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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2017 JUN 23 PM 4: 38 ✓

DONNA McQUALITY, CLERK

BY: K. ALEXANDER

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

STATE OF ARIZONA,)	Case No.: P1300CR201600476
)	
Plaintiff,)	Addendum to Rule 12.9
)	MOTION TO REMAND
)	
ANTHONY RICHARDS,)	(Oral Argument Requested)
)	
Defendant.)	Hon. Tina R. Ainley, Div. 3

The Defendant, 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. Material errors in the presentation of facts 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.

A second presentation of evidence to a grand jury was done by the state on February 8, 2017, which resulted in a new indictment with the same cause number as the previous indictment: P1300CR201600476. Counsel undersigned is treating the second presentation of the case to the grand jury as superseding the first, to a limited extent, because the second presentation retained jurisdictional errors. While the second presentation eliminated the issue of

taint in the first grand jury, where two witnesses tag-teamed their way through the proceeding, this second presentation contained what was essentially a long, biased editorial commentary by Detective John McDormett, with very little questioning by the state. For example, early in the second grand jury presentation, the state asked Det. McDormett the following:

- Q. And, detective, could you tell – please tell the Grand Jury what you learned? Mr. Chastain, as well as any other detectives, officers, deputies, anyone involved, what you learned about this investigation, where you're at with it today, and what's occurred?
- A. Okay.
- Q. Including a little background story as to individuals who may be pertinent and relevant to your investigation.

(GJT, February 8, 2017, pg. 12, lns. 9-16).

From there, the state asked just one question over the next 17 pages:

- Q. And, detective, could I interrupt you?
- A. Yeah.
- Q. Could you explain to the Grand Jury how Mr. Richards and Mr. Powers came to know one another?
- A. I was just about to get into that.
- Q. Okay. Thank you.

(GJT, February 8, 2017, pg. 14, lns. 10-15).

Several issues remain from the first presentation to the grand jury, including what the state knew, but did not tell the second grand jury. For that reason, Counsel requests that the Yavapai County Public Defender's Motion to Remand and Motion to Dismiss filed on May 27, 2016, re: the April 15, 2016 Indictment apply to the February 8, 2017 Indictment.

In the second presentation to the Grand Jury, on February 8, 2017, the state hurried through many allegations, without addressing jurisdiction:

Former Count 1 is now Count 2: The shaker table presented as purchased in La Paz or Maricopa County and later recovered in La Paz County.¹ In the previous grand jury testimony, it was just Salome, AZ, in La Paz County.

¹ See: GJT, February 8, 2017, pg. 16, lns. 17-19.

Former Count 3 is now Count 4: The state does not tell the Grand Jury where this crime is alleged to have occurred.

Former Count 5 is now Count 6: This crime is alleged to have occurred in Mohave County.

Former Count 6 is now Count 7: This crime is alleged to have occurred in California.

Former Count 7 is now Count 8: This crime is alleged to have occurred in California.

Former Count 8 is now Count 9: The state does not tell the Grand Jury where this crime is alleged to have occurred.

Former Count 9 is now Count 10: This crime is alleged to have occurred in California.

Former Count 10 is now Count 11: This crime is alleged to have occurred in California.

Former Count 11 is now Count 12: This crime is alleged to have occurred in California.

Former Count 12 is now Count 13: This crime is alleged to have occurred in California.

Former Count 13 is now Count 14: This crime is alleged to have occurred in Oregon.

Former Count 14 is now Count 15: This crime is alleged to have occurred in Oregon.

Former Count 15 is now Count 16: This crime is alleged to have occurred in Oregon.

Former Count 16 is now Count 17: This crime is alleged to have occurred in Oregon.

Former Count 17 is now Count 18: This crime is alleged to have occurred in Oregon.

Former Count 18 is now Count 19: This crime is alleged to have occurred in Oregon.

Former Count 19 is now Count 20: This crime is alleged to have occurred in Oregon.

Former Count 20 is now Count 21: This crime is alleged to have occurred in Oregon.

Former Count 21 is now Count 22: This crime is alleged to have occurred in Oregon.

Former Count 22 is now Count 23: This crime is alleged to have occurred in Oregon.

Former Count 23 is now Count 24: The state does not tell the Grand Jury where this crime is alleged to have occurred.

There is no explanation given why any of the out-of-Yavapai-County events are within the jurisdiction of this Yavapai County Grand Jury. In fact, the following misleading statement was offered to attempt to invoke Yavapai County jurisdiction:

The events leading to this Indictment are alleged to have occurred *in the – or near the Bagdad area of Yavapai County.*

(GJT, February 8, 2017, pg. 10, lns. 1-3, italics added).

There is testimony by Det. McDermott that the body was recovered “within about 350 feet of where the two men had camped²” near Bagdad, AZ, presumably (though not expressly stated) within the jurisdiction of this Yavapai County Grand Jury. Although the state did

²(GJT, February 8, 2017, pg. 14, lns. 3-4).

instruct the Grand Jury regarding premeditation³, the evidence presented did not rise to the level of a premeditated first degree murder. Det. McDermott provided the Grand Jury with a inappropriate legal conclusion regarding premeditation:

And it all adds up to the fact that Mr. Powers – *in our estimation* and based on 10 years of the investigation, that Mr. Richards killed Mr. Powers, wrapped his body up, placed him in a mine shaft six feet down and buried the body.

Whether or not you guys determine it's premeditated, that's not my job. All I can do is present the facts.

(GJT, February 8, 2017, pg. 31, lns. 15-21, italics added).

Det. McDermott also offered inadmissible “bad guy” evidence to the Grand Jury, to frame his arguments regarding motive:

We have documentation that shows Richards is a pretty angry person.

(GJT, February 8, 2017, pg. 13, lns. 8-9).

What documentation was Det. McDermott referring to? Det. McDermott’s declaration that the Defendant was a “bad guy” was offered to taint the grand jury.

This evidence is generally excluded because it tends to draw the jury's attention from the real issues on trial and to lead them unconsciously to render their verdicts in accordance with their view of defendant as a "bad man."

(State v. Mulligan, 126 Ariz. 210, 215, 613 P.2d 1266, 1271 (1980), italics added).

The “bad man” evidence was also presented in inconsistent testimony. Concerning the use of alleged victim Powers’ credit card, Det. McDermott proclaimed:

Mr. Richards had used Mr. Powers' credit cards for his own gain after his death. There's no evidence that Mr. Powers was ever with Richards after April 9th of 2007. None of the charges on these credit cards would have benefitted Mr. Powers.

³Let me read the premeditation statutory definition – I'm sorry; it's not statutory. It's case law. Premeditation means that the suspect intended to kill another human being, or knew he would kill another human being, and that after forming that intent, reflected on the decision before killing. (GJT, February 8, 2017, pg. 9, lns. 3-8).

(GJT, February 8, 2017, pg. 14, lns. 5-9).

The state cannot designate a date nor time of death of Mr. Powers, and they can only guess as to the last time Mr. Powers was seen. In fact, even from Det. McDermott's testimony, Mr. Powers and the Defendant were together, and using Mr. Powers' credit card on April 9th and traveling substantial distances, not in Bagdad.

On April 9th, '07, Mr. Powers and Richards went to 18 mining stores in Salome and Wickenburg, Arizona. At one of those mining stores, a shaker table, which is used in mining, was purchased for \$1,895.00, as was additional mining gear. Both purchases were made using Mr. Powers' credit card. *Mr. Powers was present during these purchases ...*

(GJT, February 8, 2017, pg. 16, lns. 17-22).

Salome, AZ is in La Paz County. Wickenburg is in Maricopa County. The two towns are not close together (54 miles), and certainly not close to Bagdad, AZ (60 miles from Wickenburg, 91 miles from Salome.)

In fact, in the first presentation of facts to the first grand jury, this was the testimony by Lt. Boelts:

They started on or about April – between April 9, 2007, and April 15, 2007. Mr. Powers - on the afternoon of April 9, *Mr. Powers bought a shaker table for approximately \$1,958 at a business in Salome, Arizona.* Later that day, the two men traveled to Wickenburg and purchased some other miscellaneous mining supplies for about \$40. And then the next time that there were purchases, that was at a gas station in Congress and a gas station in Lake Havasu and gas stations all the way through California.

(GJT, April 15, 2016, pgs. 15, lns. 19-25, pg. 16, lns. 1-4, italics added).

The shaker table is an important item in this case, because both Mr. Powers and the Defendant were working mining claims. Mr. Powers was present when the table was purchased. Thus, to say that Mr. Powers did not benefit from any of the purchases is misleading.

Finally, one of the grand jurors raised the issue of statute of limitations:

Clerk Gilmore: Richard Gilmore. can I ask a question?

Mr. Rodriguez: (No oral response)

Clerk Gilmore: I take it the statute of limitations hasn't run out on any of those charges?

Mr. Rodriguez: No, the statute of limitations has not run on any of the proposed charges.

(GJT, February 8, 2017, pg. 8, lns. 8-12).

That was an inadequate legal explanation regarding the statute of limitations.

Presentation of "bad man evidence," combined with serious jurisdictional flaws (*supra*), and misleading facts that implied that Mr. Powers was "murdered" for credit cards and a shaker table, deprived the Defendant of substantial Due Process.

The Supreme Court has described the grand jury as "a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused ... to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice or ill will." Wood v. Georgia, 370 U.S. 375, 390, 8 L. Ed. 2d 569, 82 S. Ct. 1364 (1962). The grand jury's mission is "to bring to trial those who may be guilty and clear the innocent." Marston's Inc. v. Strand, 114 Ariz. 260, 264, 560 P.2d 778, 782 (1977). *To do its job effectively, the grand jury must receive a fair and impartial presentation of the evidence.* Crimmins, 137 Ariz. at 41, 668 P.2d at 884; State v. Emery, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982). Because defendants enjoy few procedural rights before the grand jury, grand juries must be unbiased and independent and must act "independently of either prosecutor or judge." Marston's, 114 Ariz. at 264, 560 P.2d at 782.

(Maretick v. Jarrett, 204 Ariz. 194, 197, 62 P.3d 120, 123 (2003)).

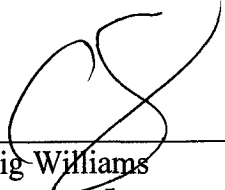
This court noted that "the grand jury is neither an arm nor a servant of the prosecution," and "the prosecutor's discretion is to be used 'in assisting the grand jury.'" Id. at 43-44, 668 P.2d at 886-87 (quoting Gershon v. Broomfield, 131 Ariz. 507, 509, 642 P.2d 852, 854 (1982)). See: Sigmund G. Popko, Arizona's County Grand Jury: The Empty Promise of Independence, 29 Ariz. L. Rev. 667, 681-83 (1987).

(Trebus v. Davis, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997)).

Conclusion

Mr. Richards moves this Court for a new determination of probable cause. In addition, the state failed to present clearly exculpatory evidence as outlined in the Yavapai Public Defender's Motion.

RESPECTFULLY SUBMITTED this June 23, 2017

By: 

Craig Williams
Attorney at Law

Copies of the foregoing delivered and/or faxed this date to:
Hon. Tina Ainley, Judge of the Superior Court.
Kevin Schiff, Yavapai County Attorney

By: 