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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	**P1300CR201600476**
Plaintiff,	***Reply:*** **NOTICE OF INTENT TO OFFER STATEMENTS PURSUANT TO RULE 804 ARIZONA RULES OF EVIDENCE**
vs.	
ANTHONY RICHARDS,	
Defendant.	**(Hon. Tina Ainley, Div. 3)**

The Defendant, through undersigned Counsel, hereby Replies to the state's Response and Notice of its intent to use "Statements of Unavailable Witnesses (Glen Croshaw and Vern Lequieu)" in the upcoming Trial.

There are crucial differences in the proposed unavailable witness requests, Dean Knight for the Defense versus Croshaw and Lequieu for the state. The state is calling Dean Knight's long time girlfriend Dianna Jensen to the stand, complete with her biased stories about the Defendant. Ms. Jensen is a part of the hearsay hotline fixed to this case. Among the other questionable stories Ms. Jensen is eager to repeat is that she "overheard" the Defendant talking with Dean Knight, saying that "Powers pulled a gun on him so he took Powers gun from him, tied him up, and left him at the claim (in the hot isolated desert). (McDormett Supplemental Report, 5/31/16, pg. 7). She later claims, in a display of mental gymnastics, that she saw a gun "handle" – or what could have been a gun "handle" – sticking out of the Defendant's pocket. (*Id.*) She did not call the police. In her Deposition, Jensen was very inconsistent regarding the

"gun handle" story:

Q. Do you recall telling him that you weren't sure that it was a gun?
A. Well, unless something looks -- the handle looks something like a gun. It may have been -- it may have been a toy. Who knows?

(Video Deposition of Dianna Jensen, December 21, 2018, pg. 72).

Dean Knight stated he did not see Anthony with a gun. (McDormett Supplemental Report, 5/31/16, pg. 7).

The unavaible witness statements proposed by the Defense are from a YCSO detective questioning Mr. Knight. Mr. Knight's statements to law enforcement are vital to rebut Jensen's tales. Thus, Due Process requires Mr. Knight's statements to law enforcement to be admitted to contradict Jensen. Defendant has a right to present a defense. Washington v. Texas, 388 U.S. 14 (1967). A Defendant's Sixth Amendment right to compulsory process requires that he must be allowed the right to call witnesses whose testimony would be relevant and material to the defense. (*Id.*)

The state is not in a similar position regarding Croshaw or Lequieu[1]. First, the state did not seek to depose either Croshaw or Lequieu, opting instead to present hearsay from both. The Defense did not interview either Croshaw or Lequieu.

And, Croshaw and Lequie cannot be cross-examined at trial.

> The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The Supreme Court has made plain that the Confrontation Clause prohibits "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." Crawford v. Washington, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004); see also Davis v. Washington, 126 S. Ct. 2266, 2273, 165 L. Ed. 2d 224 (2006) (quoting Crawford).

(State v. McGill, 213 Ariz. 147, 163, 140 P.3d 930, 946 (2006).

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[1]Lequieu had talked to Joan Shattuck shortly after Larry "disappeared." (McDormett Supplemental Report, 5/31/16, pg. 21). Thus, Lequieu was also a part of the hearsay hotline.

The state's proposed presentation of Croshaw and Lequieu would be hearsay, admitted for the proof of truth of the matter asserted – that the Defendant killed the victim. However, what both men had to say is inadmissible nontestimonial hearsay.

> Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law—as does Roberts, and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

(Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 1374, 158 L. Ed. 2d 177 (2004).

Denial of right of effective cross-examination is a constitutional error of the first magnitude so that no amount of showing of want of prejudice could cure it. Davis v. Alaska, 415 U.S. 308, 318[2]. (1974), citing Brookhart v. Janis, 384 U.S. 1, 3, and Smith v. Illinois, 390 U.S. 129, 131 (1968).

For the reasons stated above, Dean Knight's statements should be admissible, but the proposed "Statements of Unavailable Witnesses (Glen Croshaw and Vern Lequieu)" should be precluded in the upcoming Trial.

RESPECTFULLY SUBMITTED on February 21, 2020.

Craig Williams
Attorney at Law

Copies of the foregoing delivered and/or faxed this date to:
Hon. Tina Ainley, Judge of the Superior Court
Josh Fisher, Deputy Yavapai County Attorney
By _____

[2]Read properly, however, Davis does not support an automatic reversal rule, and the above-quoted language merely reflects the view that on the facts of that case the trial court's error had done "serious damage" to the petitioner's defense. Del. v. Van Arsdall, 475 U.S. 673, 683 (U.S. 1986)