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2010 OCT 12 PM 12:10

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,
10 Plaintiff,
11 vs.
12 JOHN CHARLES MCCLUSKEY,
13 Defendant.

No. CR-2010-0823
**RESPONSE TO MOTION TO
REMAND TO THE GRAND JURY**

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
15 the undersigned deputy, respectfully requests this Court deny Defendant's motion to
16 remand as the Defendant has not been denied a substantial procedural right. Arizona
17 Rules of Criminal Procedure 12.9(a).

18 I. **The Grand Jury was property instructed on its ability to change an**
19 **indictment during opening admonitions and during the**
20 **presentation of facts**

21 Defendant concedes that during opening admonitions the prosecutor properly
22 instructed the Grand Jury that the indictment was a draft, and the Grand Jury had the
23 power to change the indictment. See Defendant's motion, page 4, lines 20-22.

24 When one of the grand jurors, [REDACTED] had a question on this matter, the
25 State properly answered the question and further clarified the power of the Grand Jury.
Several counts in the draft indictment charged multiple suspects. Therefore, as written,
the indictment would have in fact been an all or nothing "vote", to use the words of the



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1 Grand Juror. Therefore, the question was properly answered by the State. More
2 importantly, the State provided further instruction on this matter. The State instructed
3 the jurors (for the second time that day), that they could change the indictment. In fact
4 the prosecutor specifically pointed out *how* they could change the indictment.
5 Admittedly, the State could have been more eloquent in its explanation, however, the
6 key is that the Grand Jury was instructed that it had the ability to change who was
7 indicted on which count if it didn't agree with the draft indictment.

8 The fact that the State did not tell the Grand Jurors that they could "cross out"
9 names is irrelevant and that information is unnecessary. This is never an instruction
10 that is given during opening admonitions. It is common knowledge that changes to a
11 "draft" copy of a document would include crossing out the information needed to be
12 changed.

13 **II. The relationship between Defendant McCluskey and Co-Defendant**
14 **Welch was relevant and not prejudicial**

15 During the presentation of facts, the State elicited the fact that the co-defendant,
16 Casslyn Welch, is Defendant's girlfriend and first cousin. Defendant argues that both
17 descriptions were irrelevant and offered only to bias the jury. However, this is relevant
18 information which describes their relationship and offers a motive on the part of Welch.
19 If it the fact that Welch is Defendant's girlfriend is relevant, then why is the other side of
20 their relationship irrelevant? Had the witness only provided information that Welch is
21 Defendant's first cousin, would the fact that she is his girlfriend then become irrelevant?
22 Had Welch not been involved in the case at all and the State brought up that the
23 Defendant was dating a blood relative, then that would be irrelevant and solely to bias
24 the Grand Jury. However, the evidence was presented because their relationship is
25 vital to Welch's motive and the role she played in the case.

1 A copy of the foregoing
sent this same day to:

2 HONORABLE STEVEN F. CONN
3 SUPERIOR COURT JUDGE

4 JOHN A. PECCHIA
PUBLIC DEFENDER
5 Mohave County Public Defender's Office
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7 By VS

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