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VILLYAN T. STELL
SUPERIOR COURT CLERK

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 JUSTIN JAMES RECTOR
Defendant.

No. CR-2014-1193

**ANSWER TO DEFENDANT'S
REPLY TO STATE'S RESPONSE
TO MOTION TO COMPEL
(UPDATED)**

13 COMES NOW, the State of Arizona, by the Mohave County Attorney and
14 through the undersigned Deputy County Attorney, Gregory A. McPhillips,
15 respectfully submits an answer to defendant's reply to state's response to motion
16 to compel (updated). Defendant's motion to compel should be denied.

17 While the State would not typically answer a reply, defense made new
18 allegations of disclosure violations. Those allegations are not supported by the
19 facts and require response.

20 The State apologizes that this answer took some time to file. Undersigned
21 counsel needed to find a dedicated block of time to sort the voluminous
22 disclosure material and locate the items defendant recently requested and
23 determining that the items were previously disclosed.



24 S8015CR201401193

1 ISSUE

2
3 In open court, the Court ordered disclosure of medical examiner records
4 and cellular information on the 21st day of May 2018. Defendant's reply to state's
5 response to motion to compel (updated), filed on the 30th of July 2018, requests
6 the court compel disclosure of 3 items. The State answers these claims
7 individually:

- 8 1. The court will hold that the list of medical examiner cassettes was
9 previously disclosed and a motion to compel disclosure is unnecessary.
10 2. The court will hold that the chain of custody of medical examiner cassettes
11 was previously disclosed and a motion to compel disclosure is
12 unnecessary.
13 3. The court will hold that the Cellular Information were previously disclosed
14 and a motion to compel disclosure is unnecessary.

15 FACTS

16 • **The list of medical examiner cassettes**

17 The list of medical examiner cassettes has been disclosed by the State on
18 at least 2 separate occasions.

19 On the 12th of November 2014, the State disclosed, Bates Stamped page
20 925, to defense. Page 925 is the list of medical examiner cassettes.

21 In early 2017 defense asked undersigned counsel to disclose a full version
22 of medical examiner file. The State did so. On the 3rd of April 2017, the State
23 disclosed, Bates Stamped page 1366, to defense. Page 1366 is re-disclosure of
24 the list of medical examiner cassettes.

1 On filed on the 30th of July 2018 defendant filed his defendant's reply to
2 state's response to motion to compel (updated). At that time, defendant already
3 possessed the list of medical examiner cassettes which was previously disclosed
4 on pages 925 and 1366.

5 • **Chain of custody of the medical examiner cassettes**

6 The chain of custody of the medical examiner cassettes has been
7 disclosed by the State on at least 2 separate occasions.

8 In early 2017, defense asked undersigned counsel to disclose a full
9 version of medical examiner file. The State did so. On the 3rd of April 2017, the
10 State disclosed Bates Stamped page 1354-1355, to defense. Pages 1354-1355
is disclosure of the chain of custody of the medical examiner cassettes.

11 On the 21st day of May 2018, the Court ordered disclosure of the Medical
12 Examiner documents at request of the defense.

13 On the 12th day of June 2018, the State disclosed, Bates Stamped page
14 1486.¹ Page 1486 is re-disclosure of the chain of custody of the medical
examiner cassettes.

15 On filed on the 30th of July 2018 defendant filed his defendant's reply to
16 state's response to motion to compel (updated). At that time, defendant already
17 possessed the chain of custody of the medical examiner cassettes previously
disclosed on pages 1354-1355 and 1486.

18 • **Cellular Information**

19 On the 21st day of May 2018, the Court ordered disclosure of cellular
20 information (phone records) at request of the defense.

21 On the 12th day of June 2018, the State disclosed, the State disclosed the
22 disk entitled Rector Phone Records (14-046298, BH-192131). The disk contains
23

24

¹ In this copy of the chain of custody documents, 2 documents were placed on one page

1 a PDF file entitled "Samsung Galaxy SIII Physical Extraction" that is, in totality,
2 3658 pages long. This is the requested cellular information.

3 On filed on the 30th of July 2018 defendant filed his defendant's reply to
4 State's response to motion to compel (updated). Defendant asserted that he did
5 not have the cellular information. At that time, defendant already possessed the
6 cellular information previously disclosed on disk as a large PDF file.

ARGUMENT

7 **1. THE MEDICAL EXAMINER INFORMATION WAS DISCLOSED**

8 **1) The State disclosed the list of medical examiner cassettes**

9 On the 12th of November 2014, the State disclosed, Bates Stamped page
10 925, to defense. Page 925 is the list of medical examiner cassettes. It is
11 attached as the last page of the Autopsy Report.

12 That is not the only time the State disclosed the list of medical examiner
13 cassettes to defense. In early 2017 defense asked undersigned counsel to re-
14 disclose the medical examiner file. On the 3rd of April 2017, the State disclosed,
15 Bates Stamped page 1366, to defense. Page 1366 is re-disclosure of the list of
16 medical examiner cassettes. It is attached as the last page of the Autopsy
17 Report. Ms. Cassels was assigned to the defense at that time.

18 In open court, the Court ordered disclosure of medical examiner records
19 on the 21st day of May 2018.

20 Defendant's reply to state's response to motion to compel (updated), filed
21 on filed on the 30th of July 2018, asserting the list of medical examiner cassettes
22 was not disclosed. As detailed above, there is no factual basis for defendant's
23 assertion.

24 Ms. Cassels possesses the list of medical examiner cassettes in 2
locations, in the Bates Stamped disclosure, connected with the Autopsy Report.
She possessed those items when she filed Reply to State's Response to Motion

1 to Compel (Updated). Defendant's disclosure request is frivolous. Defendant's
2 Motion to Compel should be denied.

3 **2) Chain of custody for the medical examiner cassettes**

4 On the 3rd of April 2017, the State disclosed, Bates Stamped page 1354-
5 1355, to defense. Pages 1354-1355 is disclosure of the chain of custody of the
6 medical examiner cassettes. It is attached to the beginning of other Medical
7 Examiner documents. Ms. Cassels was assigned to the defense at that time.

8 That is not the only time the State disclosed the chain of custody of the
9 medical examiner cassettes to defense. In 2018 defense, again, asked
10 undersigned counsel to re-disclose the medical examiner file. On the 12th day of
11 June 2018, the State disclosed, Bates Stamped page 1486. Page 1486 is re-
12 disclosure of the chain of custody of the medical examiner cassettes. It is the 3rd
13 page of the Medical Examiner disclosure in that grouping.

14 In open court, the Court ordered disclosure of medical examiner records
15 on the 21st day of May 2018.

16 Defendant's reply to state's response to motion to compel (updated), filed
17 on filed on the 30th of July 2018, asserting the chain of custody of the medical
18 examiner cassettes was not disclosed. As detailed above, there is no factual
19 basis for defendant's assertion.

20 Ms. Cassels possesses the chain of custody of the medical examiner
21 cassettes in 2 locations, in the Bates Stamped disclosure, connected with the
22 Autopsy Report. She possessed those items when she filed Reply to State's
23 Response to Motion to Compel (Updated). Defendant's disclosure request is
24 frivolous. Defendant's Motion to Compel should be denied.

2. CELLULAR INFORMATION WAS DISCLOSED

Defense alleges in written motion that the cellular information was not
obtained. That is not the fact.

1 In open court, the Court ordered disclosure of cellular information on the
2 21st day of May 2018.

3 On the 29th day of June 2018, the State disclosed the disk entitled "Rector
4 Phone Records (14-046298, BH-192131)." The disk contains a PDF file entitled
5 "Samsung Galaxy SIII Physical Extraction" that is 3658 pages long.

6 Defendant's reply to state's response to motion to compel (updated), filed
7 on filed on the 30th of July 2018, asserted the cellular information was not
8 disclosed. As detailed above, there is no factual basis for defendant's assertion.

9 As defense acknowledged at the hearing dated the 30th of July 2018, the
10 State did disclose a disk entitled Rector Phone Records. Defense indicated at
11 the hearing that they did not look at the disk when it was disclosed but rather
12 waited until later to examine the disk. Defense indicated—for the first time at the
13 hearing—that they could not open the disk.

14 The State has checked its copy. The State used the basic Adobe Acrobat
15 reader to view the contents of the disk. The State's copy works. Defense may
16 have a problem with their computer. If the defense cannot get the disk to work—
17 after checking with IT—then they can bring their computer to the office of
18 undersigned counsel and we will see if the State's copy works for them. If so, we
19 will burn defense another copy and we will see a new copy works.

20 Defense alleges in written motion that the cellular information was not
21 obtained. That is not so. Defendant's disclosure request is frivolous.
22 Defendant's Motion to Compel should be denied.
23
24

1 3. DEFENDANT'S DISCLOSURE REQUESTS, MADE IN THE DEFENDANT'S
2 REPLY TO STATE'S RESPONSE TO MOTION TO COMPEL (UPDATED),
3 WERE NOT MADE IN GOOD FAITH

4 The disclosure rules are made to promote an open discovery process and
5 avoid delay of trial. Here defendant is using the rules of disclosure to unduly
6 delay trial.

7 Arizona has long been committed to a broad interpretation of its discovery
8 rules, but mere 'fishing expeditions' are not countenanced.² The purpose of the
9 rules governing criminal discovery is to give "full notification of each side's case-
10 in-chief so as to avoid unnecessary delay and surprise at trial."³

11 Defendant's Reply states that the trial cannot be set due to this delay
12 occasioned by the State.⁴ The delay was not occasioned by the State. The
13 State disclosed the Cellular Information and the Medical Examiner information.
14 Some disclosure was made on multiple occasions.

15 On the 30th of July 2018, defendant waited for a hearing to make a written
16 disclosure violation allegation and announce the allegation in court. Defense did
17 not contact undersigned counsel until minutes prior to the hearing to mention this
18 new issue. Undersigned counsel did not have time, at the hearing, to pour
19 through the disclosure and identify the requested information in the disclosure.

20 Defendant's motion was not made in good faith.

21
22 _____
23 ² *State v. Kevil*, 527 P.2d 285, 287 (Ariz. 1974), citing *Corbin v. Superior Court of*
Maricopa County, 103 Ariz. 465, 445 P.2d 441 (1968).

24 ³ *State v. Martinez-Villareal*, 702 P.2d 670, 676 (Ariz. 1985), citing *State v.*
Dodds, 112 Ariz. 100, 102, 537 P.2d 970, 972 (1975).

⁴ Reply to state's response to motion to compel (updated), page 3, line 24.

1 The defense is using Rule 15 to delay trial. In practical reality, the
2 defendant is using the filing of motions to compel disclosure to forestall the
3 setting of witness interviews. Years of delay have been enough.

4 CONCLUSION

5 The State has complied with the disclosure orders of the court dated 21st
6 day of May 2018. Defendant's reply to state's response to motion to compel
7 (updated) must be denied.

8 RESPECTFULLY SUBMITTED THIS 14TH DAY OF AUGUST, 2018.

9 MOHAVE COUNTY ATTORNEY
10 MATTHEW J. SMITH

11 By 
12 DEPUTY COUNTY ATTORNEY
13 GREGORY A. MCPHILLIPS

14
15 A copy of the foregoing
16 sent this same day to:

17 HONORABLE LEE F. JANTZEN
18 SUPERIOR COURT JUDGE

19 JULIA CASSELS
20 ATTORNEY FOR DEFENDANT
21 Law Office of Julia Cassels
22 2642 East Thomas Road
23 Phoenix, AZ 84015

24 By 