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COURT
ARIZONA
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S. LANDINO

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.	**CAUSE NO. P1300CR201001325** **STATE'S REPLY TO DEFENDANT'S RESPONSE TO STATE'S MOTION FOR CLARIFICATION OF RULING RE: NOTICE** Assigned to Hon. David L. Mackey

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The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned hereby submit its reply to Defendant's Response to State's Motion for Clarification of Ruling re: Notice. The State's reply is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The defense argument is that the newly indicted consolidated case is the same case as the original homicide. That simply isn't accurate.

The criminal charges arising out of the Hartford Life Insurance scheme was a new circumstance that the State did not learn about until June 2010. It was not until John Sear's opening statement that the State learned that the Hartford Life Insurance Policies had been paid. The State was in contact with Hartford Insurance company and was led to believe that the life insurance

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benefits would not be paid out until the Defendant was cleared of the murder charge. In fact, Hartford sent several letters to the Defendant until January of 2009 stating that the life insurance monies would not be paid out to him until he was cleared of the murder charge.

Upon hearing John Sear's opening statement, the State immediately began an investigation and served numerous subpoenas to obtain evidence of the reason the life insurance claims were paid after having been denied multiple times. The State then received evidence needed to charge the Defendant with the life insurance fraud scheme. It became apparent that the defendant had hoodwinked the insurance company into believing that he did not maintain dominion or control over the life insurance proceeds by giving the insurance company disclaimers. Until the State had this evidence the State could not have charged the Defendant with crimes arising from the Hartford Life Insurance fraud scheme.

The newly consolidated indictment incorporates the original homicide and burglary case with the newly discovered charges of the life insurance fraud scheme, the voice in the vent fraud scheme, and the manufactured email fraud scheme. The new indictment was necessary as a result of the newly discovered life insurance fraud scheme as well as the fraud schemes concerning the voice in the vent and the manufactured email that arose during the trial. *Godoy v. Hantman,* 205 Ariz. 104, 106, 67 P.3d 700, 702 (2003) states "New indictment begins a separate matter, and thus, the right to a peremptory change of judge applies as if no prior criminal action had been filed." In accordance with *Godoy, supra*, the State was within its right to file a Notice of Change of Judge. The new indictment was not an effort by the State to eradicate the law of the case or obtain a new right to an ARCP 10.2 Notice of Change of Judge. The new indictment was necessitated by the defendant's newly discovered and ongoing criminal conduct. Regardless, the new indictment gave rise to a new right to file an ARCP rule 10.2 Notice of Change of Judge.

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RESPECTFULLY SUBMITTED this 3d day of February, 2011.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: _____
Joseph C. Butner
Deputy County Attorney

COPY of the foregoing Emailed this 3rd day of February, 2011, to:

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