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Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA m

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 MOTION IN LIMINE
RE: ADMISSION OF MERCHANT
CREDIT CARD RECEIPTS ON
VICTIM'S US BANK ACCOUNT**

Assigned to Hon. Debra Phelan

1 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and her
2 deputy undersigned, submits the following response to defendant's motion in limine. As more
3 fully explained in the State's response below, there is sufficient foundation for admission of the
4 records marked as States exhibits 110-114 not to prove the truth of the specific information in
5 the credit card receipts, but to establish the identity of the defendant, and not his mining partner
6 Larry Powers¹ (who the State asserts had already been killed by defendant) as the individual
7 who utilized victim LP's credit card on various occasions after LP was last seen between April
8 15, 2007 and May 9, 2007. Those became a trail of law enforcement investigation with the
9 defendant who acknowledged each of the charges after defendant left his mining claims near
10 Bagdad and traveled north in his white pickup truck through California and in eventually into
11 Oregon to his home in Christmas City, Oregon. They are also being offered to refute various

¹ The victim in this case is Lawrence John Powers but is referred to by his nickname 'LP'.

1 and often contradictory statements the defendant made to law enforcement, to the victim's sister,
2 and to friends of the victim, wherein he adopted and acknowledged the charges on the victim's
3 credit card made for his personal benefit shortly after LP disappeared from sight after traveling
4 alone with the defendant to the parties' 3 mining claims near Bagdad; mining claims which the
5 two had agreed to mutually buy and operate. And those credit card statements will refute
6 assertions by the defendant that the victim was alive and present with him and was the one using
7 the card, and/or present to authorize the use of the card, when he returned to his home State of
8 Oregon. Assertions made when the as yet unrecovered body of the victim lay in a mine shaft on
9 one of the Big Nugget claims.

RESPECTFULLY SUBMITTED this 14th day of February, 2022.

Sheila Polk
Yavapai County Attorney

By: _____


Ethan A. Wolfinger
Deputy County Attorney

COPY of the foregoing

mailed emailed hand-delivered

This 14th day of February, 2022 to:

Hon. Debra Phelan
Yavapai County Superior Court Division Pro-Tem A

Tyrone Mitchell
Attorney for Defendant

By: Brenda Crouth

MEMORANDUM

1. Facts Relevant to Defendant's Motion

This is a cold case homicide dating back to April, 2007. Facts in this case will establish that the victim LP and the defendant, residents of California and Oregon, respectively,

were longtime acquaintances and had agreed to be mining partners in 3 mining claims near Bagdad, Arizona. The two had been friends since the mid 1990's and both enjoyed the outdoors and later in their lives both were interesting in mining claims and prospecting.

Evidence will show that in late 2005, the defendant purchased 3 mining claims ('Big Nugget, Big Nugget #2 and Big Nugget #3), owned by the family of Lisa Tucker. Each mining claim was quarter section in size (160 acres each) and located in remote and rugged high desert country in Yavapai County along Burro Creek Road outside of Bagdad, Arizona. Evidence will also show that when the claims were purchased by the defendant in 2005, the defendant paid the asking price and anticipated that the victim would pay his fair share for the claims and that they would operate like a partnership with respect to the ownership and use of the mining claims.

The testimony at trial will also show that in February of 2007, and then again in early April of 2007, the defendant and victim traveled together in the defendant's Nissan truck from Northern California to spend time on the Big Nugget mining claims near Bagdad and explore the area. Evidence will show that around April 7, 2007, the defendant and victim arrived in Yavapai County, traveled to their mining claims, set up a campsite with some gear on the Big Nugget #2, and spent some time camping at the claim sites. The testimony and evidence will also show that defendant and LP also shopped on April 9, 2007 in Salome and Wickenburg. While in those communities, they purchased a piece of mining equipment – a 'Shaker Table' in Salome, Az., and they also purchased smaller mining supplies at a Miner's Store in Wickenburg. Both purchases were made on the victim LP's US Bank credit card account.

Facts in this case will also show that during the referenced time defendant and LP were in Arizona in April of 2007, defendant became interested in purchasing a 5th wheel trailer located

at the Lost Dutchman's Mining Camp. Facts presented at trial will show that the defendant negotiated the purchase with the boyfriend of Dianna Jansen, one of the state's witnesses. The purchase price was \$2000.00. Evidence will show that around April 15, 2007, the defendant showed up alone at the 5th wheel residence of Diana Jensen to complete the purchase of the 5th wheel. To cover the purchase price, he paid \$1000 cash which he had in his possession and he also exchanged the recently purchased shaker table. When Ms. Jansen made inquiry with the defendant about the whereabouts of LP (whose only source of transportation and mobile communication in Arizona was defendant), the defendant made a comment about having an argument with the victim, disarming him, and leaving him tied up at the campsite.

Evidence will show that on April 15, 2007 - April 16, 2007, the victim's US Bank credit card was used to make credit purchases of gas for defendant's vehicle from Barstow to the victim's home town in Murphy's California. Transactions were also made en route for remote control airplane products and a vehicle part from Autozone in Barstow. Then, on April 20, 2007, two additional purchases of gas were made on LP's credit card in two small Northern California towns (Alturas and Jackson). In various interviews and phone conversations with defendant concerning those credit card purchases, he maintained that the victim was alive and used, or allow him to use, the victim's credit card as repayment for various debts that LP allegedly owed.

Bank records presented in this case will show that from April 28, 2007 to May 9, 2007, the victim's credit card was used at various locations in Bend, Oregon and locations near Bend and the defendant's home in Christmas City, Oregon. For purposes of defendant's motion and Exhibits 110-114, evidence will show that the credit card of the victim was used three times in

Bend, Oregon: at an Office Max Store on April 26, 2007 and April 28, 2007, and then, at an AutoZone Store in Bend on April 26, 2007 to obtain a refund for a motor vehicle part. Each of those receipts purported to bear the signature of LP.² Handwriting exemplar analysis of those receipts has concluded that the person signing the scribbled 'Larry Powers' appearing name on the receipts was not Larry Powers. Defendant was interviewed about those receipts by a detective from the Calaveras Sheriff's Office, by volunteer investigator Paul Chastain with YCSO, and by detective McDormett when he arrested the defendant in Oregon in 2016.

In addition, interviews with the defendant and the defendant's bank records showed that the credit card number of LP was used on May 10, 2007, to obtain a drive shaft auto part that the defendant acknowledged was a purchase of a drive shaft for his own vehicle that had been shipped to his home address. In each interview the defendant verified and acknowledged being present at the transactions and/or using the card with LP's permission and/or that the transactions were completed because LP wanted to repay his indebtedness to the defendant. In every case, the defendant maintained that LP was present at the time of each transaction to make or authorize the purchases, and/or sign the receipts.

Evidence in this case will also show that the victim was a loner and while a lot of people knew LP in his home town of Murphy's, California, very few were his friends. And of those friends that knew him, no one had seen or has seen LP since his involvement in the purchase of a shaker table and mining table on April 9, 2007 with the defendant.

Evidence in this case will also show that in June of 2007, a neighbor of the victim from

² The credit card of the victim was also used to purchase tools at a Harbor Freight including a utility trailer later found in the defendant's possession and on his property when arrested by law enforcement.

Murphys called the victim's sister, who also lived in Murphy's about her concern over not having seen LP for a number of weeks. With that call the sister of the victim called law enforcement in California to report that her brother was a missing person. At around the same time, friends of the victim who lived in Prescott, Arizona contacted Yavapai County Sheriff's Department on June 29, 2007, to report that the victim was missing and hadn't been seen.

.Deputy Mike Bricker, who will testify at trial, will establish that he commenced an investigation in Arizona, talked to the sister and numerous people, and went to the mine sites to follow up on the report. By July 18, 2007, the sister of the victim had gone to the victim's home in Murphy's Ca. and had found unopened US bank statements for the months of April and May, 2007. She looked at those statements, saw all the charges made in April and May of 2007, and gave that information to law enforcement. Copies of those statements are attached as Exhibit 'A.'

Whereas the bank statements of the victim reflected charges made in Bend at Automax, and Harbor Freight, Deputy Bricker contacted those stores and requested credit card transaction receipts. He also spoke with a store named Rock Auto out of Wisconsin requesting credit card transaction information concerning purchases of an auto part mailed to the defendant's home in Christmas Valley, Oregon³³. With the assistance of the victim's sister, he also obtained an Autozone return voucher listing the defendant's name and phone number and a purported signature on a receipt signed for the auto part return.

On August 8, 2007, deputy Mike Bricker received information requested from Rock Auto

³³ As has been mentioned previously, the credit card purchases from Rock Auto for remote control products were not only discussed with law enforcement but brought up in phone conversations with the defendant acknowledging the purchases but saying that LP had bought the items for him.

and that information is marked as State's Exhibit 113. Around that date he also received a fax and ultimately, hard copy records mailed from the Bend Oregon Office Max store (ex. 114). The records were forwarded to the Arizona Department of Public Safety who conducted a handwriting analysis of the signatures on the Office Max credit card receipts and the Autozone receipt.

As noted throughout these facts, the defendant was asked about the transactions on the victim's credit card and he provided additional foundation for their authenticity by acknowledging the transactions being made when Larry was still alive and when Larry was present to use, or authorize us, of the credit card for credit card purchases.

2. Rule of Evidence Applicable to Credit Card Receipts

The defendant in his motion in limine asserts that the above referenced business records of Autozone, Automax, and Rock Auto, are hearsay and not supported by adequate foundation. The State would agree that they are business records but that they are not offered to prove the truth of the content of the records, but to support the defendant's acknowledgements of charges made on the victim's credit card for his benefit, and to also establish the identity of the individual who was using LP's credit card AND to refute the defendant's assertions that it was LP, and not him, who was responsible for each credit card transaction.

In regards to the defendant's assertion of inadmissibility, the State would first reference the rules of evidence relating to hearsay statements. 'Hearsay' is 'a statement [including written assertions] that the declarant does not make while testifying at the current trial or hearing' *and* 'a party [is offering the] evidence of the statement to prove the truth of the matter asserted in the statement.' Rule 801(a)(c), Arizona Rules of Evidence.

The State is not offering the statements for the truth of the matter asserted, but for the above, limited, non-hearsay purpose of establishing the identity of the person who used LP's credit card by showing the purchases, the dates of the purchases, the location of the purchases, and to refute various inconsistent statements made by the defendant. Courts have held that admission of documents for such limited purposes is not hearsay under Rule 801(c), Arizona Rules of Evidence. *State vs. Spinks*, 156 Ariz. 355, 359, 752 P.2d 8, 12 (App. 1987).

The State is also offering those documents because in interviews with law enforcement, the defendant was asked about each purchase – like why remote control airplane and other products supposedly ordered by LP would be sent to the defendant's address in Christmas Valley. Or why the Autozone receipts from Bend bore a signature that looked like the signature of Larry Powers but wasn't. During the interviews, each transaction was discussed in detail and the defendant had an explanation every time indicating essentially that LP was present or authorized each transaction. In addition to the non-hearsay purpose for admission to show identity, accentuate discrepancies in the defendant's statements about the purchases, who was present and who used the card, case law also makes clear that an incriminating statement or written assertion of a third party that is admitted to be true by the accused is not hearsay because it is regarded as an adoptive admission by the defendant. *State vs. Thomas*, 104 Ariz. 408, 411, 454 P.2d 23, 156 (1969); *See also, State vs. Atwood*, 171 Ariz. 576, 832 P.2d 539, 636 (1992). Rule 801(d)(2)(B), Arizona Rules of Evidence. All of the purchase information in the credit card receipts from the account of LP as set forth in Exhibits 110 – 114, was adopted as true by the defendant in various interviews, and they constitute adoptive admissions subject to admission by the Court.

And finally, if the Court despite the above authority finds that the purpose of admission is hearsay, then the State would respectfully reference the residual exception found in Rule 807, Arizona Rules of Criminal Procedure. That rule states that where a statement (like the information in Exhibits 110-114) is deemed hearsay, it is nevertheless admissible if supported by sufficient guarantees of trustworthiness – after considering the totality of circumstances under which it was made including corroboration (like the admitted US Bank statements and the defendant’s own statements), and also, the evidence is more probative than any other evidence that the proponent can obtain through reasonable efforts. In this case, the businesses involved have been contacted and either don’t exist or have no other records dating back to 2007.

As for authentication and foundation for admission of documents, Rule 901(a)(b)(1) says that to authenticate a particular item of evidence as genuine and what it purports to be, testimony by a witness with knowledge is sufficient if that witness acknowledges that the item is what is claimed to be. In this case, the defendant acknowledged, explained and verified the authenticity and foundation for each document in his statements to law enforcement as he made varying statements to law enforcement about whether that he didn’t have LP’s credit card, and/or that he did have LP’s credit card and/or that LP made all the transactions and was alive at the time. In addition, the fact of each transaction will be supported by US Bank records.

Based on the foregoing, it is respectfully requested that defendant’s motion in limine be denied.



Handwritten note: "Handwritten note" (illegible)

April Statement for activity from Mar. 29, 2007 through Apr. 27, 2007
LAWRENCE J POWERS

Inquiries: 1-800-285-0585
BNK 817 Page 1 of 2

Your U.S. Bank Visa® Classic Card account at a glance Account: 4037 8400 0492 8154

Activity Summary		Credit and Payment Information	
Previous Balance.....	\$0.00	Credit Line.....	\$5,750.00
Payments and Credits.....	\$0.00	Available Credit.....	\$3,215.99
Purchases, Advances & Other Debits	\$2,534.04	Minimum Payment Due (Current Month)...	\$26.00
FINANCE CHARGES.....	\$0.00	Minimum Payment Due (Past Due).....	\$0.00
New Balance.....	\$2,534.04	Total New Minimum Payment Due.....	\$26.00
		Payment Due Date.....	May 17, 2007

To reduce or avoid paying additional finance charges on your purchase balance, pay the total new balance of \$2,534.04 by 05/17/07. Any cash balance or balance transfer balance will continue to accrue daily interest until the date your payment is received.

Year	Month	Day	Ref. No.	Description of Transaction	Amount
04/10	04/09	0011		GOLDEQUIPMENT.COM 928-859-3792 AZ	1,895.00
04/11	04/09	0017		MINERS CREEK WICKENBURG AZ	48.55
04/17	04/15	4512		CHEVRON 00208940 BARSTOW CA	38.30
04/17	04/15	2454		TEXACO 00908123 CONGRESS AZ	23.75
04/17	04/15	8285		PILOT L Hevasu City AZ	30.00
04/17	04/15	4112		AUTOZONE 95608 BARSTOW CA	126.06
04/17	04/16	1186		HOB*TOWER HOBBIES 800-637-6050 IL	50.95
04/17	04/16	4701		HOB*TOWER HOBBIES 800-637-6050 IL	101.99
04/17	04/16	4719		HOB*TOWER HOBBIES 800-637-6050 IL	101.99
04/17	04/16	9241		CHEVRON 00096637 EARLIMART CA	33.75
04/18	04/16	1947		SHELL OIL 57441441607 MURPHYS CA	41.00
04/23	04/20	8991		SHELL OIL 57428908205 ALTURAS CA	23.70
04/23	04/20	4725		KWIK SERV JACKSON JACKSON CA	19.00

Balance Type	Balance	Avg. Daily Balance	Daily Periodic Rate	Rate Type	Comp. Int.	APR	APR	Grace
						This Period	This Period	Period
BALANCE TRANSFER	\$0.00	\$0.00	0.027808%	VARIABLE	\$0.00	10.15%	0.00%	N
PURCHASES	\$2,534.04	\$0.00	0.027808%	VARIABLE	\$0.00	10.15%	0.00%	Y
ADVANCES	\$0.00	\$0.00	0.066410%	VARIABLE	\$0.00	24.24%	0.00%	N

Continued on Next Page
Please detach and send coupon with check payable to: U.S. Bank



0140378400049281540000026000002534044

Your Account Number:	4037 8400 0492 8154
Total New Balance:	\$2,534.04
Minimum Payment Due:	\$26.00
Payment Due Date:	May 17, 2007

To change your address or for Cardmember Service please call: 1-800-285-0585 Every Hour! Every Day!

77466UP T321 P1

LAWRENCE J POWERS
PO BOX 1071
ALTAVILLE CA 95221-1071

U.S. Bank

P.O. Box 700408



April Statement for activity from Mar. 29, 2007 through Apr. 27, 2007
LAWRENCE J POWERS

Inquiries: 1-800-285-8585
Page 2 of 2

Important Messages


Mother's Day is approaching fast and U.S. Bank can help you get her something special! Visit USBank.com/usmall to receive discounts from select merchants when you use your U.S. Bank credit card for your Mother's Day purchases.


Take a break from paying your bills! Use your U.S. Bank Credit Card to pay your bills from February 1 through May 31, 2007 and you could win \$25,000 to pay future bills. When you pay a bill, you're automatically entered. The more bills you pay, the more chances to win! For more information visit usbank.com/sweeps through May 31, 2007.

Each time you or a third party on your behalf, pays your bill by personal check, you authorize us to convert that payment into an electronic debit. If the check is processed electronically, the checking account will be debited for the amount on the check and the debit will appear on your account statement. If you have any questions, please contact us at the inquiries phone number located on this statement.

To contact us regarding your account: 4037-8400-0492-8154

 **By Telephone:**
Every Hour! Every Day!
Voice: 1-800-285-8585
TDD: 1-888-352-6455
Fax: 1-866-568-7729

 **Send Inquiries to:**
Cardmember Service
P.O. Box 6352
Fargo, ND 58125-6352

 **Send Payments to:**
U.S. Bank
P.O. Box 780408
St. Louis, MO 63178-0408

 **By E-Mail:**
visit our website:
usbank.com

End of Statement

000492



May Statement for activity from Apr. 28, 2007 through May 25, 2007
LAWRENCE J POWERS

Inquiries: 1-800-285-8585
BNK 3617 Page 1 of 2

Your U.S. Bank Visa® Classic Card account at a glance Account: 4037 8400 0492 8154

Activity Summary		Credit and Payment Information	
Previous Balance	\$2,534.04	Credit Line	\$4,000.00
Payments and Credits	\$17.00	Available Credit	\$88.47
Purchases, Advances & Other Debits	\$1,355.35	Minimum Payment Due (Current Month)	\$108.00
FINANCE CHARGES	\$29.14	Minimum Payment Due (Past Due)	\$26.00
New Balance	\$3,911.53	Total New Minimum Payment Due	\$134.00
		Payment Due Date	Jun. 19, 2007

To reduce or avoid paying additional finance charges on your purchase balance, pay the total new balance of \$3,911.53 by 06/19/07. Any cash balance or balance transfer balance will continue to accrue daily interest until the date your payment is received.

Transactions	Post Date	Trans Date	Ref No	Description of Transaction	Amount
Payments and Credits	04/30	04/26	9151	AUTOZONE #2802 BEND OR MERCHANDISE/SERVICE RETURN	17.00 CR
Purchases, Advances, Debits	04/30	04/28	0802	HARBOR FREIGHT TOOLS 3 BEND OR	379.98
	04/30	04/28	4667	OFFICE MAX BEND OR	194.95
	04/30	04/28	8041	EAST BEND SERVICE BEND OR	100.00
	04/30	04/28	8058	EAST BEND SERVICE BEND OR	30.35
	04/30	04/26	8631	OFFICE MAX BEND OR	209.95
	05/02	05/01	3390	RCBOYZ 801-252-0244 UT	88.15
	05/07	05/04	8127	JUNO R/C 832-4180176 TX	103.00
	05/09	05/08	4673	UNION 76 00448142 WHITE CITY CR	65.03
	05/09	05/08	6447	UNION 76 00390443 LA PINE CR	75.00
	05/10	05/02	7258	ROCK AUTO 608-661-1376 WI	79.94
	05/17			LATE FEE - PAYMENT DUE ON 05/17	39.00
Finance Charges	05/25			***FINANCE CHARGE***INTEREST	29.14

Rate Summary	Balance	Avg Daily Balance	Daily Periodic Rate	Rate Type	Cost	APR	Grace Period
BALANCE TRANSFER	\$0.00	\$0.00	0.027808%	VARIABLE	\$0.00	10.15%	0.00% N
PURCHASES	\$3,911.53	\$3,742.99	0.027608%	VARIABLE	\$29.14	10.15%	10.15% Y
ADVANCES	\$0.00	\$0.00	0.066410%	VARIABLE	\$0.00	24.24%	0.00% N

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Please detach and send coupon with check payable to: U.S. Bank



0140378400049281540000134000003911537

To change your address or for Cardmember Service please call: 1-800-285-8585 Every Hour! Every Day!

Your Account Number:	4037 8400 0492 8154
Total New Balance:	\$3,911.53
Minimum Payment Due:	\$134.00
Payment Due Date:	Jun. 19, 2007

77712UP T321P1

LAWRENCE J POWERS
PO BOX 1071
ALTAVILLE CA 95221-1071

U.S. Bank

P.O. Box 790408



May Statement for activity from Apr. 26, 2007 through May 25, 2007
LAWRENCE J POWERS

Inquiries: 1-800-285-8585
Page 2 of 2

Important Messages

Payment on your account is past due. While we have chosen not to close your account, your payment history directs us to reduce your credit line. To avoid further actions, please pay the past due amount. If future payments are made on a timely basis, we may consider your account for a line increase in the future.

The above minimum payment includes a past due amount which is payable immediately upon receipt of this statement. If this amount has already been mailed, please disregard this notice. If you cannot immediately forward this past due amount, please contact our collection department at 1-877-838-4347 to make other suitable arrangements for payment.

Each time you or a third party on your behalf, pays your bill by personal check, you authorize us to convert that payment into an electronic debit. If the check is processed electronically, the checking account will be debited for the amount on the check and the debit will appear on your account statement. If you have any questions, please contact us at the inquiries phone number located on this statement.

To contact us regarding your account: 4037840004928154



By Telephone:
Every Hour! Every Day!
Voice: 1-800-285-8585
TDD: 1-888-352-6455
Fax: 1-888-568-7729



Send Inquiries to:
Cardmember Service
P.O. Box 6352
Fargo, ND 58125-6352



Send Payments to:
U.S. Bank
P.O. Box 790408
St. Louis, MO 63179-0408



By E-Mail:
visit our website:
usbank.com

End of Statement

000490