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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, **Plaintiff,** **v.** **STEVEN CARROLL DEMOCKER,** **Defendant.**	**Cause No. P1300CR20081339** **Division 6** **STATE'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE THE DEATH PENALTY OR IN THE ALTERNATIVE TO PRECLUDE EVIDENCE AND FOR OTHER SANCTIONS BASED ON DESTRUCTION OF BIOLOGICAL EVIDENCE, FALSE REPORTING OF BIOLOGICAL EVIDENCE RESULTS AND DEFIANCE OF THIS COURT'S ORDERS** **(Filed May 25, 2010)**

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby responds to Defendant's Motion to Strike the Death Penalty or in the Alternative to Preclude Evidence and for Other Sanctions Based on Destruction of Biological Evidence, False Reporting of Biological Evidence Results and Defiance of this Court's Orders and asks that the Motion be denied. The State's position is supported by the following Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

This is a complex case involving hundreds of thousands of pages of financials records, divorce documents, telephone records, and scientific reports. In conjunction with this material, dozens of witnesses and numerous experts from vastly diverse disciplines are essential to the State's case. In an attempt to resolve all unsettled issues in this case, dozens of evidence items have been tested for biological material and some of the extracts from said items have been tested more than once.

The defense team caustically berates the State, claiming the State is both ignorant and incompetent. The fact that the prosecutor did not have a working knowledge of the scientific testing methodology for DNA and specifically the complex methods of testing for alleles which identify the sex of the DNA is not indicative of incompetence nor does it demonstrate a lack of due diligence. Nothing the State has done or not done in this case is justification for the defense team's unrelenting, over-stated, overly dramatic, and at times, down-right insulting claims. In fact, many of the claims are pure fabrications with absolutely no basis in reality.

As the Court is aware, several items have been subjected to biological testing within the past several weeks. In fact, the Court ordered that the testing on some of the items be completed and that the results of the testing be distributed by a certain date. Defendant complains mightily regarding the timeliness of the testing and asks the Court to strike the death penalty, preclude the evidence, or impose other severe sanctions. Defendant has failed to demonstrate any prejudice whatsoever as a result of the testing or the subsequent test results and Defendant's motion must be denied.

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A. The State did not violate the Court's Order.

Defendant claims the State intentionally defied the Court's Order regarding consumption of biological evidence. This is blatantly untrue. After Defendant's mountain bike was seized, it was taken to the Glenshandra trailhead where the tires were rolled in the soil for comparison with the existing tire tracks. The bike was then transported to the Sheriff's Office where it was placed in a cardboard box and sealed with packing tape. The box was stored inside the evidence locker at the Sheriff's Office. The bike was never left unsealed or outside exposed to the elements.

According to an interview of administrative lead, Dan Hellwig of Sorenson Laboratory conducted on May 24, 2010, the subject bike was delivered to them on or about February 17, 2010 by Captain Rhodes. On February 18, 2010 a meeting involving Captain Rhodes, Dan Hellwig and Carma Smith was held and memorialized in case notes from the Sorenson file. Although the bike was now in the custody of Sorenson Laboratory, no decision was made at this time to conduct DNA testing on it. Attached hereto a copy of the case notes marked as exhibit #1. In fact, according to Mr. Hellwig's recent interview, he did not believe any further testing was going to be conducted on the bike.

On or about March 31, 2010 a serology test consisting of the swabbing of the handle bars and the sides of the bike seat was done. This swabbing was done outside of the presence of defense's observer Norah Rudin. Mr. Hellwig stated there was no attempt to keep the serology test from Ms. Rudin. He explained that since they were not conducting consumption testing of the swabs from the bike, it did not fall under the underlying court order. He stated the serology test done on specific areas of the bike was done so he could return the large evidence item bike back to Captain Rhodes. Captain Rhodes was at the

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Sorenson Laboratory as the State's observer while the consumption testing was been conducted. Captain Rhodes had no involvement in the Sorenson Laboratories decision to perform a serology on the bike.

The swab from the bike was stored in Sorenson's freezer. On or about April 8, 2010 the State authorized Sorenson Laboratory to conduct consumption testing of the swab for possible Y-STR DNA. The DNA tests on the swab were not conducted in secret nor were they conducted while Norah Rudin was at the lab.

While the individual swab was consumed, not all areas of the handlebars or the seat or all of the other surfaces of the bike were swabbed for biological material. If it is Defendant's claim that he is somehow precluded from conducting independent DNA testing on the bike because the State consumed the one swab, this contention is without merit. There are literally hundreds of places available on this bike for serology testing.

Ms. Rudin's purpose was to observe testing on swabs where all the biological material available would be consumed. Clearly, this is not the case with the bike. Obviously, Defendant's claim that the State consumed all of the biological evidence from Evidence Item 400 (Defendant's mountain bike) in defiance of the Court's Order is untrue.

What is true is that none of Defendant's DNA was found on either the handlebars or the seat of his bike. The defense team claims this can be explained by the storage of the bike and by what Defendant was wearing. As the bike was handled and stored properly, this portion of the explanation does not survive scrutiny.

When interviewed just hours after Carol's murder was discovered, Defendant said he wore shorts, a shirt, but no gloves during the bike ride on July 2, 2008. The State concedes that wearing long shorts might explain why no DNA was found on the seat; however, one

would expect that while riding a mountain bike on a rocky, sometimes steep, often single-track trail with bare hands, some scrapping and certainly friction between the handlebars and the hands will occur. As a result, the rider's DNA should be deposited on the handlebars. The unexplained absence of Defendant's DNA where one would expect to find it is a material fact that the jury should be allowed to consider.

B. Reporting of Biological Testing Results

It is undisputed that Sorenson Laboratory made a mistake in reporting the results of the DNA testing of the isolated material found under the victim's left hand fingernails. It is also undisputed that a mixture of Y-STR DNA profiles from at least three males was obtained under the victim's left hand fingernail. From this mixture one major profile and two minor profiles were discovered.

The major Y-STR profile obtained is attributable to an unknown male. Due to the complexity of this mixture, the minor Y-STR DNA component excludes Steven DeMocker and James Knapp.

Sorenson Laboratory in a report dated April 14, 2010 incorrectly stated they could not exclude Steven DeMocker's DNA profile from the minor Y-STR DNA but it could excluded James Knapp' DNA from the minor Y-STR DNA. Following a lengthy interview, analyst Alexis Brown discovered the error. The next day and while the defense was still at the Sorenson Lab, Ms. Brown disclosed she interposed Mr. DeMocker's profile with Mr. Knapp's profile. The result of this mistake resulted in the exclusion of Mr. DeMocker's DNA profile from the minor Y-STR DNA. The results are a very significant exculpatory piece of evidence for the defendant. Ms. Brown stated she could not exclude James Knapp' DNA from the minor Y-STR DNA. Again, this is a significant piece of evidence for the

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defense.

On May 25, 2010 the State conducted an interview of defense expert Norah Rudin. Ms. Rudin disagreed with Ms. Brown's opinion regarding Mr. Knapp. Ms. Rudin, using the Sorenson DNA test results concluded that Mr. Knapp should also be exclude as a donor to the mixture to the minor Y-STR DNA component.

CONCLUSION:

Defendant's claim of destruction of biological evidence in violation of this Court's Order is without factual basis. The claim reporting the false results of critical biological evidence is equally without merit. In addition, Defendant has failed to demonstrate any prejudice whatsoever by the recent testing or the subsequent results. Defendant's request to strike the death penalty or in the alternative to preclude evidence and for other sanctions should be denied

RESPECTFULLY SUBMITTED this 25 May, 2010.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: _____
Joseph C. Butner
Deputy County Attorney

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COPIES of the foregoing delivered this 25th day of May, 2010 to:

Honorable Thomas J. Lindberg
Division 6
Yavapai County Superior Court
(via email)

John Sears
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STATE'S EXHIBIT A

Sorenson Lab Case Notes dated February 18, 2010

CASE NOTES

Case Number: T151298 Pt 3 Date: 2/18/2010
Technician: Carma A. Smith Time: N/A

Met with Lt. Rhodes regarding his case # 08-029129. This is a homicide case with victim being Virginia Carol Kennedy, suspect Steve DeMocker, ex-husband of victim. Victim was bludgeoned to death. It is suspected that a golf club was the murder weapon. Victim was on the phone (item 507) with her mother when it went dead. The cordless phone is being submitted for testing. The suspect removed the battery (item 408) from his cell phone it is believed to prevent being tracked. Several hours later he reinserted it into his phone. The battery is being submitted for testing for victim DNA. A mountain bike (item 400) and tires (item 400B) is being submitted for testing to locate any victim DNA that may have been present on the suspect. Suspect supposedly road the Mtn. bike after the murder. It is thought that he hid it in the scrub oak near by. Victim finger nails and scrapings (items 600,603,611) are being submitted for DNA testing. When police arrived at the suspect's home for questioning they found that the suspects biking clothes and shoes were all in the washer having been run through the wash. The washer hose (Item 426, 426A, 426B) is being submitted for testing. Swabs from the door handle (item 805) of north hallway door to garage area are being submitted for DNA testing looking for the suspects DNA. Two standards and additional extracts are being sent overnight. The standards are for suspect Steve DeMocker and male friend of victim Jim Nap.

- Testing will start with Serology on the Phone Battery, cuttings for DNA on the Finger nails, Victims Phone, Washer Hose and Door Handle.
- Dan is asking for Y-STR testing to be done on Finger Nails, Phone (Victims), Door Handle and the two references. STRs on phone battery + washer hose for victim DNA
- Cell phone battery and washing machine hose looking for victim.
- Previous testing has been conducted so it is being asked that a mix of the swabs & extracts be used to raise the probability of getting a profile. DMS 3.11.10

End Carma A. Smith 2/18/10

Dr. Dan Smith 2/18/10

* Additional Instructions from client!
Process references from James Nap & Steve DeMocker
Y-STR

cas 3.12.10

End

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