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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2020 JAN 21 AM 8:47 ✓
COURT CLERK
BY: L. JACKSON

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

STATE OF ARIZONA,) P1300CR201600476
)
Plaintiff,)
)
vs.) REQUEST FOR WILLITS INSTRUCTION
) FOR LOST EVIDENCE
ANTHONY RICHARDS,)
)
Defendant.)
) (Hon. Tina Ainley, Div. 3)
)
_____)

The Defendant, by and through Counsel undersigned, hereby request a Willits instruction for:

- 1) Photos Joan Shattuck sent to Officer Bricker of Larry Powers and Anthony Richards on or about 7-11-07;
- 2) Copies of any and all Subpoenas issued in 2007, (Bricker report, bate stamp 1240, 1263);
- 3) Copies of all Subpoena return information from Rock Auto, Harbor Freight and Office Max, (Bricker report, bate stamp 1240, 1263);
- 4) Copies of any and all Search Warrants and Search Warrant Returns from 2007-2017;
- 5) Copies of any and all Chain of Custody sheets.
- 6) Off. White's Photographs used in Dep. Bricker's August 7, 2007 report of Big Nugget Mine 1, 2, and 3.

Josh Fisher, Deputy County Attorney in this case, has not been able to locate them at this time, but has expressed to Counsel that he does not believe that they still exist.

In *State v. Willits*, 393 P.2d 274 (Ariz.,1964), the Arizona Supreme Court found that it was reversible error for the trial court not to give a jury instruction regarding evidence lost at the hands of the state:

In prosecution for attempting to explode dynamite in a dwelling house, wherein defendant claimed that discharge was accidental, and uncontradicted evidence showed that package of explosive with wires attached was destroyed by military officials, refusal to give requested instruction that if jury found that state caused to be destroyed any material evidence jury might infer that "true fact is against their interest" was reversible error.

Supra.

Willits instruction is designed to permit inference in favor of defendant when state fails to preserve evidence important to case. *State v. Hill*, 848 P.2d 1375 (Ariz.,1993). A Willits instruction, permitting jury inference that true fact is against interest of State, is appropriate when the State destroys or loses evidence potentially helpful to the defendant. *State v. Lopez*, 786 P.2d 959, (Ariz.,1990).

Such an instruction directs that if the jury finds that the state has destroyed, caused to be destroyed, or allowed to be destroyed any evidence whose contents or quality are at issue, it may infer that the true fact is against the state's interest. See *State v. Willits*, 96 Ariz. 184, 187, 393 P.2d 274, 276 (1964).

State v. Strong, 185 Ariz. 248, 251, 914 P.2d 1340, 1343 (Ct. App. 1995).

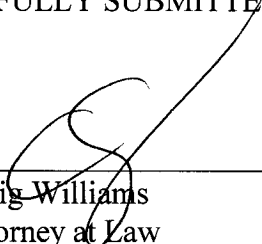
The Arizona Supreme Court has set up a two prong test for when a Willits instruction would be appropriate. To be entitled to a Willits instruction, a defendant must prove: (1) that the state failed to preserve material evidence that was accessible and might tend to exonerate him, and (2) resulting prejudice. *State v. Fulminante*, 975 P.2d 75 (Ariz.,1999). Defendant is entitled to Willits instruction regarding state's failure to preserve evidence where state failed to preserve accessible material evidence that might have been exculpatory and there was resulting prejudice. *State v. Geotis*, 930 P.2d 1324, (Ariz.App.Div.1,1996).

The state began their search for the victim in 2007. Search warrants obtained in 2017 refer to information from 2007. When the Defendant requested this information the state said it no longer exist. This information may tend to exonerate the Defendant. Without the chain of custody and documentation obtained in 2007 the Defendant would be prejudiced because he is unable to challenge the 2017 search warrants. Thus, the second prong of the test is satisfied.

CONCLUSION

Therefore, the Defendant respectfully requests that a Willits instruction be included in the jury instructions.

RESPECTFULLY SUBMITTED this January 21, 2019



Craig Williams
Attorney at Law

Copies of the foregoing delivered this date to:
Hon. Tina Ainley, Judge of the Superior Court
Josh Fisher, Yavapai County Attorney's Office
The Defendant

By:  _____