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MIKE MEIER, OF COUNSEL

April 21, 2009

Yuma County Attorney's Office
250 W 2nd St. Suite G,
Yuma AZ 85364

RE: State of Arizona vs. Steven Anderson
Case No.: J1403MS2009-00009

Dear Counsel:

Please find enclosed our Rule 15.2 Disclosure Notice. I look forward to working with you on this matter, and hope we will have a cordial working relationship throughout the case. I will be happy to arrange and attend any interviews with defense witnesses should you desire them. Please contact me with proposed dates and times to schedule such interviews.

I am hereby requesting interviews with all State's witnesses and disclosure including names, addresses, telephone numbers and any statements of all the State's witnesses, experts and investigators.

Please provide me with copies of all audio and/or video tapes that were made of my client, this incident, or any accounts/recreations thereof. In addition, at the time of this incident Mr. Anderson was recording with his camcorder. The camcorder was confiscated by either U.S. Border Patrol or Arizona Department of Public Safety. I am hereby requesting that you provide me with a copy of the video tape that was in the camcorder at the time of Ms. Anderson's arrest. I am also requesting that you ensure the preservation of all audio and video tapes in this matter.

I am requesting a criminal history witnesses, whether admissible or not. Additionally, I am requesting discovery of any and all offers, promises inducements, and representations including but not limited to promises of no prosecution, immunity, lesser sentence, etc. made to witnesses in exchange for their testimony. Please provide me with any 609 or 404(b) evidence you may seek to introduce at trial. Regarding any 404(b) evidence, please include what noncharacter purpose the evidence is offered for as well as its relevance, and your proposed limiting instruction.

This letter is a specific request for *all* information available to the defense pursuant to *Brady v. Maryland*. As you are well aware, the United States Supreme Court has previously stated, "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The United States Supreme Court has expounded on the state's duty to disclose by holding in *Kyles v. Whitley*, "...the individual prosecutor has a *duty* to learn of any favorable evidence known to others acting on the government's behalf in the case, *including the police*." *Kyles v. Whitley*, 115 S. Ct. 1555, 131 L.Ed.2d 490 (1995). (emphasis added). *State V. Smith* goes even further to *require prosecutors to ascertain and disclose exculpatory information not in its immediate possession or under its control* if the State has better access to the information and the defense is unable to obtain it on its own. See *State v. Smith*, 123 Ariz. 231, 599 P.2d 187 (1979).

Pursuant to these Constitutional and ethical duties, I specifically request that, in addition to examining your own knowledge and files for evidence favorable to my client, you also make specific and detailed inquiry of *all* investigating agencies and officers involved in this matter in any way to determine if they are aware of any exculpatory or impeachment information involving any witness which may be helpful to my client's case.

Pursuant to my request, I have enclosed a checklist containing questions regarding some of the information I am seeking. I request that you ask each investigating officer to review the checklist and sign the affirmation at the bottom that he or she is not aware of any such information. Further, I request you return the completed checklist to my office as soon as possible as a supplemental Rule 15 disclosure. Additionally, please consider this a formal request to run an ACJIS background check on all witnesses the State intends to call in this matter and disclose all resulting impeachment and exculpatory information.

Moreover, as you know, a defendant's failure to specifically request evidence does *not* mean the state is relieved of its *Brady* obligation to disclose relevant information. *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392 (1976). In addition, the state is obligated to disclose any evidence which could be used for *impeachment purposes* as well as exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985). Regarding the prosecutor's determination of whether or not evidence is required to be disclosed pursuant to *Brady*, the Supreme Court has stated, "...the prudent prosecutor will resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 U.S. 97, 98, 96 S.Ct. 2392, 2399-2400 (1976).

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All the information on the checklist is believed to come within the prosecutor's duty to investigate and disclose pursuant to *Brady* as interpreted by *Kyles* as well as the prosecutor's duty pursuant to the Rules of the Supreme Court, Rule 42, ER 3.8(d). Please contact me immediately in the event you are unable to comply with this request in a timely fashion. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Victor", with a large, stylized flourish extending from the end of the signature.

Marc L. Victor

MJV/ckd
Enclosures

BRADY/KYLES CHECKLIST

I hereby certify that in regards to the case of State v. Anderson and unless otherwise disclosed to the prosecutor, I do not possess nor am I willfully ignorant of any of the following information:

1. Information to impeach any witnesses such as prior inconsistent statements, prior bad acts including criminal convictions, motives to lie or be dishonest, or immunity agreements;
2. Information tending to discredit in any way the reliability or integrity of the criminal investigation such as:
 - a. the tampering with evidence;
 - b. any unpursued leads or evidence;
 - c. any exculpatory evidence;
lack of credibility of investigating officers or informants;
 - d. any statements tending to discredit the investigation;
 - e. any information with the potential to discredit the police methods employed in assembling or investigating the case;
3. Information which may discredit the decision to charge the defendant such as bias or other bad faith motive;
4. Any witnesses who failed to identify the defendant or who contradicted other witnesses or who were not interviewed at all and may have information about the case in any way;
5. Any other persons who were or are being considered by investigating officers as suspects and the evidence which leads those persons to be suspects;
6. Any inconclusive forensic evidence such as fingerprint tests, DNA tests, drug tests, blood tests or other chemical or scientific tests;
7. Evidence regarding the integrity, competence or experience of the investigating officer which may be relevant to impeach or discredit the reliability of any officer involved in the case including confidential personnel files, review board investigation files, internal affairs reports or criminal history; and

8. Anything else which may be relevant or call into question the good faith, thoroughness or reliability of the investigation, officers or witnesses involved.

Moreover, in the event I learn of the existence of any of the preceding information, I promise to immediately disclose such information to the prosecutor in this case.

Signed,

Investigating Officers:

1 MARC J. VICTOR, P.C.
3920 South Alma School Road, Suite 5
2 Chandler, Arizona 85248
(480) 755-7110
3 Fax (480) 755-8286
Attorneys for Defendant
4 **Marc J. Victor - SBN 016064**

5
6
7 **THIRD PRECINCT JUSTICE COURT**
8 **YUMA COUNTY**

9
10 STATE OF ARIZONA,) Case No.: J1403MS2009-00009
11)
Plaintiff,)
12 vs.) DEFENDANT'S RULE 15.2 DISCLOSURE
NOTICE
13 STEVEN LEE ANDERSON,)
14)
Defendant.)
15)

16 Defendant, by and through undersigned counsel, and pursuant to Rule 15.2, Arizona Rules of
17 Criminal Procedure, hereby gives notice of the following witnesses, exhibits and defenses:

18 **WITNESSES**

19 The Defendant may call some or all of the following witnesses at trial:

- 20 1. Any investigator utilized by the State (for impeachment purposes only);
 - 21 2. A Defense investigator/investigators to be disclosed prior to trial;
 - 22 3. A Defense expert/experts to be disclosed prior to trial;
 - 23 4. Any custodians of record as needed (for impeachment purposes only);
 - 24 5. All witnesses listed by the State (for impeachment purposes only);
- 25
26

1 6. Any and all individuals named or referred to in the preliminary transcript and/or grand
2 jury transcript and/or police departmental reports, State's witness list, or in any of the State's
3 discovery (for impeachment purposes only);

4 7. Any and all individuals, including but not limited to Victim Assistance caseworkers
5 and/or volunteers who have spoken with any witness in this case (for impeachment purposes only);

6 8. Any experts who have personally examined the Defendant or any evidence in this
7 case;

8 a. together with the identity of any test employed and copies of the results of

9 i. physical examinations,

10 ii. scientific tests,

11 iii. experiments or comparisons, including all written reports or statements
12 made in connection with this case;

13 9. Any witnesses discovered during remaining discovery or determined to be necessary
14 to call at trial. In such a case disclosure will be made immediately;

15 10. Character witnesses to be disclosed prior to trial (if good character has been noticed as
16 a defense).

17 All listed witnesses are expected to testify pursuant to all defenses listed below. Pursuant to
18 Rule 15.1(i), Defendant requests disclosure of the names and addresses of all persons who will be
19 called as rebuttal witnesses, together with their written or recorded statements.

20 **EXHIBITS**

21 1. All exhibits listed by the State;

22 2. A list of all papers, documents, photographs or other tangible objects which the State
23 will or may use at trial, or which were obtained from or purportedly belong to Defendant;

24 3. Copies of any and all audio or video tape recordings made relative to this case,
25 including taped field notes, if any;

26

1 4. Impeachment documents purporting to be evidence of any prior conviction which the
2 State intends to use to enhance sentencing in this case;

3 5. A list of all prior acts of the Defendant which the State may or will use to prove
4 motive, intent, knowledge or otherwise use at trial;

5 6. All material and information which tends to mitigate or negate the Defendant's guilt as
6 to the offenses charged or which would tend to reduce Defendant's punishment therefor, including all
7 prior convictions of witnesses who the State expects to call at trial;

8 7. Information regarding the existence and/or involvement of any informant(s) in this
9 case; the identity of such informant(s); whether such informant was a material witness to the events
10 from which the criminal charges arise; together with all aliases which such informant(s) use(s) and
11 his/her address(s) or residence;

12 8. Photographs of the alleged crime scene or instrumentalities of such crime;

13 9. Diagram of the alleged crime scene or instrumentalities of such crime;

14 10. Any object or document disclosed by the State or used or referred to at trial by the
15 State;

16 11. Any written or electronically recorded statements by any witness;

17 12. Defendant's relevant medical records;

18 13. Any relevant Curriculum Vitae or other foundation for any witness;

19 14. Any exhibits discovered during remaining discovery.

20 DEFENSES

21 Defendant **may** elect to invoke some or all of the defenses listed below. Due to continuing
22 discovery, the Defendant may become aware of further defenses which may be invoked in this case.

23 The Defendant will immediately disclose any further such defenses.

24 1. Not Guilty; -

25 2. Insufficiency of State's Evidence;

26 3. Lack of Knowledge;

- 1 4. Lack of Specific Intent;
- 2 5. No Criminal Intent;
- 3 6. Unconstitutional Arrest; and,
- 4 7. Unconstitutional Search

5 The Defense reserves the right to supplement any part of this Disclosure Statement up to and
6 including the day of trial.

7 **SPECIFIC REQUESTS**

8 Defendant, by and through undersigned counsel, and pursuant to Rule 15.1(e), Arizona Rules
9 of Criminal Procedure, hereby specifically requests that the state disclose all prior felony convictions
10 of all state's witnesses along with a list of any prior felony convictions that the state intends to use to
11 impeach any defense witnesses.

12 Defendant, by and through undersigned counsel, and pursuant to Rule 15.1(f), Arizona Rules
13 of Criminal Procedure, hereby specifically requests that the state make available to undersigned
14 counsel for examination, testing and reproduction, all items disclosed by the state pursuant to Rule
15 15.1(a)(5) along with recordings of all 911 calls and radio transmissions between any law
16 enforcement officers relevant to the case, and all written reports statements and examination notes
17 made by any state's experts disclosed pursuant to Rule 15.1(b)(4).

18 RESPECTFULLY SUBMITTED this day of April, 2009.

19 MARC J. VICTOR, P.C.

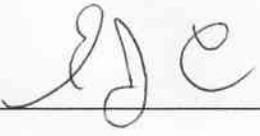
20
21 By:



22 Marc J. Victor
23 Attorney for Defendant
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25
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1 Original mailed to the Court, and a
2 copy mailed 4/22, 2009, to

3 Yuma County Attorney's Office
4 250 W 2nd St. Suite G,
5 Yuma AZ 85364

6  A handwritten signature in cursive script, possibly reading 'JDC', is written above a horizontal line.

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