

STATE'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER ORDER GRANTING STATE'S MOTION TO COMPEL DISCLOSURE OF PHYSICAL EVIDENCE

The State properly requested a sample of the defendant's blood under Rule 15.2(a)(6), Ariz. R. Crim. P.

The State of Arizona, by and through undersigned counsel, in response to the defendant's Motion to Reconsider Order Granting State's Motion to Compel Disclosure of Physical Evidence, requests that this Court deny the motion for the following reasons:

1. The State's request for a sample of the defendant's blood is relevant. During a search of co-defendant Greenham's apartment, a glove with human blood was recovered. Blood tests are needed to determine whose blood may be on the glove.

2. Rule 15.2(a)(6), Ariz. R. Crim. P., specifically allows the State to obtain a sample of the defendant's blood. The United States Supreme Court has held that the taking of blood does not violate a defendant's Fifth Amendment rights because blood is nontestimonial evidence. *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 908 (1966). In Arizona, in the context of DUI prosecutions, if a defendant refuses to submit to giving a blood, breath, or urine sample, the State may properly comment on the defendant's refusal without violating the defendant's Fifth Amendment rights. See *Campbell v. Superior Court*, 106 Ariz. 542, 549, 479 P. 2d 685, 692 (1971). In *State v. Curiel*, 130 Ariz. 176, 634 P.2d 988 (App. 1981), the defendants were arrested for possession of heroin and the arresting officers noted track marks on their arms indicating narcotics use. The officers asked the defendants if they would give blood or urine samples and they refused. The Court of Appeals held that the prosecutor could properly comment on their refusal to submit to blood samples. *Id.* at 182, 634 P.2d at 994.

3. Taking blood from the defendant pursuant to a court order is not intrusive, nor does it violate a defendant's Fourth Amendment rights. *State v. Wedding*, 171 Ariz. 399, 407, 831 P.2d 398, 406 (1992).

Therefore, since defendant has not shown good cause as required pursuant to Rule 16.1(d), his motion should be denied.