

Stephen Frank Karban
Booking #P117874
4th Avenue Jail
Defendant Pro Per

FEB 19 2008

I.L.S.
FILED

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

Plaintiff,

v.

STEPHEN FRANK KARBAN,

Defendant.

No. CR 2005-011629-001 DT
DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE TESTIMONY OF DETECTIVE MOMBORG;
RE: STATE'S FAILURE TO DISCLOSE PROMPTLY
(Honorable Raymond P. Lee)

THE DEFENDANT, STEPHEN FRANK KARBAN, BY SELF REPRESENTATION, REQUESTS THIS COURT PRECLUDE THE TESTIMONY OF DETECTIVE MOMBORG, DUE TO THE STATE FAILING TO DISCLOSE THE WITNESS IN A TIMELY MANNER.

FACTS:

THE STATE'S PRE-TRIAL STATEMENT FILED ON FEBRUARY 12TH, 2008, DISCLOSES A SURPRISE NEW WITNESS, DETECTIVE MOMBORG, OF THE KAUKAUNA, WISCONSIN POLICE DEPARTMENT. IN NEITHER OF THE STATE'S TWO PRIOR DISCOVERY DISCLOSURES, DATED NOVEMBER 18TH, 2005 AND MARCH 9TH, 2007 DOES THE STATE LIST DETECTIVE MOMBORG AS A WITNESS IN THEIR CASE-IN-CHIEF, OR AS A REBUTILE WITNESS.

LAW AND ARGUMENT:

RULE 15.1(B)(1) OF THE ARIZONA RULES OF CRIMINAL PROCEDURE, REQUIRES THE STATE TO PROVIDE: "NAMES AND ADDRESSES OF ALL PERSONS WHOM THE PROSECUTOR INTENDS TO CALL AS A WITNESS IN THE CASE-IN-CHIEF TOGETHER WITH THEIR RELEVANT WRITTEN OR RECORDED STATEMENTS."

RULE 15.1(C)(1) SETS THE TIME FOR DISCLOSURE NOT LATER THAN 30 DAYS AFTER ARRAIGNMENT.

RULE 15.6(A) WHICH ADDRESSES CONTINUING DUTY TO DISCLOSE SPECIFICALLY STATES: "THE DUTIES PRESCRIBED IN THIS RULE SHALL BE CONTINUING DUTIES AND EACH PARTY SHALL MAKE ADDITIONAL DISCLOSURE, SEASONABLY, WHENEVER NEW OR DIFFERENT INFORMATION SUBJECT TO DISCLOSURE IS DISCOVERED."

THE STATE, JUST TWENTY-NINE (29) DAYS PRIOR TO TRIAL, CHOOSES TO ADD THIS SURPRISE WITNESS IN WHICH DEFENDANT KARBAN HAS NOT HAD THE OPPORTUNITY TO INTERVIEW. THE STATE IS AWARE DEFENDANT KARBAN IS INCARCERATED AND HAS RESTRICTED ABILITY TO INTERVIEW A WITNESS. DEFENDANT KARBAN REMINDS THIS COURT OF THE DIFFICULTY TO SIMPLY INTERVIEW THE STATE'S LOCAL WITNESS, MRS DUTTON. ALL INTERVIEWS CONDUCTED BY DEFENSE, REQUIRE PREPARATION TIME WITH THE DEFENDANT'S INVESTIGATOR, LEE DAMMER, TO PREPARE MR DAMMER TO THEN CONDUCT THE ACTUAL INTERVIEW OF THE WITNESS, AROUND THE STATE'S SCHEDULE. THOU, DEFENDANT KARBAN MUST WAIT UNTIL THE INTERVIEW IS TRANSCRIBED.

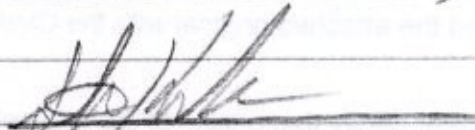
DETECTIVE MOMBORG HAS NEVER TESTIFIED REGARDING THIS CASE, IN EITHER OF DEFENDANT KARBAN'S TWO PRIOR TRIALS. IN OCTOBER OF 2007, THE STATE'S ATTORNEY TRAVELED TO WISCONSIN AND CONDUCTED INTERVIEWS WITH WISCONSIN POLICE WHO INVESTIGATED THIS CASE. RATHER THAN PROPERLY AND PROMPTLY DISCLOSE THIS NEW WITNESS, THE STATE CHOSE TO WAIT FOUR(4) ADDITIONAL MONTHS TO DISCLOSE DETECTIVE MOMBORG AS A WITNESS.

CONCLUSION:

THEREFORE, BECAUSE THE STATE WILLFULLY FAILED TO DISCLOSE THIS WITNESS, DEFENDANT KARBAN REQUESTS THIS HONORABLE COURT PRECLUDE DETECTIVE MOMBORG'S TESTIMONY AS ALLOWED IN RULE 15.7(A)(1). FAILURE TO PRECLUDE THIS WITNESS

WOULD BE PRESUDICIAL TO THE DEFENSE, AND SHOW FAVORITISM TO THE STATE, BY ALLOWING THE STATE TO FUNCTION OUTSIDE THE GUIDELINES OF THE LAW.

RESPECTFULLY SUBMITTED,



STEPHEN FRANK KARSAN

PRO-TER REPRESENTATION

DATED: 2-19-08

COPY MAILED/ DELIVERED

2-19-08 TO:

HONORABLE JUDGE LEE

JUDGE OF THE SUPERIOR COURT

RACHEL PAIPPS-KNAS

DEPUTY COUNTY ATTORNEY

ELIAN RUMBERG

OFFICE OF LEGAL ADVOCATE

**MARICOPA COUNTY SHERIFF'S OFFICE
JOSEPH M. ARPAIO, SHERIFF**

CERTIFICATION

I hereby certify that on this date 2/19/2008

I filed the attached original with the Clerk of the Superior Court, Maricopa County, State of Arizona.

I further certify that copies of the original have been forwarded to:

Judge/Comm. Lee Superior Court, Maricopa County, State of Arizona.

County Attorney, Maricopa County, State of Arizona. R. Phipps-Yonas

Public Defender, Maricopa County, State of Arizona. _____

Attorney General Office _____

Advisory Counsel _____

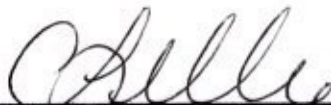
Probation Officer _____

Adult Probation Department, Maricopa County, State of Arizona. _____

Legal Defender _____

Legal Advocate E. Romberg

Attorney _____



INMATE LEGAL SERVICES
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