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BY: J YOUNT

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	Case No.: P1300CR201600476
)	
Plaintiff,)	MOTION TO REMAND
)	
)	(Oral Argument and Evidentiary Hearing
ANTHONY JAMES RICHARDS,)	Requested)
)	
Defendant.)	Hon. Tina R. Ainley, Div. 3

Anthony James Richards, by and through undersigned counsel, moves this Court to remand his case to the Grand Jury for a new determination of probable cause. Mr. Richards was denied substantial procedural rights during the presentation to the Grand Jury. These errors violated his right to Due Process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article II § 4 of the Arizona Constitution. Pursuant to Arizona Rule of Criminal Procedure 12.9, Mr. Richards is entitled to a new determination of probable cause.

MEMORANDUM OF POINTS AND AUTHORITIES

Background

Anthony Richards and Larry Powers were friends and business partners for over a decade. Mr. Richards, after ten years with the United States Air Force, took a job as a mechanic with TGR Helicopters, where he met Mr. Powers. The two discovered a mutual interest in gold mining, and proceeded to invest in claims throughout Arizona, California and Oregon.

In April 2007, Mr. Richards and Mr. Powers traveled to Arizona to work their Bagdad claims. Records show that the pair signed into the Lost Dutchman's Mining Association Park on April 8, 2007 and signed out on April 14, 2007. While in Arizona, Mr. Richards and Mr. Powers purchased a shaker table from Gold Equipment in Salome, Arizona. The police later located the shaker table in a storage shed in Quartzite, Arizona. Mr. Powers used a credit card to purchase the shaker table. He also used the credit card in Wickenburg, Arizona to purchase other mining equipment. Following these purchases, the credit card continued to be used:

- April 15, 2007: Texaco gas station in Congress, Arizona. (This is within the jurisdiction of Yavapai County.)
- April 15, 2007: Pilot gas station in Lake Havasu, Arizona. (This is within the jurisdiction of Mohave County.)
- April 15, 2007: Chevron gas station in Barstow, California.
- April 15, 2007: AutoZone in Barstow, California.
- April 16, 2007: Hob Tower Hobbies. (This purchase was believed to be by phone out of a residence in Murphys, California.)

- April 16, 2007: Chevron gas station in EarliMart, California.
- April 16, 2007: Shell Oil gas station in Murphys, California.
- April 20, 2007: Shell Oil gas station in Alturas, California.
- April 20, 2007: Kwik Serv in Jackson, California.
- April 26, 2007: AutoZone in Bend, Oregon.
- April 26, 2007: OfficeMax in Bend, Oregon.
- April 28, 2007: OfficeMax in Bend, Oregon.
- April 28, 2007: Harbor Freight in Bend, Oregon.
- April 28, 2007: East Bend Service in Bend, Oregon.
- April 28, 2007: Office Max, location unknown.
- May 1, 2007: RC Boyz, location unknown.
- May 4, 2007: Juno R/C, location unknown.
- May 8, 2007: Union 76 gas station in White City, Oregon.
- May 8, 2007: Union 76 gas station in La Pine, Oregon.
- May 9, 2007: Rock Auto, location unknown.

Mr. Powers was reported missing in June of 2007.

Grand Jury Presentation

Jurisdiction

The Government submitted 23 counts against Mr. Richards. Testimony as to jurisdiction was as follows:

Government: And lastly, Lieutenant, all the events and – at least the theft of this credit card was taken in Yavapai County?

Witness (Mr. Boelts): Yes.¹

No follow-up questions were asked with regard to jurisdiction of the remaining counts.

Exculpatory Evidence

The Government presented testimony that the investigation against Mr. Richards dated back to 2007. Due to this investigation, the Government had facts pertaining to the locales of the alleged crimes. It did not disclose this information to the Grand Jury. Further, the Government did not tell the Grand Jury that Mr. Richards and Mr. Powers purchased the shaker table together.

¹ GJ Tr. at 27:18-21 (Apr. 15, 2016).

Law

The United States and Arizona Constitutions each guarantee Due Process.² A grand jury proceeding must comport with this right to Due Process.³ “In particular, due process here requires the use of an unbiased grand jury and a fair and impartial presentation of the evidence.”⁴ The Government has a duty to present clearly exculpatory evidence, which is “evidence of such weight that it might deter the grand jury from finding the existence of probable cause.”⁵

To establish probable cause, the Government must present evidence of each element of the alleged crime. Jurisdiction is an element of each crime. “Arizona has jurisdiction to try a defendant if conduct constituting one or more elements of the charged offenses occurred in Arizona.”⁶

Here, the Government presented misleading testimony about whether Yavapai County had jurisdiction over many of the alleged counts. Further, the Government omitted clearly exculpatory evidence. Accordingly, the case should be remanded for a new finding of probable cause.

² U.S. Const. amends. V, XIV; Ariz. Const. Art. 2, § 4.

³ *Crimmins v. Superior Court, In & For Maricopa Cnty.*, 137 Ariz. 39, 41 (1983); *Corbin v. Broadman*, 6 Ariz.App. 436, 441 (App. 1967).

⁴ *Crimmins*, 137 Ariz. at 41.

⁵ *Trebus v. Davis, In & For Cnty. of Pima*, 189 Ariz. 621, 625 (1997) (emphasis added), citing *State v. Coconino County Superior Court (Mauro)*, 139 Ariz. 422, 425 (1984)).

⁶ *State v. Willoughby*, 181 Ariz. 530, 536 (1995), citing A.R.S. § 13-108(A)(1).

Argument

I. **The Government presented confusing and misleading testimony as to whether Counts 1-2 and 5-23 occurred in Yavapai County.**

The Grand Jury testimony referenced locations within Yavapai County, La Paz County, Maricopa County, Mohave County, California and Oregon. In an effort to sweep all of the counts under Yavapai County's jurisdiction, the Government asked:

Government: And lastly, Lieutenant, all the events and – at least the theft of this credit card was taken in Yavapai County?

Witness (Mr. Boelts): Yes.⁷

This question is extremely confusing and misleading. Was the witness replying that “yes” all of the events occurred in Yavapai County or “yes” the theft of the credit card occurred in Yavapai County? The answer is important because had the facts been fairly and impartially presented, the Grand Jury could not have found jurisdiction for the majority of the counts:

- **Count 1:** The shaker table was purchased in La Paz County and later located in La Paz County.⁸
- **Count 2:** The Government does not say where Mr. Richards was seen with a handgun.⁹
- **Count 5:** This crime is alleged to have occurred in Mohave County.¹⁰
- **Count 6:** This crime is alleged to have occurred in California.¹¹
- **Count 7:** This crime is alleged to have occurred in California.¹²
- **Count 8:** This crime is alleged to have occurred in California.¹³

⁷ GJ Tr. at 27:18-21 (Apr. 15, 2016).

⁸ *Id.* at 17:15-19.

⁹ *Id.* at 18:23 – 19:23.

¹⁰ *Id.* at 20:9-15.

¹¹ *Id.* at 20:20-24.

¹² *Id.* at 20:25 – 21:4.

- **Count 9:** This crime is alleged to have occurred in California.¹⁴
- **Count 10:** This crime is alleged to have occurred in California.¹⁵
- **Count 11:** This crime is alleged to have occurred in California.¹⁶
- **Count 12:** This crime is alleged to have occurred in California.¹⁷
- **Count 13:** This crime is alleged to have occurred in Oregon.¹⁸
- **Count 14:** This crime is alleged to have occurred in Oregon.¹⁹
- **Count 15:** This crime is alleged to have occurred in Oregon.²⁰
- **Count 16:** This crime is alleged to have occurred in Oregon.²¹
- **Count 17:** This crime is alleged to have occurred in Oregon.²²
- **Count 18:** The Government does not tell the Grand Jury where this crime is alleged to have occurred.²³
- **Count 19:** The Government does not tell the Grand Jury where this crime is alleged to have occurred.²⁴
- **Count 20:** The Government does not tell the Grand Jury where this crime is alleged to have occurred.²⁵
- **Count 21:** This crime is alleged to have occurred in Oregon.²⁶
- **Count 22:** This crime is alleged to have occurred in Oregon.²⁷

¹³ *Id.* at 21:5-14.

¹⁴ *Id.* at 21:15-18.

¹⁵ *Id.* at 21:19-23.

¹⁶ *Id.* at 21:24 – 22:2.

¹⁷ *Id.* at 22:3-6.

¹⁸ *Id.* at 22:7-10.

¹⁹ *Id.* at 22:11-14.

²⁰ *Id.* at 22:15-18.

²¹ *Id.* at 22:19-22.

²² *Id.* at 22:23 – 23:1.

²³ *Id.* at 23:2-8.

²⁴ *Id.* at 24:10-14.

²⁵ *Id.* at 24:15-18.

²⁶ *Id.* at 25:8-11.

²⁷ *Id.* at 25:12-16.

- **Count 23:** The Government does not tell the Grand Jury where this crime is alleged to have occurred.²⁸

Had the Government presented a fair and impartial presentation of the evidence establishing jurisdiction, the Grand Jury would likely have returned a No True Bill on the majority of the alleged counts. Accordingly, the case should be remanded for a new finding of probable cause.

II. The Government did not present clearly exculpatory evidence

- a. The Government did not tell the Grand Jury that Count 1 occurred outside of Yavapai County's jurisdiction.

The Government's witness, Mr. Boelts, told the Grand Jury that Mr. Powers purchased a shaker table in Salome, Arizona.²⁹ Salome, Arizona is in La Paz County. He did not tell the Grand Jury where the table was located. However, police reports document that the table was located in Quartzite, Arizona, which is also located in La Paz County.³⁰ Had the Grand Jury known this they could not have returned a True Bill for Count 1 because the crime did not occur in Yavapai County.

- b. The Government did not tell the Grand Jury that Mr. Richards and Mr. Powers purchased the shaker table together.

The Government's witness told the Grand Jury that only Mr. Powers purchased a shaker table.³¹ However, according to the police reports, both Mr. Richards and Mr. Powers were seen purchasing the table. The owners of the shaker table told Deputy Bricker "they had sold a RP4 shaker table for \$1,895.00 to two men in early April

²⁸ *Id.* at 25:17-19.

²⁹ *Id.* at 17:15-19.

³⁰ M. Bricker Supplement DR (no date) (Information obtained on August 16, 2007).

³¹ GJ Tr. 17:9-12.

2007.”³² They recognized photographs of Mr. Richards and Mr. Powers as being the men who purchased the table.³³ This was not told to the Grand Jury. This information is clearly exculpatory because a person can only be accused of trafficking property if the property at issue was stolen.³⁴ The fact that Mr. Richards was, at the least, a co-owner of the shaker table is material information that should have been told to the Grand Jury.

Conclusion

Mr. Richards moves this Court for a new determination of probable cause. The Government’s misleading presentation on jurisdiction and failure to present clearly exculpatory evidence denied Mr. Richards’ his right to Due Process at the Grand Jury proceeding. Pursuant to the United States Constitution, the Arizona Constitution, and Arizona Rules of Criminal Procedure, Mr. Richards is entitled to a new grand jury proceeding.

RESPECTFULLY SUBMITTED this 27 day of May, 2016,

YAVAPAI COUNTY PUBLIC DEFENDER

By: _____



Grace M. Guisewite
Deputy Public Defender
Attorney for the Defendant

³² M. Bricker Supplement DR (no date).

³³ *Id.*

³⁴ A.R.S. § 13-2307.

Original of the foregoing filed
this 27 day of May, 2016, with

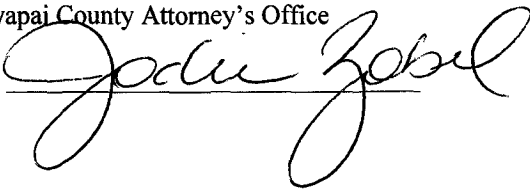
Clerk of the Court
Yavapai County Superior Court

Copies of the foregoing *emailed*
this 27 day of May, 2016, to:

Honorable Tina R. Ainley
Yavapai County Superior Court
Division Three

Kevin D. Schiff, Esq.
Deputy County Attorney
Yavapai County Attorney's Office

By:

A handwritten signature in cursive script, appearing to read "Jodie Zobel", is written over a horizontal line. The signature is fluid and extends above and below the line.