

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

Susie Charbel
Deputy County Attorney
Bar ID #: 018270
MCAO Firm #: 00032000
301 West Jefferson, Suite 400
Phoenix, AZ 85003
Telephone: 602 506-5780
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
vs.)	
)	
)	
JOHN CHESTER STUART,)	NO. CR 2008-006332-001-DT
)	
Defendant.)	RESPONSE TO DEFENDANT'S
)	MOTION TO DISMISS
)	
)	(Assigned to the Honorable
)	Judge Paul McMurdie, Saj-04)
_____)	

The State, by and through undersigned counsel, requests this Court to deny DEFENDANT'S MOTION TO DISMISS. The reasons for the State's request are outlined in the attached memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Defendant is charged with one count of Presentment of False Instrument for Filing, a class 6 felony. The facts are that on

March 26, 2008, the defendant filed in the Maricopa County Superior Court, a stack of documents, containing, among others, an IRS form 1040-V and an IRS form 1099-OID. According to his Motion, for the purpose of this Motion, the defendant is not contesting these facts.

II. LAW

In his Motion, the defendant explains the "purpose of 39-161." He explains that the purpose behind the law is so that the public may and must act with the presumption that the instrument is genuine... It is precisely because the general public relies on filed instruments to be genuine, that the defendant's filing of the 1099-OID and 1040-V forms in this case is a crime. It is the State's contention that these particular 1099-OID and 1040-V are not genuine, but contain false information. On page 3 of his own Motion, the defendant explains that falsely completing an instrument means to transform written instrument into a complete one by adding, inserting,...without the permission of anyone entitled to grant it... That is exactly what happened in this case. The defendant filed a written instrument he knew contained false information, containing an alleged financial relationship between himself and two other individuals, such a relationship not having existed and without the permission and even the knowledge of the other parties named in the false

documents.

III. ARGUMENT

The Defendant's argument is that these IRS forms are part of legitimate unaltered Motion, Memorandum and Attachment. That argument fails because the Memorandum and the Petition, which he now calls a Motion, do not refer to the IRS forms as exhibits, are not included in his Motion/Petition as part of his arguments, and unlike his assertion, the defendant did in fact falsely complete the IRS forms. The IRS 1099-OID form itself, prepared and filed by Mr. Stuart and his cohort Shawn Talbot Rice, contain the defendant's claim to have settled the Second Degree Murder case he is awaiting trial for in exchange for a sum of money listed on the 1099-OID form. The defendant knows that to be false as he is still awaiting trial on the Murder charge.

As much as defense counsel would like for it to be otherwise, case law simply does not support his position. "The term instrument is not necessarily confined to any definite class of legal documents." *State v. Lewis*, 32 Ariz. 182, 256 P.1048 (1927). So yes, even a pleading, petition, or memorandum of law, if containing false information and filed may be actionable. The defendant cannot use the law as both sword and shield, to file whatever false instruments he chooses simply by stapling them to a petition or a memorandum. The defendant is not entitled to file

false 1099-OID forms, containing unsupported allegations of a financial relationship between himself, Mr. Andrew Thomas, and Mr. Timothy Ryan, allegations they have both denied and then claim that the falsely completed forms are simply exhibits.

Defense also argues that the State could only have filed this charge if the defendant had removed a document from the record, altered it, and re-filed it. That argument does not pass muster. In *State v. Edgar*, 124 Ariz. 472, 605 P.2d 450 (1979), the defendant filled out a mortgage application with false information and although he tried to argue, as defense attempts here, that there is a difference between a false instrument and an instrument containing false information. The Court in *Edgar* found that the difference applies only to the crime of forgery. Since a filed mortgage application can be the basis for a filing a false instrument charge, so can any instrument containing false information filed in a public office.

IV. CONCLUSION

Based on the foregoing, the State respectfully asks the Court to deny the defendant's Motion and allow the matter to proceed to trial.

SUBMITTED this 12, day of June, 2008.

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

By /s/ Susie Charbel
/s/ Susie Charbel
Deputy County Attorney

Copy of the foregoing
mailed\delivered this
12 day of June, 2008 to:

The Honorable Paul McMurdie
Judge of the Superior Court

Jeremy Geigle
40 N. Center, Suite 200
Mesa, Arizona 85201
Attorney for Defendant

BY /s/ Susie Charbel
/s/ Susie Charbel
Deputy County Attorney