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BY: _____ **J YOUNT** _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

ANTHONY JAMES RICHARDS,

Defendant.

) Case No.: P1300CR201600476

) **MOTION TO DISMISS (ARIZONA RULE**
) **OF CRIMINAL PROCEDURE 16.6(b))**

) (Oral Argument and Evidentiary Hearing
) Requested)

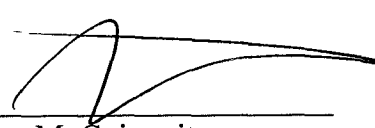
) Hon. Tina R. Ainley, Div. 3

Anthony James Richards, by and through undersigned counsel, and pursuant to Arizona Rule of Criminal Procedure 16.6(b) and the Due Process Clauses of the Fifth and Fourteenth Amendments, respectfully moves this Court to dismiss Counts 5-23 of the Indictment in the above-captioned case because the Government has not provided sufficient notice of jurisdiction. Mr. Richards submits the following Memorandum of Points and Authorities in support of his Motion.

RESPECTFULLY SUBMITTED this 27 day of May, 2016,

YAVAPAI COUNTY PUBLIC DEFENDER

By: _____


Grace M. Guisewite
Deputy Public Defender
Attorney for the Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background¹

On April 15, 2016, the Government held a grand jury proceeding in which it proposed 23 charges against Mr. Richards. The Grand Jury returned an Indictment on all charges.² On its face, the Indictment is insufficient as a matter of law. Specifically, the Indictment does not provide Mr. Richards sufficient notice of jurisdiction.

II. Law and Argument

Arizona Rule of Criminal Procedure 16.6(b) reads:

The court, on motion of the defendant, shall order that a prosecution be dismissed upon finding that the indictment, information, or complaint is insufficient as a matter of law.³

This rule is the vehicle through which a criminal defendant may challenge whether a charging document provides adequate notice. It also allows a criminal defendant to challenge charging documents on grounds involving jurisdiction.⁴

An indictment, at a minimum, must provide notice as to each element of the charged crime. Jurisdiction is an element of each crime alleged against Mr. Richards, and, therefore, must be set forth in the information.⁵ Notably, “Arizona has jurisdiction to try a defendant if conduct constituting one or more elements of the charged offenses occurred in Arizona.”⁶ Here, the Indictment against Mr. Richards provides conflicting and insufficient information as to jurisdiction. The Indictment charges that the alleged crimes occurred in the “Bagdad Precinct,

¹ Additional background can be found in Mr. Richards’ Motion to Remand, Case No. P1300CR201600476, filed on May 27, 2016.

² Indictment, Case No. P1300CR201600476 (Apr. 15, 2016), enclosed as Exhibit 1.

³ Ariz.R.Crim.Pro. 16.6(b).

⁴ See *Chronis v. Steinle*, 220 Ariz. 559, 560 (2009), citing *State v. Smith*, 66 Ariz. 376, 379 (1948), abrogated by *State v. Maldonado*, 223 Ariz. 309 (2010).

⁵ *Smith*, 66 Ariz. at 379 (“[I]n a criminal case ... the jurisdictional facts constituting the offense [must be] set forth in the information”).

⁶ *State v. Willoughby*, 181 Ariz. 530, 536 (1995), citing A.R.S. §13-108(A)(1).

Yavapai County, State of Arizona” but then, in the paragraph describing the individual crimes, cites to jurisdiction elsewhere:

- **Count 5:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Lake Havasu City, Arizona.**
- **Count 6:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Barstow, California.**
- **Count 7:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Barstow, California.**
- **Count 8:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” at **Hob Tower Hobbies.** (Upon information and belief, there is no Hob Tower Hobbies in the Bagdad Precinct.)
- **Count 9:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Earlimart, California.**
- **Count 10:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Murphys, California.**
- **Count 11:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Alturas, California.**
- **Count 12:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Jackson, California.**
- **Count 13:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Bend, Oregon.**
- **Count 14:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Bend, Oregon.**

- **Count 15:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Bend, Oregon**.
- **Count 16:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Bend, Oregon**.
- **Count 17:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **Bend, Oregon**.
- **Count 18:** The indictment reads Mr. Richards committed a forgery at **Office Max**. (Upon information and belief there is no Office Max in the Bagdad Precinct.)
- **Count 19:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” at **RC Boyz**. (Upon information and belief there is no RC Boyz in the Bagdad Precinct.)
- **Count 20:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” at **Juno R/C**. (Upon information and belief there is no Juno R/C in the Bagdad Precinct.)
- **Count 21:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **White City, Oregon**.
- **Count 22:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” in **La Pine, Oregon**.
- **Count 23:** The indictment reads Mr. Richards “knowingly possessed or used any personal identifying information” at **Rock Auto**. (Upon information and belief there is no Rock Auto in the Bagdad Precinct.)

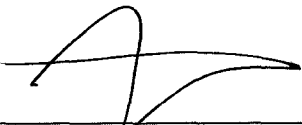
In short, the Indictment is rife with conflicting and erroneous information as to where the alleged crimes occurred. Accordingly, Mr. Richards has not received sufficient notice. Counts 5-23 must be dismissed.

III. Conclusion

For the reasons explained above, Mr. Richards asks this Court to dismiss Counts 5-23 of the indictment.

RESPECTFULLY SUBMITTED this 27 day of May, 2016,

YAVAPAI COUNTY PUBLIC DEFENDER

By: 

Grace M. Guisewite
Deputy Public Defender
Attorney for the Defendant

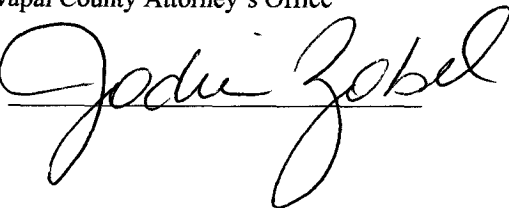
Original of the foregoing filed
this 27 day of May, 2016, with

Clerk of the Court
Yavapai County Superior Court

Copies of the foregoing *emailed*
this 27 day of May, 2016, to:

Honorable Tina R. Ainley
Yavapai County Superior Court
Division Three

Kevin D. Schiff, Esq.
Deputy County Attorney
Yavapai County Attorney's Office

By: 

FILED
1 O'Clock P.M.
APR 15 2016 ✓
DONNA McQUALITY, Clerk
By: K. GLENN

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,
Plaintiff,

vs.

ANTHONY JAMES RICHARDS,
Defendant.

Superior Court No. P1300CR20160 0476

Grand Jury No. 193-GJ-212873

Division _____

INDICTMENT

The grand jurors of Yavapai County, Arizona, accuse **ANTHONY JAMES RICHARDS**, charging that in Bagdad Precinct, Yavapai County, State of Arizona:

COUNT 1

TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE

On or between April 9, 2007 and April 15, 2007, **ANTHONY JAMES RICHARDS**, knowingly initiated, organized, planned, financed, directed, managed or supervised the theft and trafficking in the property of Larry Powers, to-wit: shaker table, that had been stolen, in violation of A.R.S. §13-2307, a class 2 felony.

COUNT 2

THEFT

On or between April 9, 2007 and April 15, 2007, **ANTHONY JAMES RICHARDS**, knowingly controlled property of Larry Powers, to-wit: a handgun, knowing or having reason to know that the property was stolen, in violation of A.R.S. §13-1802, a class 6 felony.

COUNT 3

THEFT OF A CREDIT CARD

On or between April 9, 2007 and April 15, 2007, **ANTHONY JAMES RICHARDS**, controlled a credit card, to-wit: US Bank VISA credit card ending in 8154, without the consent of the cardholder, Larry Powers, through conduct defined in A.R.S. §13-1802 or §13-1804, in violation of A.R.S. §13-2102, a class 5 felony.

COUNT 4

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 15, 2007, at Texaco, Congress, Arizona, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

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COUNT 5

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 15, 2007, at Pilot, Lake Havasu City, Arizona, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 6

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 15, 2007, at Chevron, Barstow, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 7

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 15, 2007 at Autozone, Barstow, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 8

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 16, 2007, at Hob Tower Hobbies, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 9

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 16, 2007, at Chevron, Earlimart, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

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COUNT 10

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 16, 2007, at Shell Oil, Murphys, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 11

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 20, 2007, at Shell Oil, Alturas, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 12

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 20, 2007, at Kwik Serv, Jackson, California, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 13

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 26, 2007, at Autozone, Bend, Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 14

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 26, 2007, at Office Max, Bend Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

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COUNT 15

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 28, 2007, at Office Max, Bend Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 16

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 28, 2007, at Harbor Freight, Bend, Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 17

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about April 28, 2007, at East Bend Service, Bend, Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 18

FORGERY

On or about April 28, 2007, **ANTHONY JAMES RICHARDS**, with intent to defraud, falsely made, completed or altered a written instrument, to-wit: Office Max receipt, in violation of A.R.S. §13-2002, a class 4 felony.

COUNT 19

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about May 1, 2007, at RC Boyz, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

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COUNT 20

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about May 4, 2007, at Juno R/C, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 21

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about May 8, 2007, at Union 76, White City, Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 22

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

On or about May 8, 2007, at Union 76, La Pine, Oregon, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

COUNT 23

TAKING THE IDENTITY OF ANOTHER PERSON OR ENTITY

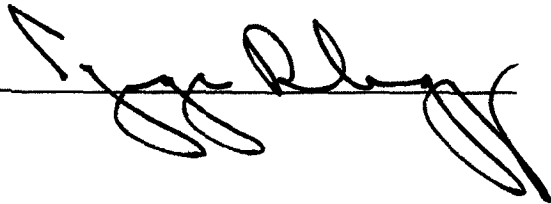
On or about May 9, 2007, at Rock Auto, **ANTHONY JAMES RICHARDS**, knowingly possessed or used any personal identifying information of Larry Powers, to wit: US Bank VISA credit card ending in 8154, without consent of Larry Powers, with the intent to obtain or use Larry Powers' identity for any unlawful purpose or to cause loss to Larry Powers, in violation of A.R.S. §13-2008, a class 4 felony.

04/15/2016

SHEILA SULLIVAN POLK
Yavapai County Attorney

True Bill
(Foreman writes "A True Bill")

By




Foreman of the Grand Jury