

APR 2 2015

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11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12
13 IN AND FOR THE COUNTY OF PINAL
14

15 THE STATE OF ARIZONA,

16 Plaintiff,

17 vs.

18 TYLER JAMES KOST,

19 Defendant.

) Case No. CR-201400949, CR-201401054, and
) CR-201401772
)

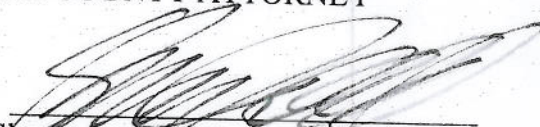
) STATE'S RESPONSE TO DEFENDANT'S
) *MOTION TO COMPEL DISCLOSURE OF*
) *SOCIAL MEDIA RECORDS*
)

) Assigned to Judge Kevin White
)
)

20 The State of Arizona, by and through the undersigned counsel, hereby responds to, and
21 respectfully requests this Court to deny, the Defendant's *Motion to Compel Disclosure of Social*
22 *Media Records* . . .
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24
25

26 M. LANDO VOYLES
27 PINAL COUNTY ATTORNEY

28 BY

29 
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31 Deputy County Attorney

1 **FACTS:**

2 For the purposes of this motion, the State agrees with the defense's identification of the
3 specific social media records that were obtained via subpoena by PCSO and were disclosed to
4 the defense. The State also relies upon facts articulated in previously filed motions or responses.

5 **LAW AND ARGUMENT**

6 **1) The social media accounts belonging to victims and witnesses are not within the**
7 **State's possession or control.**

8 The defense contends that the Facebook, Instagram, and other social media accounts for
9 victims and witnesses whose accounts have not yet been subpoenaed by PCSO are within the
10 State's possession or control. Yet, Arizona Criminal Procedure Rule 15.1(f) specifically states
11 that the prosecutor's obligation to disclose "extends to material and information in the possession
12 or control of any of the following: 1) The prosecutor, or members of the prosecutor's staff, or, 2)
13 Any law enforcement agency which has participated in the investigation of the case and that is
14 under the prosecutor's direction or control, or, 3) any other person who has participated in the
15 investigation or evaluation of the case and who is under the prosecutor's direction or control."

16 The remaining victims and civilian witnesses for whom social media account information has not
17 been obtained do not fall into any of the 3 listed categories in Rule 15.1(f). The Arizona
18 Supreme Court, furthermore, has held that merely because a witness has cooperated "does not
19 render her an agent of the prosecutor's office." *State v. Reinhardt*, 190 Ariz. 579, 585, 951 P.2d
20 454, 460 (1997). In addition, "the fact that the prosecution is in a better position to secure a
21 witness's cooperation" does not mean that the witness is under the prosecutor's control." *Id.*

22 None of the social media information the defense is moving to compel the court to order
23 disclosed is under the possession or control of the State. The remaining victims and civilian
24
25

1 witnesses, even if they have previously cooperated or are presently cooperating in the case with
2 PCSO and/or PCAO, are not under the State's control. Consequently, unless the defense can
3 demonstrate that it has a "substantial need" for the material or information, this court should not
4 compel the State to procure the information on behalf of the Defendant.

5 **2) The defense has not demonstrated a "substantial need" for the social media**
6 **account information.**

7 In its discretion, a trial court may order any person to make material or information
8 available to a criminal defendant upon a written showing by the defendant that he has a
9 **substantial need** in the preparation of his case under circumstances when he is "unable without
10 undue hardship to obtain the substantial equivalent by other means." Arizona Criminal
11 Procedure Rule 15.1(g) (emphasis added). The Defendant must demonstrate his "substantial
12 need" for such material or information "based on materiality and facts, not conclusions, surmise,
13 and conjecture; 'blanket request(s) will not be granted, merely in hope that something will turn
14 up.'" *State v. Fields*, 196 Ariz. 580, 583, 2 P.3d 670, 673 (App. 1999) (quoting *Bettlyoun v.*
15 *State*, 562 P.2d 862, 866 (Okla. Crim. App. 1977)). In other words, "mere conjecture" that
16 undisclosed information may possibly reveal information potentially useful to the defense in
17 cross-examination of victims or other State witnesses is "insufficient to require disclosure." *Id.*
18 (citing *State v. Hatton*, 116 Ariz. 142, 568 P.2d 1040 (1977)).
19


20 In this case, the defense's motion to compel is based entirely on speculation rather than
21 materiality and facts. The defense quotes at length from a February 2014 Facebook conversation
22 between several individuals, including victims TS, MR, and PR. The defense characterizes this
23 conversation as a plot between the participants to take revenge against the Defendant. The
24 defense also rehashes the Facebook records from victim CB wherein she apparently continued to
25 express her love and affection for the Defendant after his alleged sexual assault against her.

1 Finally, the defense once again relies on the independent investigation by Austin Schack to
2 suggest that the disclosures by all the victims must have somehow been "contaminated."

3 The glaring omission from the defense's motion is any material or factual justification for
4 his substantial need for the Facebook, Instagram, or other social media account information for
5 victims HJ, LP, CM, SB, RH, or JB. The defense has not included a single piece of evidence
6 that would indicate there is any sort of exculpatory material contained within any social media
7 accounts for these victims. Without such factual support, the Defendant's motion must fail
8 because he has not demonstrated a "substantial need" for such information or material.

9 Submitted this 2nd day of April, 2015.

11
12 M. LANDO VOYLES
13 PINAL COUNTY ATTORNEY

14 BY 
15 Shawn Jensvold
Deputy County Attorney

16 Copy of the foregoing mailed/
17 delivered this 2nd day of
April, 2015, to:

18 BY _____
19 Shawn Jensvold
Deputy County Attorney

20
21 ORIGINAL of the foregoing filed
this 2nd day of April, 2015 with:

22 The Clerk of Superior Court
23 Pinal County Courthouse
24 Florence, Arizona 85132

25 COPIES of the foregoing delivered/
mailed this 2nd day of April, 2015 to:

1 COPIES of the foregoing delivered/
mailed this 2nd day of April, 201~~4~~⁵ to:

2 Judge Kevin White
3 Pinal County Superior Court

4 Michael Alarid, III
Attorney for Defendant

5 by: CS

6 SAJ:sb