

FILED  
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SUE HALL, CLERK  
APACHE COUNTY SUPERIOR COURT

1 David J. Martin, Attorney at Law, P.L.L.C.  
2 Post Office Box 808  
3 Lakeside, AZ 85929-0808  
4 (928) 368-8677  
5 State Bar #009508  
6 Attorney for Defendant  
7 Joseph Douglas Roberts

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF APACHE**

10 STATE OF ARIZONA, ) No. CR2010-0047  
11 )  
12 ) Plaintiff, )  
13 vs. ) **PARTIAL REPLY TO RESPONSE TO**  
14 ) **DEFENDANT'S MOTION FOR REVIEW OF**  
15 ) **PRELIMINARY HEARING**  
16 JOSEPH DOUGLAS ROBERTS, )  
17 ) Assigned to Honorable Donna J.  
18 ) Grimsley  
19 )  
20 )  
21 )  
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28 )

COMES NOW Defendant, by and through the undersigned attorney, and pursuant to the Order of this Court, hereby submits his Reply to the State's Response to Defendant's Motion for Review of Preliminary Hearing.

With respect to the State's recitation of the procedural history, the Defendant replies as follows:

With respect to the qualification stated by the State that a Bar Complaint was filed ". . . according to defense counsel . . .", there should be absolutely no doubt that a Bar Complaint was filed. See Exhibit A and B attached to Defendant's Motion for Review of Preliminary Hearing. Further, probable cause was found to exist. See Exhibit C. With respect to the State's assertion that, "The other two motions are moot.", referring to Motion for Removal of a Prisoner filed on February 26, 2010 and Motion to Permit Telephonic Testimony filed on February 26, 2010, the Defendant submits those

1  
2 motions are not moot but rather were simply side-stepped by the  
3 Justice of the Peace as reflected in her Minute Entry of March 3,  
4 2010 states: "These motions cannot be ruled upon at this time."

5 With respect to this Court's ruling disqualifying the Apache  
6 County's Attorney's Office, this Court stated that it would  
7 consider the response of the newly assigned prosecutor ". . .  
8 rather than the Apache County Attorney's Office's Response to  
9 those motions." (R.T. of 06/08/2010, P. 4, L. 17-18). See  
10 Exhibit E.

11 With respect to the factual background asserted by the  
12 State, Defendant objects to it in its totality for the reason  
13 that no citation to the record has been provided. There appears  
14 to be several misstatements of fact and without citation to the  
15 record by the State in support of its alleged factual background,  
16 it is impossible for the defense to check accuracy/veracity of  
17 the factual background allegations.

18 With respect to the claim of duplicitous charging in Count  
19 One, which alleges both first degree murder "and/or" felony  
20 murder, the defense acknowledges that the determination in State  
21 v. Axley, 132 Ariz. 383, 392, 646 P.2d 268 (1982), concluded that  
22 an indictment count alleging both first degree murder and felony  
23 murder set forth two bases within A.R.S. 13-1105 yet charged only  
24 one crime thus rendering the indictment not duplicitous. The  
25 Court in Axley went on to suggest that even if it had found the  
26 indictment duplicitous, it could be remedied by jury  
27 instructions. Defendant submits that engaging in remedial jury  
28 instructions to address multiple offenses charged in a single

1 indictment creates a situation that invites prejudicial impact to  
2 the Defendant's

3  
4 ability to precisely defend the crimes alleged in a single count  
5 of the indictment by establishing a lack of particularized  
6 conduct. Further, it invites massive confusion on the part of  
7 jurors who may not be so well-attuned at sorting out the various  
8 elements, despite instructions otherwise, that distinguish felony  
9 murder from pre-meditated murder. In State v. Ramsey, 211 Ariz.  
10 529, 533, 124 P.3d 756 (App. 2005), the Arizona Court of Appeals  
11 stated in pertinent part:

12 An indictment that charges separate or multiple crimes in  
13 the same count is duplicitous.

14 Id. at P. 532, Paragraph 6, citing, Spencer v. Coconino County  
15 Superior Court, 136 Ariz. 608, 610, 667 P.2d 1323, 1325  
16 (1983) (emphasis added).

17 With respect to the lack of evidence regarding  
18 premeditation, at the outset, while Investigator Hounshel said  
19 "Okay", (R.T. of 02/05/10, P. 12, L. 3) in response to the  
20 request that he refrain from referring to any statements made by  
21 any body who he did not currently know would be available to  
22 testify at trial, questions persist regarding the availability of  
23 William Inmon for trial. It should be noted that the defense in  
24 State v. Inmon, Apache County Case CR2009-0225, requested a Rule  
25 11 Evaluation Order of Mr. Inmon citing a diagnostic evaluation  
26 that included possible previous neurological traumatic brain  
27 injury; a psychotic break suffered by Mr. Inmon after he was  
28 arrested and incarcerated in the Navajo County Jail, prescription

1 for anti-psychotic medication, diagnosis by Dr. Krietch of  
2 serious psychological/mental issues including possible bi-polar  
3 disorder, psychopathy, and ADHD, and other non-specified  
4 intellect and mental functioning deficiencies preventing Mr.  
5 Inmon from processing information at a high or quick level. See  
6 Motion for Rule 11 Evaluation filed July 12, 2010. Subsequently,  
7 a sealed and redacted Rule 26 evaluation was filed.

8 Unfortunately, that mental evaluation has not been provided to  
9 the Defendant in the instant case although Rule 15.1(B)(4), as  
10 well as Rule 15.1(I)(3)(d) would require its disclosure, thus,  
11 serious questions remain as to whether or not Mr. Inmon will in  
12 fact be available for trial thus implicating the Court's refusal  
13 to rule on the Motion to Transfer the Prisoner and the Court's  
14 refusal to accept evidence from the Defendant. Most recently has  
15 been filed a Motion to Withdraw Mr. Inman's plea which is the  
16 bedrock of his intended testimony against the defendant.

17 In addition, the State's assertion that the victim was  
18 killed by multiple gunshot wounds that came from at least two  
19 weapons is not explicitly nor necessarily concluded from those  
20 reports. The incorrect assertion appears to be based upon the  
21 false testimony offered by Investigator Hounshel at R.T. of  
22 02/05/10, P. 14, L. 6-24. Contrary to Mr. Hounshel's testimony,  
23 the report of the autopsy conducted by Dr. Bruce Parks, Forensic  
24 Pathologist, opined that the alleged victim died of multiple  
25 gunshot wounds. No opinion is rendered in the report regarding  
26  
27 the multiplicity or singularity of the weapon or weapons used in  
28 the death of the victim. The FBI Laboratory report of

1 firearms/toolmarks appears to report the identity of two separate  
2 files based upon examination of a bullet fragment recovered from  
3 the victim's head and a .22 caliber bullet recovered from the  
4 victim's back. Thus for neither has been identified as the cause  
5 of death.

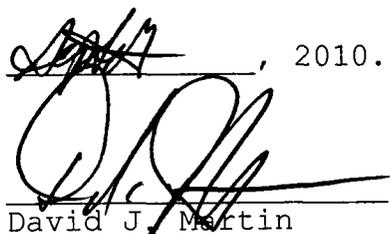
6 With respect to the State's assertion regarding  
7 premeditation, the State's citation to report his transcript of  
8 February 2010, page 23, line 3-5 does not reasonably suggest a  
9 intent on a part of the defendant to go to the victim's house  
10 kill the victim. It states in:

11 "...Mr. Inmon yelled something to the effect of 'kill him  
12 now'. They both fired approximately, a combined, total of 15 or  
16 rounds striking Mr. McCarraghe".

13 With respect to the States assertion that the defendant went  
14 with Mr. Inmon and Mr. Dandirgre to get three guns to use in the  
15 crimes committed against the victim, the State's witness  
16 testified that the defendant alleging stating they drove to  
17 Charles Inmon's residence where William Inmon went inside the  
18 residence and returned with three firearms. R.T. 3/19/10, P. 39,  
19 L. 8-10.

20 With respect to the balance of the State's argument,  
21 incorporating facts for which there is no citation for support  
22 within the record, the defendant objects.

23 RESPECTFULLY SUBMITTED this 27 day of April, 2010.

24  
25   
26 David J. Martin  
27  
28



June 29, 2010

David J. Martin  
Attorney at Law, P.L.L.C.  
P. O. Box 808  
Lakeside, Arizona 85929-0808

Re: File No. 10-0488  
Martin E. Brannan, Respondent

Dear Mr. Martin:

Please be advised that the initial investigation into your charge against Martin Brannan has been completed. This matter was then submitted to the Probable Cause Panelist of the State Bar of Arizona for review.

After this review, it was determined that probable cause exists for the filing of a formal complaint against Mr. Brannan by the State Bar. We will send you a copy of the complaint when we file it with the Disciplinary Clerk.

Sincerely,



Stephen P. Little  
Staff Bar Counsel

SPL/dds

Exhibit C

JUN 30 2010 ✓

Roberts

ROUND VALLEY JUSTICE COURT

Post Office Box 1356 ✦ 130 South Mountain Avenue ✦ Springerville, Arizona 85938

(928) 333-4613 ◆ FAX (928) 333-4205

**Honorable Sherry L. Geisler**

*Justice of the Peace*

CASE NO. CR-09-0259

DATE: March 3, 2010

STATE OF ARIZONA

*Plaintiff*

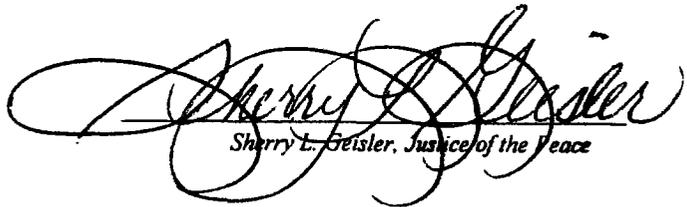
Joseph Douglas Roberts,

*Defendant*

**MINUTE ENTRY**

IN AND FOR THE ROUND VALLEY JUSTICE COURT it is the determination of the court that the Motion to Dismiss, Motion to Permit Telephonic Testimony and the Motion for Removal of Prisoner have been filed prematurely. These Motions cannot be ruled upon at this time.

IT IS THE ORDER OF THE COURT setting the date and time for Preliminary Hearing for March 19, 2010 at 1:30 p.m. said hearing to be held at the Apache County Superior Court in St. Johns, AZ.

  
*Sherry L. Geisler, Justice of the Peace*

This 03rd day of March 2010

- cc: file
- Mr. Michael B. Whiting – Apache County Attorney
- Mr. David J. Martin – Defense Counsel
- Corp. McCarthy – Apache County Detention
- Betty Smith – Apache County Court Administrator

Exhibit D

MAR 05 2010 ✓

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF APACHE

STATE OF ARIZONA, )  
 )  
 Plaintiff, ) CASE NO. CR 2010047  
 )  
 vs. )  
 )  
 JOSEPH DOUGLAS ROBERTS, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

TRANSCRIPT OF MOTION HEARING

June 8, 2010

BEFORE THE HONORABLE DONNA J. GRIMSLEY

Lynne McSeaton  
Certified Electronic Reporter and  
Transcriber No. 00281

**E-Court Transcription Service**  
30379 N. Coral Bean Drive  
Queen Creek, Arizona 85243  
(602) 300-3249

Exhibit E

JUL 22 2010

1 MR. BRANNAN: And --

2 THE COURT: -- dealing with any taint.

3 MR. BRANNAN: -- while I don't disagree, the problem  
4 with the Attorney General's Office is that Mr. Lassen is now a  
5 Assistant Attorney General, and Don Conrad has said that they  
6 believe they have a conflict of interest.

7 THE COURT: Okay. What I want you to do is to pick  
8 an agency not to prosecute but to assign it for prosecution.

9 MR. BRANNAN: We will do that.

10 THE COURT: Okay. And then I think that distance is  
11 enough that that won't be put at issue.

12 What I'm going to do is set this for a status  
13 hearing on Monday, July 19th, at 1:00 p.m. I may very well,  
14 because sometimes it takes a little time for a new prosecuting  
15 agency to get up to speed, give that agency, upon a request,  
16 some additional time to respond to the motions, but I will  
17 consider their response rather the Apache County Attorney's  
18 response to those motions.

19 MR. BRANNAN: And what time is that again, Judge?

20 THE COURT: At 1:00 p.m.

21 MR. BRANNAN: 1:00 p.m. Thank you.

22 MR. MARTIN: I'm sorry, Judge. What was that date?

23 THE COURT: July 19th at one o'clock.

24 And if I actually get responses before then and I'm  
25 able to set further hearings before then, I will do so.