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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 |
| |) | 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.

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 since these IRS forms cannot be filed in this Court, then he did nothing wrong and so he asks that the Court dismiss the case. However, the Filing False Documents statute does include things that could be filed In federal court, which according to the Defendant's own expert, Can be filed in federal court.

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 18th day of September, 2008.

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

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

Copy of the foregoing
mailed\delivered this
18th day of September, 2008 to:

The Honorable Paul McMurdie, Saj-04
Judge of the Superior Court

Jeremy Geigle
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Mesa, Arizona 85201
Attorney for Defendant

BY /s/ _____

/s/ Susie Charbel
Deputy County Attorney