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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	No. 2 CA-SA 2011-0038
)	
Petitioner,)	Department A
vs.)	
)	Pima County Superior Court
HON. CHRISTOPHER BROWNING,)	Nos. CR20092122
JUDGE OF THE PIMA COUNTY)	
SUPERIOR COURT OF THE STATE)	APPENDIX TO PETITION
OF ARIZONA, IN AND FOR THE)	FOR SPECIAL ACTION
COUNTY OF PIMA,)	
)	
Respondent,)	
)	
and)	
)	
ARTURO MARTIN FLORES,)	
)	
Real Party in Interest.)	
)	
)	

¶1 The State of Arizona submits its Appendix to its Petition for Special Action,

filed today.

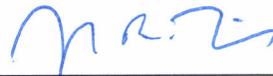
Exhibit A: Notice of Intent re: Witness Testimony

Exhibit B: Response to Notice

Exhibit C: Reply to Response

RESPECTFULLY SUBMITTED this 29th day of April, 2011.

BARBARA LAWALL
PIMA COUNTY ATTORNEY



JACOB R. LINES
Deputy County Attorney

One copy mailed and hand-delivered to:

Hon. Christopher Browning
Judge of the Superior Court
110 W. Congress
Tucson, AZ 85701

Joel Feinman, Esq.
33 N. Stone, 21st Floor
Tucson , AZ 85701
Attorney for Defendant

Exhibit A

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FILED
PATRICIA A. NOLAN
CLERK, SUPERIOR COURT

11 APR 19 PM 2: 19

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

L. SHAFER, DEPUTY

3 THE STATE OF ARIZONA,

4 Plaintiff,

5 vs.

6 ARTURO FLORES,

7 Defendant.

NOTICE OF INTENT RE: WITNESS
TESTIMONY

HON. CHRISTOPHER BROWNING,
DIVISION 27

CR-20092122-001

8 COMES NOW the State of Arizona, by and through the Pima County Attorney, BARBARA
9 LAWALL, and her Deputy, JENNIFER DENT, and hereby notifies the Court that it intends to elicit
10 testimony of witnesses with personal knowledge of the Defendant that they recognizes Defendant in the
11 surveillance video.

12 Ariz. R. Evid. 701 states that a lay witness can testify to those opinions or inferences which are
13 rationally based on the perception of the witness and helpful to the determination of a fact in issue. The
14 identity of the shooter in this case is a fact in issue. The State has disclosed and plans to call witnesses who
15 knew Defendant at the time of the murder, and recognized him in the video shown on the news. The State
16 also plans to call witnesses who recognized the shooter in the video as someone they had seen earlier that
17 week with an Audi like the one shown in the video. This knowledge is helpful because the jurors did not
18 see or know the Defendant two years ago when the murder occurred. Additionally, the witnesses have a
19 broader knowledge of Defendant than the jury will be able to see in Court. The witnesses identification of
20 Defendant may be based on his appearance coupled with the way he moves, the type of clothes he wears, the
21 way he wears his clothes, or other body language characteristics. Because of their familiarity with
22 Defendant, these witnesses are in a better position to identify Defendant in the video than the jurors. Such
23 testimony is admissible under Ariz. R. Evid. 701. Additionally, the probative value outweighs any danger

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1 of **unfair** prejudice under Ariz. R. Evid. 403 (emphasis added). The proposed testimony is probative in that
2 it helps the jury identify the person who committed the crime. There is no prejudice in allowing the
3 testimony. "Unfair prejudice" means undue tendency to suggest decision on improper basis, such as emotion,
4 sympathy, or horror. *State v. Schurz*, 176 Ariz. 46, 859 P.2d 156 (1993). Whether the jury believes that
5 Defendant is in fact, the person shown in the video, is a decision they may make based on a proper evaluation
6 of the witness' basis for opinion, not improperly based on emotion, sympathy or horror. The testimony is
7 not unfairly prejudicial.

8 The Arizona Supreme Court has held that testimony by an acquaintance of a defendant, identifying
9 the defendant as the person depicted in the surveillance videotape pictures taken during a robbery, did not
10 improperly allow witnesses to testify as to the ultimate issue of defendant's guilt. *State v. King*, 180 Ariz.
11 268; 883 P.2d 1024 (1994). In *King*, the defendant and an accomplice robbed a convenience store in
12 Phoenix. *Id.* at 1026. The robbery was caught on video camera and the videotape was submitted into
13 evidence. *Id.* Later that night, a witness saw the defendant throw a plastic bag into a dumpster. *Id.* at 1027.
14 This witness knew the defendant, as the defendant was a childhood friend of her boyfriend and she had
15 frequently seen the defendant. *Id.* When the witness later saw the surveillance picture on television, she
16 recognized the perpetrator as the defendant, and she called the police. *Id.* The Court ruled that the witness'
17 testimony that the defendant was the person in the photograph from the bank was admissible under Ariz. R.
18 Evid 701. *Id.* at 1036. Additionally, the Court held that the witnesses testimony was admissible even though
19 the jurors had the photographs before them and were able to make their own comparison. *Id.* The Court
20 reasoned that unlike the jurors, the witness knew the defendant at the time of the offense and the witness'
21 opinion was based on her perceptions of the defendant. *Id.* The Court also determined that the witness'
22 opinions assisted the jury in determining a fact in issue-the identity of the person on the videotape. *Id.*
23 Finally, the Court found that the admission of this testimony was not contrary to *Fuenning v. Superior Court*,
24 139 Ariz. 590, 680 P.2d 121 (1984). Specifically, the Court said that "although identification testimony

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1 embraces an issue of fact-the identity of the perpetrator, and perhaps evidence of guilt-the persons providing
2 the identifications are not providing opinions of defendant's guilt or innocence or telling the jury how it
3 should decide the case." *King* at 1036.

4 The Ninth Circuit has similarly ruled that such opinion testimony is admissible under Fed. R. Evid.
5 701, which is identical to Ariz. R. Evid. 701. The Ninth Circuit found testimony by the defendant's cousin
6 and his parole officer that the person depicted in bank surveillance photographs was the defendant was
7 admissible. *United States v. Langford*, 802 F.2d 1176 (9th Cir., 1986). The Court also addressed whether
8 such evidence was admissible under Fed. R. Evid. 403 and determined that the probative value outweighed
9 any danger of unfair prejudice. *Id.* at 1179. Fed. R. Evid. 403 is identical to Ariz. R. Evid. 403.

10 For the reasons stated above, the State believes that the testimony it intends to elicit is permissible
11 and asks that it be permitted to ask witnesses about whether they recognized the person in the surveillance
12 video, and who they recognized that person to be.

13 RESPECTFULLY submitted this 19th day of April, 2011.

14 BARBARA LAWALL
15 PIMA COUNTY ATTORNEY


16 _____
17 JENNIFER DENT #66101
18 Deputy County Attorney
19 Jennifer.dent@pcao.pima.gov
20

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State v. Flores
CR-20092122-001

1 **Original of the foregoing filed**
2 **with the Clerk of the Court**
3 **this 19th day of April, 2011.**

4 **Copy foregoing delivered this**
5 **19th day of April, 2011, to:**

6 Honorable Christopher Browning,
7 Division 27

8 **Copy foregoing mailed/delivered this**
9 **19th day of April, 2011, to:**

10 Dean Brault
11 Public Defender
12 Tucson, AZ 85701
13 Attorney for Defendant

Exhibit B

RM

1 **Robert J. Hirsh**
2 **Pima County Public Defender**
3 33 N. Stone Ave., 21st Floor, Tucson, Arizona 85701
4 TEL: (520) 243-6800 FAX: (520) 243-6900
5 **DEAN BRAULT, PCC#65190, SB#017152**
6 *Pd.MinuteEntries@pima.gov*
7 *Attorney for Arturo Martin Flores*

FILED
11 APR 25 PM 3:03
CLERK OF SUPERIOR COURT
BY [Signature]

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF PIMA

10 THE STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 ARTURO MARTIN FLORES,

14 Defendant

) Case No.: CR-20092122-001

) **RESPONSE TO THE STATE'S NOTICE
OF INTENT RE: WITNESS TESTIMONY**

) The Honorable Christopher Browning
Division 27

15 COMES NOW the Defendant, ARTURO MARTIN FLORES, by and through his
16 undersigned attorney, the Pima County Public Defender, and responds to the State's "Notice of
17 Intent Re: Witness Testimony," filed on April 19, 2011. The testimony that the State is noticing
18 should be precluded from evidence, as it will not be helpful to the jury in determining whether
19 Mr. Flores is the person depicted in a surveillance videotape. On the contrary, it is improper
20 opinion testimony solely concerned with the ultimate issue in this case. This Response is made
21 pursuant to Ariz. R. Evid. 401, 402, 403, and 704, and relevant case law, and is supported by the
22 following memorandum of points and authorities.
23

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. Statement of facts.**

26 The State alleges that on April 20, 2009, Mr. Martin shot Julian Garcia, and shot and
27 killed Francisco Antonio Calvillo, at the Mission Valley Car Wash at 2630 West Valencia Road
28 in Tucson. The shooting was captured by a video surveillance camera installed at the car wash. It

1 is the Defense's understanding that the State intends to introduce into evidence at trial images
2 from this surveillance camera, and elicit from Mr. Flores' acquaintances their opinion that Mr.
3 Flores is the person shooting Mr. Garcia and Mr. Calvillo in the videotape. The State argues that
4 this testimony is admissible lay person opinion evidence under Ariz. R. Evid. Rule 701, and that
5 the Arizona Supreme Court's decision in *State v. King*, 180 Ariz. 268, 883 P.2d 1024 (1994),
6 allows for this testimony to be presented to the jury at trial.
7

8 **II. Statement of law and argument.**

- 9
10 a. Arturo Flores' appearance has not changed substantially since his arrest on May
11 27, 2009. Accordingly, *State v. King* is distinguishable from this case, and does
12 not allow witnesses to offer their opinion that the person in the surveillance video
13 is Mr. Flores.

14 In its Notice, the State cited *State v. King* to support its contention that it is allowed to
15 present to the jury testimony by a defendant's acquaintances that the defendant is the same
16 person as one depicted in a videotape. This is a misreading of the *King* decision.

17 In *King*, the defendant was accused of committing murder while robbing a Short Stop
18 convenience market in Phoenix. The robbery was captured on videotape by the market's
19 surveillance system, and admitted into evidence at trial. *King*, 180 Ariz. At 271, 883 P.2d at
20 1027. Also at trial, the State called as a witness the defendant's friend, Michael Jones, who had
21 been with the defendant on the night of the robbery. The prosecutor showed Mr. Jones a still
22 image taken from the surveillance camera tapes, and Mr. Jones testified that the person in that
23 image "looks a lot like" the defendant, and that "it seems like" the defendant." *Id.* at 272, 883
24 P.2d at 1028. On appeal, the Supreme Court held that this testimony was proper, and admissible
25 under Ariz. R. Evid. Rule 701. *Id.* at 280, 883 P.2d at 1036.
26

27 ***

28 ***

1 “Although the jurors had the pictures before them and could make their own comparison
2 between the person depicted in the pictures and defendant, they, unlike the state’s
3 witnesses, did not know defendant at the time the murders occurred. **And, because**
4 **defendant changed his appearance between the time of the crime and the trial,**
5 **testimony from those who knew defendant at the time of the crime is particularly**
6 **relevant.** Because the state’s witnesses knew defendant at the time of the murders, their
7 opinions that the person depicted in the picture was or was not defendant was based on
8 their perceptions.” *Id.* (emphasis added)

9 In its Notice, the State did not cite the language emphasized above, nor note the fact that
10 the defendant’s changed appearance between the time of the crime and the time of the trial was
11 “particularly relevant” to the Court’s decision in *King*. Similarly, while the State’s Response
12 cited *U.S. V. Langford*, 802 F.2d 1176 (9th Cir. 1986), to support its argument that the opinion
13 testimony at issue in this case is admissible, the State did not cite the *Langford* Court’s statement
14 that,

15 “Such testimony is particularly valuable where, as in the present case, the lay witnesses
16 are able to make the challenged identifications based on their familiarity with
17 **characteristics of the defendant not immediately observable by the jury at trial.**”
18 *Langford*, 802 F.2d at 1179. (emphasis added)

19 In this case, unlike in *King*, Mr. Flores’ appearance has not substantially changed since
20 his arrest on May 27, 2009. Additionally, unlike in *Langford*, the State has presented no evidence
21 that the witnesses it intends to call will identify Mr. Flores based on their familiarity with
22 “unique characteristics” of his that will not be immediately observable to the jurors themselves.
23 In the absence of both of these considerations, lay witness testimony that Mr. Flores is the person
24 depicted in the car wash surveillance tape is not proper. On the contrary, this testimony is
25 nothing more than an improper opinion on the ultimate issue. Witness identification of Mr.
26 Flores from the surveillance tape is not “helpful” to a determination of a fact at issue in this case.
27 Rather the question of who is the person in the videotape shooting Julian Garcia and Francisco
28 Antonio Calvillo on April 20, 2009, is the **ultimate** issue; it is what the law mandates that the

1 jury, and only the jury, can decide. Therefore the State's plan to elicit this ultimate issue opinion
2 from witnesses is barred by both the Arizona Rules of Evidence,¹ and the Arizona Supreme
3 Court.²
4

- 5 b. Other jurisdictions have concurred with *King*, and held that lay witnesses should
6 only be allowed to offer identification testimony if the jury is unable to make an
7 identification on its own.

8 A line of Washington state cases has held that the testimony a defendant's friends and
9 acquaintances regarding identification is only proper if there is some reason that the jury cannot
10 make a valid comparison between the defendant and the video or picture. *See State v. Jamison*,
11 93 Wash.2d 794, 613 P.2d 776 (Wash. 1980); *see also State v. Collins*, 216 P.3d 463,
12 (Wash.App., 2009).

13 The *Jamison* Court held that it was solely the province of the jury to decide if the
14 defendant was the same individual as the person depicted in surveillance photographs, unless lay
15 witness testimony on this issue could help the jurors understand "matters that are not within their
16 common experience." *Jamison*, 93 Wash.2d at 799, 613 P.2d at 779. The Court determined that
17 such witness testimony is not helpful to the jury, and therefore not admissible, when there is no
18 evidence that: 1) the proffered pictures didn't clearly or accurately depict the perpetrator, or 2)
19 that the defendant's appearance had changed prior to trial, or 3) that the defendant had certain
20 "peculiarities" that could not be not readily compared to a photograph of the perpetrator under
21 trial conditions. *Id.*
22
23
24
25

26
27 ¹ "Witnesses are not permitted as experts on how juries should decide cases." Ariz. R. Evid. 704
comment.

28 ² *Fuenning v. Superior Court*, 139 Ariz. 590, 605, 680 P.2d 121, 136 (1983) ("In our view, ordinarily it
would be neither necessary nor advisable to ask for a witness' opinion of whether the defendant
committed the crime with which he was charged.")

1 In the present case, the opinion of the State's witnesses that Mr. Flores is the same person
2 depicted in the car wash surveillance video would not be helpful to the jury. The images on the
3 videotape are clear enough that the jury can discern for themselves whether or not the person in
4 them is Mr. Flores. Mr. Flores has not changed his appearance since his arrest, and there is no
5 evidence that he has any "peculiarities," or unique characteristics that the jury could not readily
6 compare to the person in the videotape footage. It is therefore unnecessary for witnesses who
7 knew Mr. Flores before his arrest to offer the jury their opinion testimony. This is nothing more
8 than ultimate issue evidence, since the jury's determination of Mr. Flores' guilt or innocence will
9 rise or fall depending on if they believe he is the man in the videotape. Any testimony in this
10 regard is prohibited by the Arizona Rules of Evidence as irrelevant opinion evidence.
11
12

13 c. Allowing the State to introduce ultimate issue opinion that Mr. Flores is the
14 individual depicted in the surveillance tape would be substantially more
15 prejudicial than probative, and thus bared by Ariz. R. Evid. 403.

16 In addition to being inadmissible ultimate issue evidence, the testimony that the State has
17 noticed is properly excluded as substantially more prejudicial than probative. Arizona Rule of
18 Evidence 403 holds that

19 "Although relevant, evidence may be excluded if its probative value is substantially outweighed
20 by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by
21 considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

22 According to Arizona courts, "Unfair prejudice results if the evidence has an undue
23 tendency to suggest decision on an improper basis, such as emotion, sympathy, or horror." *State*
24 *v. Lee*, 189 Ariz. 590, 599-600, 944 P.2d 1204, 1213-1214 (Ariz. 1997); *quoting State v. Mott*,
25 187 Ariz. 536, 545-546, 931 P.2d 1046, 1055-1056 (Ariz. 1997).

26 In this case, Mr. Flores will suffer unfair prejudice if the State's witnesses are allowed to
27 opine that he is the person seen on video shooting Julian Garcia and Francisco Antonio Calvillo.
28

1 This testimony will encourage the jury to judge Mr. Flores based solely on lay witness opinion.
2 No evidence will be introduced proving that these witnesses will be better then the jury at
3 comparing Mr. Flores to the person on the videotape, and determining if they are one and the
4 same man. On the contrary, if this evidence is introduced, the jury will be encouraged to find Mr.
5 Flores guilty based on the opinion of the States' witnesses that he is guilty. This is an irrational
6 and prejudicial basis for weighing evidence and deciding guilt or innocence, and as such is one
7 of the occurrences that Ariz. R. Evid. 403 was intended to guard against.
8

9
10 **III. Conclusion.**

11 For the foregoing reasons, Mr. Flores moves this Court to preclude the State from
12 eliciting testimony from its witnesses that they recognize Mr. Flores as the person depicted in the
13 surveillance video take from the Mission Valley Car Wash on April 20, 2009.

14 RESPECTFULLY SUBMITTED this 25th day of April, 2011.

15 ROBERT HIRSCH
16 PIMA COUNTY PUBLIC DEFENDER

17
18 By 
19 DEAN BRAULT
20 Attorney for Arturo Martin Flores

21 Copies of the foregoing delivered/
22 faxed/mailed on April 25, 2011, to:

23 The Honorable Christopher Browning
24 Division 27
25 110 W. Congress Street
26 Tucson, AZ 85701

DELIVERED

26 Jennifer Dent
27 Deputy County Attorney
28 32 N. Stone Ave., #1400
Tucson, AZ 85701

DELIVERED

By: 

Exhibit C

Handwritten mark

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FILED
PATRICIA A. NOLAN
CLERK SUPERIOR COURT

11 APR 26 PM 2:46

APR 26 2011

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

L. SHAFER, DEPUTY

THE STATE OF ARIZONA,

Plaintiff,

vs.

ARTURO FLORES,

Defendant.

REPLY TO DEFENDANT'S RESPONSE
TO STATE'S NOTICE OF INTENT RE:
WITNESS TESTIMONY

HON. CHRISTOPHER BROWNING,
DIVISION 27

CR-20092122-001

COMES NOW the State of Arizona, by and through the Pima County Attorney, BARBARA LAWALL, and her Deputy, JENNIFER DENT, and replies to Defendant's Response to State's Notice of Intent Re: Witness Testimony.

**I.
DEFENDANT'S APPEARANCE HAS CHANGED**

Defendant argues that his appearance has not changed substantially since his arrest on May 27, 2009. However, Defendant's appearance has changed. Defendant has gained weight. At a deposition for this case, one of the State's witnesses, Natalie Flores, told Undersigned counsel's legal assistant that Defendant gained weight and looked good. Ms. Flores is one of the witnesses who identified Defendant in the video. Therefore, it is reasonable to believe that the jury will have difficulty determining whether the person in the video is Defendant based on Defendant's obvious weight gain. Defendant's appearance has changed, and the State should be permitted to elicit testimony of people who knew Defendant two years ago that the person in the video is Defendant.

1
2 **II.**
3 **THE JURY MAY BE UNABLE TO MAKE AN IDENTIFICATION ON ITS OWN**
4 **BECAUSE IT DOES NOT HAVE THE COMPREHENSIVE PERCEPTION OF**
5 **DEFENDANT THAT THE WITNESSES POSSESS**

6 Defendant argues that lay witnesses should only be allowed to offer identification testimony
7 if the jury is unable to make an identification on its own. Defendant also contends that the State is
8 not calling the witnesses based on their “familiarity with characteristics of the defendant not
9 immediately observable by the jury.” Defendant is incorrect, and the State should be allowed to
10 elicit identification testimony.

11 Defendant offers Washington case law to support his position. However, Washington case
12 law is not controlling and the Court should make its decision based on Arizona case law.
13 Controlling case law on this issue is *State v. King*, which, contrary to Defendant’s assertion, does
14 not state that lay witnesses should only be allowed to offer identification testimony if the jury is
15 unable to make an identification on its own. The Court in *King* found that, “Although the jurors had
16 the pictures before them and could make their own comparison between the person depicted in the
17 pictures and defendant, they, unlike the state’s witnesses, did not know defendant at the time the
18 murders occurred.” 180 Ariz. 268, 280, 883 P.2d 1024, 1036 (1994). The Court found that the
19 witness opinion was based on the witnesses perceptions, and was admissible under Rule 701,
20 Arizona Rules of Evidence. *Id.*

21 All of the witnesses who the State intends to call to identify Defendant in the video saw the
22 video, not just stills made from the video. In the video, Defendant is running. The witnesses the
23 State intends to call to identify Defendant in the video have seen the way Defendant moves.
Therefore, their perception of Defendant is different from the jury’s perception.

1 In *King*, the Court held that “although identification testimony embraces an issue of fact-the
2 identity of the perpetrator, and perhaps evidence of guilt-**the persons providing the identifications**
3 **are not providing opinions of defendant's guilt or innocence or telling the jury how it should**
4 **decide the case.”** 180 Ariz. 268; 883 P.2d 1024, 1036 (1994)(emphasis added). The Court
5 differentiated the testimony of lay witnesses that the person on the video was Defendant from the
6 testimony elicited in *Fuenning*, stating “The State did not ask the witnesses whether, in their opinion,
7 defendant committed first degree murder. Instead, the state tried to elicit through testimony from
8 individuals who knew defendant at the time the pictures was taken and who had seen him on the
9 night of the murders, whether, in their opinion, the person depicted in the photograph was the
10 defendant.” *Id.* Therefore, Defendant’s contention that allowing such testimony is permitting
11 testimony to the ultimate issue has already been rejected by the Arizona Supreme Court. The State
12 intends to ask witnesses who knew Defendant and had seen Defendant recently whether, in their
13 opinion, the person in the video is Defendant, not whether Defendant committed first degree murder.
14 Such testimony has clearly been determined to be proper under *King*.

15 Furthermore, although Defendant cites case law that defines unfairly prejudicial evidence as
16 evidence based on emotion, sympathy, or horror, Defendant does not explain how allowing the
17 State’s proposed testimony would suggest that the jury make a decision based on emotion, sympathy,
18 or horror. In fact, Defendant does not state how the proposed testimony is prejudicial **at all**, much
19 less state any way that the probative value of the proposed testimony is **substantially** outweighed
20 by the danger of **unfair** prejudice. The State is not seeking to ask the witnesses their opinion as to
21 whether Defendant is guilty of First Degree Murder. The State is seeking to ask the witnesses
22 whether, based on knowing Defendant at the time of the incident and their perception of Defendant,

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1 the person in the video is Defendant. The probative value of this testimony is great, and it is not
2 substantially outweighed by the danger of unfair prejudice. It does not ask that the jury make a
3 decision based on emotion, sympathy, or horror, it merely gives them a piece of evidence to consider
4 when making their decision as to Defendant's guilt.

5 **CONCLUSION:**

6 For the reasons stated above, the State believes that the testimony it intends to elicit is
7 permissible and asks that it be permitted to ask witnesses about whether they recognized the person
8 in the surveillance video, and who they recognized that person to be.

9 RESPECTFULLY submitted this 26 day of April, 2011.

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BARBARA LAWALL
PIMA COUNTY ATTORNEY



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**Original of the foregoing filed
with the Clerk of the Court
this 26 day of April, 2011.**

Dean Brault
Public Defender
Tucson, AZ 85701
Attorney for Defendant

**Copy foregoing delivered this
26 day of April, 2011, to:**

Honorable Christopher Browning,
Division 27

**Copy foregoing mailed/delivered this
26 day of April, 2011, to:**