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<p>COURT OF APPEALS DIVISION 1</p> <p>STREET ADDRESS: 1501 West Washington</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE: Phoenix, AZ 85007</p> <p>BRANCH NAME: Court of Appeals Division 1</p> <p>WEBSITE:</p>	
ATTACHMENT NAME: REPLY - Petition for Special Action: Petitioner's Reply Memorandum	
CASE NAME: BASHIR v. HON PINEDA/STATE	CASE NUMBER: SA-10-0267
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IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

NADIA H. BASHIR) Court of Appeals
) Division One
Petitioner,) No. SA-10-0267
)
v.)
)
THE HONORABLE SUSANNA C.) Maricopa County Superior Court
PINEDA, Judge of the SUPERIOR) No. CR2010-005129-001
COURT OF THE STATE OF)
ARIZONA, in and for the County of) PETITIONER’S REPLY
MARICOPA,) MEMORANDUM
)
Respondent Judge,)
)
STATE OF ARIZONA,)
)
Real Party in Interest.)

The Arizona Supreme Court’s decision in *Trebus v. Davis*, 189 Ariz. 621, 944 P.2d 1235 (1997), unambiguously obligates the State to provide the grand jury with the subject and outline of a defendant’s proposed testimony so the grand jury can make an informed decision whether to hear from her. *Id.* at 626, 944 P.2d at 1240 (holding that grand jury “can make an informed decision only if, on the one hand the defendant’s request provides information with some degree of detail, at least as to the subject and outline of the proposed evidence, and, on the other hand, if the prosecutor conveys that information to the grand jury”).

It is undisputed that Ms. Bashir asked to testify before the grand jury and provided the State with 120 pages of information detailing her proposed testimony, none of which the State conveyed to the grand jury. The State argues that, notwithstanding its clear language, *Trebus* requires only that the State (1) inform the grand jury of a defendant's willingness to testify, and (2) present clearly exculpatory information to the grand jury.¹ *Trebus* is clear and straightforward, and this Court need only abide by that case to reach the result requested here – a remand based on the State's failure to convey to the grand jury any information, including as to the subject and outline of Ms. Bashir's proposed testimony.

The State does not, because it cannot, reconcile the operative language from *Trebus*. Rather, the State argues why the *Trebus*-mandated result is inconsistent with the separate notion that the grand jury need only “hear[] probable cause evidence” and thereby decide whether the accused's “testimony would assist it in the probable cause determination.”² The State further suggests that no description of the defendant's proposed testimony would ever need to be conveyed, as the “grand jury would assume that the person's testimony would attempt to tell their

¹ Resp. at 6-7. This obligation is present regardless of a request to testify.

² *Id.* at 7-8.

[sic] side of the story in order to dissuade the grand jury from returning an indictment.”³

The Supreme Court in *Trebus* rejects entirely this narrow application of the grand jury’s “right and obligation to decide whether to hear a defendant or his exculpatory evidence.” 189 Ariz. at 624, 944 P.2d at 1238. Unless so informed by the State, the Court held, “the grand jury ordinarily has no reason to believe that other evidence within its reach will explain away the charge.” *Id.* (internal quotation marks and citation omitted). As such, the Court reasoned that implicit in A.R.S. § 12-412 and Ariz. R. Crim. P. 12.6 is the obligation to convey to the grand jury sufficient information to make an informed decision – at a minimum, the “*subject and outline*” of the defendant’s proposed testimony. *Id.* at 626, 944 P.2d at 1240 (emphasis added).⁴

Ms. Bashir informed the State that she wished to appear before the grand jury and provided over 120 pages detailing the testimony and evidence she wished to present. The State failed to convey any of this information to the grand jury, a clear violation of the rule announced in *Trebus*. The trial court abused its

³ *Id.* at 7.

⁴ Indeed, the Court notes that the failure to impose on the State the obligation to “inform the grand jury that the defendant has requested to appear or has submitted exculpatory evidence” would “render meaningless” A.R.S. § 21-412 and Rule 12.6. *Id.* at 625, 944 P.2d at 1239. The Court imposes this burden notwithstanding the fact that neither § 21-412 nor Rule 12.6 explicitly requires the State to so inform the grand jury.

discretion in failing to apply the law set forth in *Trebus*, and order a remand. This Court should accept jurisdiction and reverse the Superior Court's denial of Ms. Bashir's motion to remand.

RESPECTFULLY SUBMITTED this 3rd day of January, 2011.

OSBORN MALEDON, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2011, Petitioner's Reply Memorandum was electronically filed with the Clerk's Office and pursuant to ARCAP Rule 4(c), copies of Petitioner's Reply Memorandum were mailed to:

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