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SUPERIOR COURT
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JEANNE HICKS, CLERK
S. KELBAUGH
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. STEVEN CARROLL DEMOCKER, Defendant.	No. P1300CR20081339 Div. 6 **RESPONSE TO STATE'S NOTICE OF LATE DISCLOSURE IN VIOLATION OF ARIZONA RULE OF CRIMINAL PROCEDURE 15.6 (Dated August 5, 2010)** **UNDER SEAL**

Steven DeMocker, by and through counsel, hereby objects to the State's Notice of Disclosure pursuant to Rule 15.6(d) filed on August 5, 2010, and requests that the Court order the State to comply with Arizona Rule of Criminal Procedure 15.6 and based on this Court's prior orders. This request is based on the due process clause, the

Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of Points and Authorities.

I. The State's Prior Failures to Comply with Rule 15.

The defense has repeatedly detailed the State's failures to comply with Rule 15 and the Court's orders regarding disclosure. After repeated orders precluding evidence under Rule 15 and dismissing death penalty aggravators based on disclosure violations, on April 28, the Court reminded the State that if it did not comply with Rule 15.6, it would not be permitted to use late disclosed evidence at trial. See April 8, 2010 Order, April 28, 2010 Minute Entry, May 11, 2010 Minute Entry.

Trial started on May 4, 2010 with jury selection, and opening statements took place on June 3. On June 17, Judge Lindberg became ill and was unable to continue with trial. Judge Darrow was assigned to the case on July 2.

On July 7-8, the State late disclosed over 1100 pages, six CDs, and over 11 witnesses. The Court heard argument on the Motions relating to late disclosure on July 16, 2010 and took the matters under advisement.

Since then, the State provided a Notice of additional disclosure on July 15, 2010, relating to some of the items included in the 72nd Supplemental disclosure. On July 20, the State filed a Motion requesting the Court to extend the time to provide disclosure from the 72nd Supplemental disclosure under Rule 15.6(d). The State disclosed four CDs of jail calls and 52 pages of documents as part of a 72nd Supplemental disclosure provided to the defense on July 21. Also on July 21, the State disclosed another CD of jail calls. The defense filed a response to these motions on July 23, 2010. The Court currently has this under advisement as well. The State made a 73rd Supplemental Disclosure in accordance with this Court's Orders on August 5, 2010.

The State has disclosed additional jail calls from July 23-25 and July 26 on July 30, and disclosed jail calls from July 28 and 29 on August 5. All of these disclosures of jail calls were made well past the three days required by this Court's prior orders. The State has not filed any motion to use these jail calls under 15.6(d) so they are precluded from use at trial on this basis as well.

II. The State's Most Recent Disclosure Violations.

The State provided a Notice of additional disclosure on August 6, 2010. Under Rule 15.6(b), if the State determines that additional discovery is forthcoming within 30 days of trial, it is required to immediately notify the Court and the defense "of the circumstances and when the disclosure will be available." Ariz. Rule Crim. P. 15.6(b). Under 15.6(d), if the State wants to disclose and use information within 7 days prior to trial, it must file a motion, supported by an affidavit requesting leave to do so. This process has been described for the State innumerable times both in pleadings and in Court.

The State's most recent filing is captioned "State's Notice of Disclosure Pursuant to 15.6(d)." However the State has not filed a motion or affidavit regarding the identified documents as required under 15.6(d). Counsel is left to speculate that perhaps the State meant to file this Notice pursuant to 15.6(b). If this is the case, the State has failed to comply with this subsection of the Rule as well. The Rule requires the State to identify the disclosure, provide notice of the circumstances and explain when the disclosure will be available. The State's description of these records is simply "search warrant" and "Sprint phone records." The State does not explain when these records will be disclosed, only saying they will be forwarded "once received." The State also does not explain what these documents are or the "circumstances." The defense does not know to whom or what entity these search warrants were issued, what the return

dates are or what or whose Sprint phone records were requested. The State's Notice fails to comply with either Rule 15.6(b) or (d).

The defense requests that this Court require the State to comply with the Rules of Criminal Procedure. These Rules are neither complicated nor arduous. They have been explained to the State a number of times, and should be known to the State in any case. The Rules are meant to provide a defendant with notice and to protect his constitutional rights to Confrontation, a fair trial and due process.

CONCLUSION

Defendant Steven DeMocker, by and through counsel, hereby requests that this Court require the State to comply with Rule 15.6 and provide proper notice of disclosure.

DATED this 10th day of August, 2010.

By: _____

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ORIGINAL of the foregoing hand delivered for filing this 10th day of August, 2010, with:

Jeanne Hicks
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COPIES of the foregoing hand delivered this this 10th day of August, 2010, to:

The Hon. Warren R. Darrow
Judge Pro Tem B
120 S. Cortez
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Prescott Courthouse basket

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