd-law.com> wrote:

CAUTION: This message and sender come from outside Pima Sheriff. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Thank you for your quick response, Ms. Vargas, although I respectfully disagree that a full internal investigation of these leaks is a matter that can wait until after the criminal investigation has been completed. Information from that internal investigation may constitute *Brady* material that must be turned over to the Santa Cruz County Attorney's Office. There was yet another concerning incident related to Sergeant Garcia's case yesterday, as local news station KOLD published a story with a photo of Sergeant Garcia inside of the jail. The photo is not an official booking photo from the Pima County Jail, but instead shows Sergeant Garcia in the jail's standard-issue orange shirt, standing against a tile wall. <https://www.kold.com/2023/01/19/pima-county-deputy-arrested-sexual-assault-charges/>.

This photo was apparently taken by a Pima County Sheriff's Department Corrections Officer after Sergeant Garcia was booked into the Pima County Jail, and then sent out to the media. Presumably there is surveillance footage that will help identify the Corrections Officer who engaged in this serious breach of protocol.

The criminal investigation of this case is ongoing, and the Sheriff's Department's continued statements in the media and ongoing leaking of information may jeopardize Sergeant Garcia's ability to obtain a fair trial, if he should be formally charged. If this conduct continues, it may be necessary to seek judicial intervention.

Louis S. Fidel

Piccarreta Davis Keenan Fidel PC | 2 E. Congress St., Suite 1000, Tucson, AZ 85701
t 520.622.6900, ext. 104 | f 520-622-0521 | www.pd-law.com

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From: Caroline G. Vargas <Caroline.Vargas@sheriff.pima.gov>

Sent: Thursday, January 19, 2023 4:24 PM

To: Alex Hutcheson <ahutcheson@pd-law.com>

Cc: Chris G. Nanos <Chris.Nanos@sheriff.pima.gov>; Louis Fidel <lfidel@pd-law.com>; Ryan E. Hilborn <Ryan.Hilborn@sheriff.pima.gov>; 'mcannon@santacruzcountyaz.gov' <mcannon@santacruzcountyaz.gov>

Subject: RE: Sergeant Ricardo Garcia, Pima County Sheriff's Department Case No. 221218031; Letter from Louis Fidel

Good afternoon Alex,

The Sheriff is in receipt of Mr. Fidel's letter dated January 19, 2023 *Re: Case #221218031*. The Sheriff and his administration are aware of potential leaks and currently there is an internal investigation being conducted. However, primarily, this department is highly focused on the criminal aspect of this case and will attend to the internal matter once the criminal investigation is complete.

If you have any further questions regarding this matter, please do not hesitate to reach out to Sheriff Nanos. Thank you.



Caroline G. Vargas
*Executive Coordinator to Sheriff Nanos and
Chief Deputy Kastigar*

Executive Office of the Pima County Sheriff
1750 E. Benson Highway
Tucson, AZ 85701
520-351-4711 Office
520-373-2072 Cellular

From: Chris G. Nanos <Chris.Nanos@sheriff.pima.gov>

Sent: Thursday, January 19, 2023 3:59 PM

To: Caroline G. Vargas <Caroline.Vargas@sheriff.pima.gov>

Subject: FW: Sergeant Ricardo Garcia, Pima County Sheriff's Department Case No. 221218031; Letter from Louis Fidel

From: Alex Hutcheson <ahutcheson@pd-law.com>

Sent: Thursday, January 19, 2023 3:41 PM

To: Chris G. Nanos <Chris.Nanos@sheriff.pima.gov>

Cc: Louis Fidel <lfidel@pd-law.com>; Ryan E. Hilborn <Ryan.Hilborn@sheriff.pima.gov>;
mcannon@santacruzcountyaz.gov

Subject: Sergeant Ricardo Garcia, Pima County Sheriff's Department Case No. 221218031; Letter from Louis Fidel

CAUTION: This message and sender come from outside Pima Sheriff. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Good afternoon, Sheriff Nanos,

Please see the attached letter from Louis Fidel in regard to the above-mentioned case. The original of this letter is also being sent by mail today.

Best,

Alexandria Hutcheson, Legal Assistant

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t 520.622.6900, ext. 101 | f 520.622.0521 | www.pd-law.com

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BARRY M. DAVIS
(1948-2016)

January 19, 2023

VIA EMAIL: Chris.Nanos@sheriff.pima.gov
AND U.S. FIRST CLASS MAIL

Sheriff Chris Nanos
Pima County Sheriff's Department
1750 E. Benson Highway
Tucson, Arizona 85714

Re: Sergeant Ricardo Garcia, Pima County Sheriff's Department Case No. 221218031

Dear Sheriff Nanos:

I am writing to express great concern about apparent leaks to the media of information about the above-referenced case from within the Pima County Sheriff's Department ("PCSD"). These leaks began early in the case, as the local news station, KOLD, published a story on December 23, 2022, less than a week after the incident in question, which identified Sergeant Garcia as the suspect and included his both his name and photograph in the article. There was another incident yesterday, when Sergeant Garcia voluntarily turned himself in at the main PCSD station, and found that upon his arrival, two separate news crews were already present with video cameras at the ready.

I received a phone call from Detective Hilborn, the case detective assigned to this investigation, at approximately 1:00 p.m. informing me that there was probable cause to arrest Sergeant Garcia, and requesting that he turn himself in at the main PCSD station that day. After speaking with Detective Hilborn, we corresponded about the investigation over the course of the next couple of hours, and at approximately 4:00 p.m., I notified him that Sergeant Garcia was enroute from his home, and that he would be present at the main station within the hour.

At approximately 4:45 p.m., I arrived at the PCSD station to accompany Sergeant Garcia, and was surprised to see that a camera crew from one of the local news stations was already present, with its camera equipment set up directly in front of the station's front door. Shortly thereafter, a second camera crew arrived and also positioned itself directly in front of the front door. I was able to speak with Detective Hilborn inside the station, and fortunately he obtained authorization for Sergeant Garcia to enter the building through the employee entrance, thereby avoiding the embarrassing spectacle of doing a "perp walk" through the waiting media crews, but it is deeply concerning that the media had already been alerted that an arrest decision had been made, and that they also had received immediate notice of both the time and the location where Sergeant Garcia would be turning himself in. at the station within minutes of my notification to the Detective.

I expressed my concern to Detective Hilborn about these leaks to the media yesterday, and he informed me that PCSD is conducting an investigation into this situation. I am glad to hear that such an investigation exists, as these leaks do a disservice to the investigation, they have resulted in significant embarrassment to Sergeant Garcia and his family, and could raise concerns about PCSD's ability to conduct an impartial investigation in this matter. I trust that the investigation of these leaks will be carried out to its conclusion, and respectfully request that PCSD take appropriate measures to ensure that the problem does not continue.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis S. Fidel". The signature is fluid and cursive, with the first name "Louis" and last name "Fidel" clearly distinguishable.

Louis S. Fidel

cc: Detective Ryan Hilborn (via email)

Mathew Cannon, Santa Cruz County Attorney's Office (via email)