

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**FEB 16 2011**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA, )

Petitioner, )

v. )

HON. CHARLES S. SABALOS, )  
Judge of the Superior Court of the )  
State of Arizona, in and for the County )  
of Pima, )

Respondent, )

and )

CARL WILLIAM ARRINGTON, )  
ERIC DOUGLAS SCIRA, )  
ERIC VALERIAN REUSCH, )  
GREG ALBERT WRIGHT, )  
JONATHAN LEE ROUSSEAU, )  
MELAVIDA BALOLONG IMATONG, )  
MICHAEL LEE WHEELER, )  
RAQUEL D. ROUSSEAU, and )  
TIMOTHY ELLIS WELLS, )

Real Parties in Interest. )

2 CA-SA 2010-0087  
DEPARTMENT B

DECISION ORDER

SPECIAL ACTION PROCEEDING

Pima County Cause Nos. CR20101896001, CR20101896002, CR20101896003,  
CR20101896004, CR20101896006, CR20101896007, CR20101896008,  
CR20101896010, and CR20101896011

JURISDICTION ACCEPTED; RELIEF DENIED

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¶1 In this special action, petitioner State of Arizona challenges the respondent judge's order entered after a pretrial conference in multiple criminal proceedings requiring the state to prepare and provide to each defendant a document identifying the evidence against that defendant. In certain circumstances it is appropriate for this court to review the propriety of a discovery order by special action because there is "no equally plain, speedy, or adequate" means of obtaining review of such an order by direct appeal. *See P.M. v. Gould*, 212 Ariz. 541, ¶ 12, 136 P.3d 223, 226 (App. 2006), *quoting State v. Brown*, 210 Ariz. 534, ¶ 5, 115 P.3d 128, 131 (App. 2005); *see also* Ariz. R. P. Spec. Actions 1(a); *Green v. Nygaard*, 213 Ariz. 460, ¶ 6, 143 P.3d 393, 395 (App. 2006). Additionally, the state cannot appeal on this ground following a defendant's conviction or acquittal and, consequently, it has no remedy by direct appeal. *See* A.R.S. § 13-4032 (setting forth kinds of orders in criminal cases appealable by state); *State ex rel. Thomas v. Newell*, 221 Ariz. 112, ¶¶ 1, 5, 210 P.3d 1283, 1284, 1285 (App. 2009) (finding state had no remedy by appeal and accepting jurisdiction to review order

requiring state to disclose fingerprint analysis results). We therefore accept jurisdiction of this special action but, for the reasons stated below, we deny relief.

¶2 Multiple defendants have been charged in the underlying criminal proceedings with various drug offenses following an investigation that involved a lengthy wiretap. At a pretrial conference on November 10, 2010, counsel for the various defendants expressed frustration with the quantity and nature of the discovery the state had provided, seeking a ninety-day extension of the next status conference to give them more time to review the disclosure. Stating he believed he was speaking for all counsel, the attorney for real party in interest Eric Scira explained the difficulty he and others had been having in determining which wiretapped conversations related to their respective clients. Other counsel expressed similar difficulties and explained how it was affecting their ability to proceed, including the evaluation of plea offers. The court asked the prosecutor what he had done “to accommodate the alleged problem of getting all the disclosure to them and assisting them in understanding what the evidence may be.” Although the prosecutor described how the materials had been organized, defense counsel maintained that explanation provided little clarity or assistance in the context of the case.

¶3 It was in this context that the respondent judge ordered the state “to prepare a summary of the evidence regarding each defendant and to submit it to each attorney within 30 days of this date.” The prosecutor objected that he did not believe it was his “responsibility” adding, “I don’t think I’m required under the rules of disclosure to do so.” The state then filed a motion for reconsideration, arguing the respondent had

exceeded the scope of his discretionary authority in monitoring discovery, the order violated the provisions of Rule 15.1, Ariz. R. Crim. P., and the respondent was asking the state to prepare and disclose work product, in violation of Rule 15.4(b)(1). The respondent denied the motion. The state then filed this special action petition, essentially reurging the arguments it had presented in the motion for reconsideration.

¶4 We will grant the state relief if the respondent judge made a decision that was arbitrary and capricious or abused his discretion. Ariz. R. P. Spec. Actions 3(c). A trial court abuses its discretion if its decision is “manifestly unreasonable, [based] on untenable grounds or [made] for untenable reasons.” *Williams v. Williams*, 166 Ariz. 260, 265, 801 P.2d 495, 500 (App. 1990). A court also abuses its discretion if it commits legal error, *Potter v. Vanderpool*, 225 Ariz. 495, ¶ 6, 240 P.3d 1257, 1260 (App. 2010); the interpretation of Rule 15 involves a question of law. *See id.*; *see also State v. Roque*, 213 Ariz. 193, ¶ 21, 141 P.3d 368, 380 (2006) (trial court has discretion to determine adequacy of disclosure but determination of scope of discovery required by rule is question of law); *Newell*, 221 Ariz. 112, ¶¶ 12-13, 210 P.3d at 1286.

¶5 We agree with the state that, other than perhaps as provided in Rule 15.1(g), a trial court may not require the state to generate or develop information to disclose to the defense. *See State v. O’Neil*, 172 Ariz. 180, 181, 836 P.2d 393, 394 (App. 1991); *see, e.g., Newell*, 221 Ariz. 112, ¶ 15, 210 P.3d at 1286. Nor can a court require a party to disclose counsel’s work product, except under certain limited circumstances that do not exist here. *See Ariz. R. Crim. P. 15.4(b)(1)*; *see also Ariz. R. Crim. P. 15.1(g)* (giving court discretion to order disclosure of material not otherwise specified in rule

upon showing of “substantial need” and inability to obtain substantial equivalent “without undue hardship”). We agree that, when read literally and without reference to the discussion that was taking place, the respondent’s order arguably appears to require the state to prepare a document that (1) does not yet exist and therefore would involve generating new disclosure information, and (2) would necessarily reflect the state’s opinions or theory of its case as to each defendant and therefore constitute counsel’s work product. But when examined in context, the respondent’s order does neither.

¶6 The respondent’s order was a response to complaints about the unwieldiness of specific material the state had disclosed on a compact disc. The respondent appears to have been trying to ensure that the state had truly complied with Rule 15.1 by producing disclosure materials that were accessible, usable, and understandable. In short, the respondent was merely requiring the state to provide identifying information relating to the evidence already disclosed. Nor is the state being asked to set forth its theory of the case as to each defendant; again, the respondent is requiring the state to identify particular items in a particular manner. Without more, this is not counsel’s work product. *See* Ariz. R. Crim. P. 15.4(b)(1). Moreover, we must assume the trial court knows the law and that its order therefore did not implicitly intend to require that the state disclose its work product or generate new disclosure information for the defense. *See State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994) (trial court presumed to know and follow law).<sup>1</sup>

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<sup>1</sup>Nor do we read the trial court’s order as limiting the scope of those disclosed materials that the state may eventually utilize against each defendant at trial. On the

¶7 In practice, we think the concerns of both parties as to the necessity and the propriety of the order are somewhat exaggerated. Arizona’s rules of disclosure in criminal cases contemplate that defense counsel are generally entitled to conduct interviews of all of the state’s witnesses in the case, including law enforcement officers and detectives. *See* Ariz. R. Crim. P. 15.3(a)(2), (b) (court may order deposition of material witness who refuses to give personal interview). During those interviews, counsel may query the detectives as to how and why each specific item was collected and thereby secure a concrete investigatory context for the items disclosed—even in the absence of any court order requiring the state to organize the material further.<sup>2</sup> And it is likely that any effective defense attorney would conduct a comprehensive review of the entirety of the disclosure—even if voluminous—in order to draw his or her own conclusions as to which items of disclosure are relevant to the case against his or her client. Given the above realities of criminal litigation, we are skeptical that the respondent judge’s order directing the state to organize the material as to each defendant would meaningfully reduce the scope of defense counsel’s own task of independently assessing the evidence. By the same token, we are equally skeptical that the order would require the state to expose any information about its theory of the case that counsel

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record before us, the state has provided comprehensive disclosure as to each defendant. It therefore will have complied with its pretrial disclosure responsibilities to the extent it chooses to marshal any of that disclosed evidence against any defendant at trial.

<sup>2</sup>Indeed, the state observed in its motion for reconsideration that “[m]any Defendants have taken the State up on [its] offer” to meet with the detectives who had been involved in the case “so that they could ask any questions they had relating to the cases against their clients or how to go through the evidence.” Notably, only one of the multiple defendants/real parties in interest has opposed the state’s special action petition.

inevitably would not determine with greater clarity through interviews of the state's witnesses.

¶8 For the foregoing reasons, we conclude that the respondent did not abuse his discretion when he issued a narrow and limited order directing the state to further organize the voluminous disclosure materials here. Therefore, although we have accepted jurisdiction of this special action, for the reasons stated herein, we deny relief.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Judge

Presiding Judge Vásquez and Judge Kelly concurring.