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10 **IN THE SUPERIOR COURT**
11 **IN AND FOR THE COUNTY OF COCONINO, STATE OF ARIZONA**

12 STATE OF ARIZONA,

13 Plaintiff,

14 vs.

15 **STEVEN EDWARD JONES,**

16 Defendant.

Case No. CR2015-00862

MOTION TO COMPEL DISCOVERY

(Hon. Dan Slayton - Div. 2)

17 COMES NOW Steven Edward Jones, through undersigned counsel, and
18 respectfully moves this Court, pursuant to Rule 15 of the Arizona Rules of Criminal
19 Procedure, to enter an order directing State to disclose forthwith all discoverable
20 materials related to State's expert witness Tom Bevel including but not limited to:

- 21 1. A copy of the email and/or other correspondence sent by Melissa
22 Fittipaldo and/or any other individual associated with or under the
23 direction of the prosecution to Mr. Bevel in response to Mr. Bevel's
24 request for factual information related to the investigation from
25 which this case arises;
- 26 2. A copy of any other emails, correspondence or other written
27 statements to, from or on behalf of Mr. Bevel in connection with his
work on this case;
3. A copy of any examination notes made by Mr. Bevel including but not
limited to the powerpoint file of approximately 280 images described
by him during his interview; and
4. A copy of billing invoices submitted by or on behalf of Mr. Bevel in
connection with his work on this case.

RELEVANT FACTS

1
2 The State retained Tom Bevel as an expert witness in this matter. As the Court
3 no doubt recalls, his involvement in the case was deemed significant inasmuch as
4 future discovery deadlines and hearing dates were scheduled around the anticipated
5 release of his report.

6 The defense interviewed Mr. Bevel on January 25, 2017. During the course of the
7 interview, Mr. Bevel revealed the existence of numerous materials that are subject to
8 Rule 15.1 but have not and will not be provided by the State. Specifically, Mr. Bevel
9 stated that during the course of his case evaluation, he prepared a powerpoint file
10 consisting of numerous scene photographs and written factual questions for the
11 prosecutor regarding the included photographs. Mr. Bevel further indicated that he
12 submitted the powerpoint file containing the questions to the prosecution and that
13 Mr. Barker's assistant at the time, Melissa Fittipaldo, wrote him back with answers to
14 the questions. The State never disclosed Mr. Bevel's powerpoint document and it was
15 only through the questioning of Mr. Bevel that the defense became aware of its
16 existence. Although the State subsequently provided a copy of the powerpoint it
17 received last spring from Mr. Bevel, it still refuses to disclose the email or any other
18 information that was provided to Mr. Bevel in response to his questions about the
19 case. Inasmuch as Mr. Bevel specifically requested the information provided by the
20 prosecutor's secretary when forming his opinions about the case, the State's refusal to
21 release it is puzzling.

22 Similarly, the report of Mr. Bevel (who ostensibly intends to testify as a "crime
23 scene expert") includes a "Brief Case Synopsis" in which he completely misstates the
24 location of the shooting. While being questioned about this error in his report on
25 January 25th, Mr. Bevel referenced yet another powerpoint file that included
26 approximately 280 photographs. Mr. Bevel stated that he created and used this
27 second powerpoint during the course of his work on the case. Although requested by

1 the defense and clearly under the purview of Rule 15.1, the State also refuses to
2 provide this document.

3 Finally, Mr. Bevel was questioned about the amount of time he spent reviewing
4 the case file but was unable to specifically provide that information. The invoices he
5 has submitted to the State for his services will not only reflect the financial
6 remuneration he is receiving, but will also presumably contain an itemization of the
7 time spent reviewing case materials and performing other functions that are relevant
8 areas of inquiry during his cross-examination. The defense requested a copy of Mr.
9 Bevel's invoices from the State however it refuses to provide those materials as well,
10 asserting that they are not in its possession.

11 LAW AND ANALYSIS

12 Rules 15.1(b)(1) and (b)(4) of the Arizona Rules of Criminal Procedure are clear
13 on their face: The prosecutor has an affirmative duty to disclose the "relevant written
14 or recorded statements" of all State witnesses and "the results of physical
15 examinations and of scientific tests, experiments or comparisons that have been
16 completed" by any expert witnesses. Under Rule 15.4(a), the term "statement" is
17 defined in very broad terms:

- 18 (i) A writing signed or otherwise adopted or approved by a person;
- 19 (ii) A mechanical, electronic or other recording of a person's oral
20 communications or a transcript thereof, and
- 21 (iii) A writing containing a verbatim record or a summary of a
22 person's oral communications.

23 In State v. Roque, 213 Ariz. 193, 206-07, ¶¶ 31-32, 141 P.3d 368, 381-82 (2006),
24 the Supreme Court of Arizona discussed the predecessor of Rule 15.1(b)(4). In that
25 case, the court reviewed the overarching purpose of the rule and rejected the State's
26 argument that disclosure was strictly limited to an expert's final written report:

27 The trial court's interpretation of Rule 15.1(a)(3) as requiring
the production only of a "written report or statement" derives
from the rule's participial phrase, "including all written reports or

1 statements made by [experts] in connection with the particular
2 case." But the "including" language does not limit disclosure of the
3 "results of physical examinations and of scientific tests,
4 experiments or comparisons" to "written reports or statements."
5 Typically, the word "including" is "not one of all-embracing
6 definition, but connotes simply an illustrative application of the
7 general principle." *Bernhart v. Indus. Comm'n*, 200 Ariz. 410, 413, ¶
8 12, 26 P.3d 1181, 1184 (App.2001) (quoting *Fed. Land Bank of St. Paul*
9 *v. Bismarck Lumber Co.*, 314 U.S. 95, 100, 62 S.Ct. 1, 86 L.Ed. 65
10 (1941)).

11 The purpose of Rule 15.1(a)(3) is "to give full notification of
12 each side's case-in-chief so as to avoid unnecessary delay and
13 surprise at trial." *Armstrong*, 208 Ariz. at 353, ¶ 38, 93 P.3d at 1069
14 (quoting *State v. Dodds*, 112 Ariz. 100, 102, 537 P.2d 970, 972 (1975)).
15 **The rule was "designed to give the defendant an opportunity to
16 check the validity of the conclusions of an expert witness and to
17 call such expert as his own witness or to have the evidence
18 examined by his own independent expert witness."** *State v.*
19 *Spain*, 27 Ariz.App. 752, 755, 558 P.2d 947, 950 (1976).

20 (emphasis added.)

21 Based on Rule 15.1(b)(1) alone, the State has not complied with its disclosure
22 obligations to the defense. Mr. Bevel's invoices simply cannot be characterized as
23 something other than a "statement" under Rules 15.1. Because these invoices likely
24 also contain a description of the various work he performed for the prosecution in this
25 case, Rule 15.1(b) is applicable to these materials as well as any other emails or other
26 correspondence received from him by the State in connection with this matter.

27 Disclosure of email(s) sent to the prosecutor by Mr. Bevel is further required
under Rule 15.1(e)(3): Upon written request, the prosecutor shall disclose "Any
completed written reports, statements and examination notes made by experts". In
addition to encompassing the emails **authored by** Mr. Bevel, this provision also
requires the State to provide Mr. Jones a copy of the email(s) **received by** Mr. Bevel
from the prosecution in response to his request for factual information needed for his
report together with any other emails he received from the State. Similarly, the larger

1 powerpoint file that Mr. Bevel used during his evaluation and referred to during his
2 defense interview would also constitute "examination notes" to which Mr. Jones is
3 entitled.

4 Finally as a catch-all, Rule 15.1(g) states in relevant part: "Upon motion of the
5 defendant showing that the defendant has substantial need in the preparation of the
6 defendant's case for material or information not otherwise covered by Rule 15.1, and
7 that the defendant is unable without undue hardship to obtain the substantial
8 equivalent by other means, the court in its discretion may order any person to make it
9 available to the defendant."

10 Here, the defendant has a substantial need for the listed items for several
11 reasons. When the prosecutor provides factual information to its testifying expert
12 witness, the defendant's ability to "check the validity of" the expert's opinions
13 **necessarily requires** the disclosure of that information together with any other
14 information that was considered by the expert. This is particularly true here wherein
15 the information was specifically requested by the expert because it was needed in
16 connection with the formulation of his opinion.

17 Mr. Bevel's invoices are likewise needed by the defense. At trial, Defendant
18 intends to cross-examine Mr. Bevel regarding the thoroughness of his case review.
19 Only his invoices (which are constructively under the control of the prosecutor under
20 Rule 15.1(f)) will reveal this information and the defendant will be unable to effectively
21 cross-examine him without them.

22 The trial court should exercise its discretion in favor of seeing that accused is
23 furnished with every fact necessary to prepare the best possible defense. State v.
24 Ford, 108 Ariz. 404, 499 P.2d 699 (1972), *certiorari denied* 93 S.Ct. 950, 409 U.S. 1128, 35
25 L.Ed.2d 261, *dismissal of post-conviction relief vacated* 107 F.3d 15, *withdrawn and*
26 *superseded on denial of rehearing* 124 F.3d 211. Moreover, the court has inherent power,
27 where due administration of justice requires, to order discovery of papers, documents,

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1 and other tangible objects. State v. Wallace, 97 Ariz. 296, 399 P.2d 909 (1965).

2 Here, the accused is unable to effectively prepare for Mr. Bevel's testimony
3 because the State is withholding relevant materials needed by the defense. The
4 defense has not been provided all of the information considered by Mr. Bevel during
5 the formation of his expert opinion, nor has it been provided all of Mr. Bevel's
6 statements. The State's refusal to provide these needed materials is unjustified and
7 Defendant requests this Court's Order compelling the disclosure of the listed items

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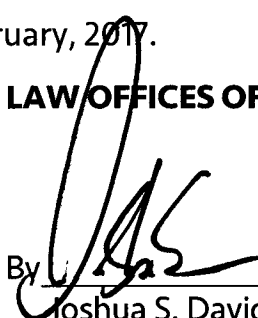
26 ...

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1 forthwith.

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3 DATED this 9th day of February, 2017.

4 **LAW OFFICES OF JOSHUA S. DAVIDSON, PLC**

5
6
7 By 
8 Joshua S. Davidson
9 Attorney for Defendant

10 **ORIGINAL** mailed
11 this 9th day of February, 2017, to:

12 Clerk of the Coconino County Superior Court
13 200 N. San Francisco St.
14 Flagstaff, AZ 86001

15 **COPY** of the foregoing mailed
16 this same date to:

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