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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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DONNA McQUALITY, CLERK

BY: _____ L JACKSON _____

Attorneys for STATE OF ARIZONA

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.

CAUSE NO. P1300CR201600476

**STATE'S RESPONSE TO
DEFENDANT'S REQUEST FOR
WILLETS INSTRUCTION**

Assigned to Hon. Tina R. Ainley

1 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and
2 her deputy undersigned, hereby objects to Defendant's Motion to Dismiss For Failure to
3 Preserve Evidence Or For *Willits* Instruction Or Sanctions ("Motion"). The request for
4 *Willits* Instruction is not appropriate because Defendant has failed to show that the
5 alleged evidence has a "tendency to exonerate" him, nor has he shown he has suffered
6 any actual prejudice.

7 The Supreme Court held that a defendant's Constitutional due process rights are
8 not implicated when "potentially useful" evidence is destroyed unless the "defendant can
9 show bad faith on the part of the police." *Arizona v. Youngblood (Youngblood II)*, 488
10 U.S. 51, 58 (1988); *Illinois v. Fisher*, 540 U.S. 544, 545, 547-38 (2004) (*per curiam*),
11 quoting *Youngblood II*. This is to "limit the extent of the police's obligation to preserve
12 evidence to reasonable grounds and confine it to that class of cases where the interests of

1 justice most clearly require it.” *Fisher*, 540 U.S. at 548, quoting *Youngblood II*, 488 U.S.
2 at 58.

3 “A *Willits* instruction is appropriate when the State destroys or loses evidence
4 potentially helpful to the defendant.” *State v. Murray*, 184 Ariz. 9, 33 (1995). However,
5 the “[d]estruction or nonretention of evidence does not automatically entitle a defendant
6 to a *Willits* instruction”. *Id.* A *Willits* instruction is not given merely because a more
7 exhaustive investigation could have been made. *Id.* To merit the instruction, a defendant
8 must show “(1) that the State failed to preserve material and reasonably accessible
9 evidence having a tendency to exonerate [the defendant], and (2) that this failure resulted
10 in prejudice.” *Id.* The Arizona Supreme Court has stated that the standard for giving a
11 *Willits* instruction requires only that the lost evidence would have been “potentially
12 helpful” or “potentially useful” to the defense. *State v. Glissendorf*, 235 Ariz. 147, 150-
13 151 (2014). “To show that evidence had a ‘tendency to exonerate’, the defendant must
14 do more than simply speculate about how the evidence might have been helpful”. *Id.*; *see*
15 *also State v. Speer*, 221 Ariz. 449, 457 (2009)(observing that defendant did not show
16 how the evidence would have exonerated or even mitigated his participation in the
17 crime); *State v. Smith*, 158 Ariz. 222, 227 (1988) (holding that speculation as to how the
18 evidence might have been beneficial was not enough); *State v. Perez*, 141 Ariz. 459, 464
19 (1984) (observing that appellant presented no evidence on how the missing evidence
20 would have helped his defense). “[T]here must be a real likelihood that the evidence
21 would have had evidentiary value.” *State v. Glissendorf*, 235 Ariz. at 150. “A *Willits*
22 instruction is not given merely because a more exhaustive investigation could have been
23 made”. *State v. Murray*, 184 Ariz. at 33. Failure to “pursue every lead or gather every
24 conceivable bit of physical evidence” will not require a *Willits* instruction. *State v.*

1 *Willcoxson*, 156 Ariz. 343, 346 (App.Div.1 1987). “Whether such an instruction is
2 necessary depends on a judgment as to how central the issue is to the case and how much
3 better or more important the ‘missing’ evidence might have been than the evidence that
4 was introduce.” *Id.*

5 Here, Defendant has failed to show that the items listed in his motion have any
6 tendency to exonerate him. In point of fact, Defendant has offered no explanation at all
7 as to how items 1, 2, 3 and 6 sought in his motion have any value at all. Further,
8 Defendant has failed to explain how the prior search warrants and chain of custody logs
9 sought in items 4 and 5 would impact his ability to challenge the 2017 search warrants.
10 As Defendant has failed to establish how any one of these items would have a tendency
11 to exonerate him and has demonstrated no actual prejudice, his motion must be denied.
12

RESPECTFULLY SUBMITTED this 4th day of February, 2020.

Sheila Polk
Yavapai County Attorney

By: 

Joshua I. Fisher
Deputy County Attorney

COPY of the foregoing

mailed emailed hand-delivered

this 5 day of February, 2020 to:

Hon. Tina R. Ainley
Yavapai County Superior Court Division 3

Craig Williams
Attorney for Defendant

By: 