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7 Attorney for Defendant

8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE [Redacted]**

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12 STATE OF ARIZONA,
13 Plaintiff,
14 vs.
15 [Redacted],
16 Defendant

Case No. : CR20053177

MOTION FOR WILLITS INSTRUCTION

(Honorable [Redacted])

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19 Defendant [Redacted], by and through undersigned counsel, and
20 pursuant to Rule 16.1(b), Ariz. R. Crim. P., requests that the Court give the jury a Willits
21 Instruction concerning the State's failure to conduct a rape kit on the alleged victim.

22 State v. Willits, 96 Ariz. 184, 393 P.2d 274 (1964) permits the jury to infer that
23 missing evidence would have been exculpatory. In this alleged sexual assault case, the
24 State contends Defendant had sexual relations with the alleged victim without consent.
25 However, the State did not conduct a rape kit or rape examination of the victim.
26 Because an issue may be whether or not Defendant actually had sexual intercourse

1 with the alleged victim, the State should have conducted a rape examination. Its failure
2 to procure evidence which might have been exculpatory to Defendant is prejudicial.
3 Therefore, the jury should be given a Willits Instruction.

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RESPECTFULLY SUBMITTED [REDACTED]

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LAWRENCE S. KOPLOW
ANGELO PATANE
Attorneys for Defendant

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Original of the [REDACTED]
[REDACTED] with:

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