

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 02/16/2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA ex rel. ANDREW) Court of Appeals
P. THOMAS, Maricopa County) Division One
Attorney,) No. 1 CA-SA 10-0015
)
Petitioner,) Maricopa County
) Superior Court
v.) No. CR 2007-140033-001 DT
)
THE HONORABLE GLENN M. DAVIS,) Department B
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA, and THE) **DECISION ORDER**
HONORABLE PHEMONIA L. MILLER, a)
Commissioner thereof,)
)
Respondent Judges,)
)
JAMIE MARTINEZ,)
)
Real Party in Interest.)
_____)

In this special action, petitioner, the State of Arizona argues the superior court should not have ordered it to produce to real party in interest Jamie Martinez copies of (1) the "Flint Walters" software/database ("software") and (2) images of alleged child pornography ("images"). As to the software, the State argues it is not authorized to produce it; and as to the images, the State

argues reproduction is not warranted because Martinez failed to make a substantial showing production was necessary for the effective investigation or presentation of a defense as required by Rule 15.1(j) of the Arizona Rules of Criminal Procedure. Having considered the petition for special action and having received no response to that petition from Martinez, the court, Presiding Judge Patricia K. Norris and Judges Daniel A. Barker and Peter B. Swann, accepts jurisdiction and grants relief in part and denies relief in part.

During the telephonic hearing on the State's request that we stay reproduction of the software and images, counsel for the State represented the State would make these items reasonably available for inspection as required by defense counsel and/or the defense expert even though the State had refused to make these items available for inspection before the telephonic hearing. Although Rule 15.1(j) authorizes inspection, to obtain reproduction, Martinez was required to make a substantial showing that "reproduction or release for examination or testing" was required for the effective investigation or presentation of his defense, as required by Rule 15.1(j). The record does not reflect Martinez ever made this showing. Given that the State has agreed to allow the software and images to be

inspected, and given the current state of the record, we vacate the superior court's order requiring the State to comply with that portion of the ruling entered by Commissioner Miller in August 2009 requiring reproduction of the software and images.

The court has received a Motion for Leave To File Amicus Brief filed by the United States of America on behalf of the Federal Bureau of Investigation.

IT IS ORDERED denying the Motion for Leave To File Amicus Brief. The United States has requested the superior court to vacate certain portions of the orders entered by it dated December 11, 2009 and August 31, 2009. The superior court has entered a stay of those portions of the orders so Martinez may respond to the motion to vacate and/or to comply with federal regulations pertaining to the production of those documents. The arguments raised by the United States are, therefore, not properly before us. This court expresses no opinion regarding the merits of the arguments made by the United States.

/s/

Patricia K. Norris, Presiding Judge