

FILED
JAN 18 2011

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE
DONNA J. GRIMSLEY, PRESIDING JUDGE**

By: Billie Hoover, Judicial Assistant

STATE OF ARIZONA, Plaintiff, vs JOSEPH DOUGLAS ROBERTS, Defendant.	Case No. CR 2010-047 Date: January 18, 2011
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UNDER ADVISEMENT RULING/ORDER

The Court, having taken Defendant's Motion for Review of Preliminary Hearing and Motion to Dismiss under advisement after hearing, hereby makes the following findings and rulings:

The central issue is whether Defendant was denied a substantial procedural right when the Justice of the Peace denied his Motion to Dismiss and whether dismissal is now warranted by the State's actions. Both motions focus on the issue of whether Defendant's 6th Amendment Right to Counsel was violated and whether the violation warrants dismissal. The other portions of the Motion for Review of Preliminary Hearing were withdrawn by counsel.

The Court finds that Defendant's 6th Amendment Rights were violated based on the following facts.

The Defendant is charged with First Degree Murder, a Class One Felony, Conspiracy, a Class One Felony; Theft of a Means of Transportation, a Class Three Felony; Mutilating a Human Body, a Class Four Felony; Concealment of a Dead Body, a Class Five Felony; Tampering with Physical Evidence, a Class Six Felony; Hindering Prosecution, a Class Three Felony; Hindering Prosecution, a Class Three Felony; Hindering Prosecution, a Class Three Felony; Hindering Prosecution, a Class Five Felony and Hindering Prosecution, a Class Five Felony.

The intrusion into the attorney-client relationship began when Brian Hounshell, an investigator from the Apache County Attorney's Office who is not a certified police officer, decided to meet with the Defendant on February 4, 2010, the day before the Defendant's preliminary hearing, to discuss the first degree murder charges. Mr. Hounshell is former Sheriff of Apache County with a long history of law enforcement

experience. Mr. Hounshell asked Chief Deputy County Attorney Brannan, as well as Apache County Attorney Whiting, if he could go to the jail and speak to the Defendant and both prosecutors indicated that he could. Mr. Hounshell knew that the Defendant had an appointed lawyer and the prosecutors who authorized the visit knew that the Defendant had a lawyer. None of the three made any attempt to contact or notify the Defendant's lawyer about their intent to speak with the Defendant.

Mr. Hounshell, accompanied by Investigator Jaramillo, also of the Apache County Attorney's Office, went to the Apache County Jail and had the Defendant removed from his cell and brought to the "attorney-client room" in the jail. Mr. Hounshell began by saying that he was there, ". . . to explain a couple of things about court." Hounshell's statements included "If we go to preliminary hearing tomorrow, it will be a tougher road for you. What I mean by that is, right now they've made some offers to you about doing twenty-five years, not getting a life sentence. This could be possibly handed down by a judge if you are convicted. That we are not going to seek a death penalty against you." This reference to the death penalty was one of six references to the death penalty made by Mr. Hounshell. Additionally, the offer previously tendered to the defense was substantially different than Mr. Hounshell's description and calls into question the State's motives.

At the preliminary hearing, Mr. Hounshell testified as to the motive for the visit; "I felt sorry for him, that he wasn't given all the information on the deal we offered with the evidence we had." Hounshell further made references to Defendant's wife being charged if he did not waive the preliminary hearing (She was in fact arrested on the day of the hearing, as directed by the Apache County Attorney's Office, and released the same day). Hounshell further stated, "If you want to waive your attorney, waive the hearing, you need to get with your attorney today and let him know."

Defendant made no incriminating statements to Investigators Hounshell and Jarimillo. Defendant testified at hearing that the conversation caused him to mistrust his attorney and all other potential attorneys and to question whether his attorney was being truthful. Current Defense counsel avows that the State's intrusion into the attorney-client relationship has interfered with his ability to represent the Defendant.

The Court finds that the State's actions in this case clearly violated the Defendant's 6th Amendment rights in that the State intruded into and attempted to undermine and control the relationship between Defendant and his attorney. The Court is appalled by the outrageous and unethical behavior of the Apache County Attorney's office.

The Court finds that the damage done to the attorney client relationship is prejudicial and irreparable, even if new counsel is appointed as Defendant's trust in the system has been betrayed. The Court further finds that the public interest has been disserved by the conduct of the Apache County Attorney's Office.

The Court is of the view that the flagrant and manipulative subversion of the Sixth Amendment Constitutional Rights in this case trumps all other considerations and that dismissal is the only remedy that will preserve the Defendant's inviolable constitutional rights.

THEREFORE the charges are ordered dismissed with prejudice.

Date: 1/18/11



DONNA J. GRIMSLEY
Presiding Judge

xc:

John F. Beatty, Maricopa County Attorney [em]

David J. Martin, Esq. [em]

Apache County Attorney's Office [em]

Apache County Adult Probation [em]