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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
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Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

ANTHONY JAMES RICHARDS,

Defendant.

CAUSE NO. P1300CR201600476

STATE'S RESPONSE TO DEFENDANT'S
RULE 12.9 MOTION TO REMAND

Assigned to Hon. Tina R. Ainley

1 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and her
2 deputy undersigned, hereby responds to Defendant's Motion to Remand pursuant to Arizona
3 Rule of Criminal Procedure ("Rule") 12.9.

4 Nowhere in Defendant's confusing Motion does he allege that any substantial
5 procedural right was violated; he simply wants to argue evidence sufficiency and/or
6 admissibility, or other legal issues proper in Rule 12.9 motion.

7 **I. Facts & Procedural History**

8 1. In April of 2007 Defendant and Victim L.P. came to Arizona to mine a claim outside of
9 Bagdad Arizona, within Yavapai County. When the two arrived L.P. had zero balance on his
10 credit card (US Bank VISA card ending in 8154). L.P. used that card on April 9th 2017 to
11 purchase a shaker table for approximately \$1,900. This purchase would be the last confirmed
12 sighting of L.P. other than ever changing claims by Defendant. After that the two men went to

1 a remote camping site to mine their claim.

2 2. A couple days later (between April 13th and 15th) Defendant came out of the desert
3 alone and arrived at a mining community camp. Defendant approached Diane Jenson and
4 Dean Knight offering to give them the shaker table as a \$1,000 down payment (½ the value of
5 what it was bought for just days prior) towards Defendant purchasing a motor home for himself
6 from Jenson and Knight. Defendant told them the table was defective and L.P. wanted to get
7 rid of it. Diane and Knight accepted the deal, and later found that the shaker table operated
8 fine.

9 Jenson during this time overheard Defendant mention to an unknown person there were
10 a lot of mine shafts out in the desert and if someone fell into one their body would never be
11 found. Jenson later asked Defendant about L.P.'s whereabouts. Defendant stated that he
12 had got in a fight with L.P., had taken L.P.'s firearm away from him, tied L.P. up and left him in
13 the desert. Jenson later again asked Defendant about L.P., and this time Defendant stated he
14 had put L.P. on a bus headed to California.

15 3. On April 15th L.P.'s VISA card was used at the Texaco in Congress Arizona, within
16 Yavapai County. From that point, as outlined temporally in Counts 5 through 24 of the
17 Indictment, L.P.'s card was used repeatedly at various locations going from Congress to
18 California (where L.P.'s primary residence was), and then from California to Oregon
19 (Defendant's primary residence). Ultimately the card was shut off for lack of payment.

20 4. In June of 2007 L.P. was reported missing by his sister J.S. to Calvares County
21 Sheriff's Office in California, who did the initial part of the investigation. Subsequently J.S. took
22 it upon herself to call Defendant to inquire about L.P.'s whereabouts, and record these phone
23 calls. Nearly every time Defendant was contacted his version of events and when he last saw

1 L.P. would change; which changes were primarily prompted by J.S. confronting Defendant with
2 the credit card bills showing the use of L.P.'s VISA card.

3 5. Ultimately YCSO took the lead of the investigation. Given the information collected
4 by J.S., the fact that L.P. had been missing for 8 years and declared legally dead in California,
5 and the credit card records for L.P., Defendant was indicted on various fraud/theft related
6 charges in April of 2016 and extradited to Arizona. During his pre-arrest interview Defendant
7 for the first time it was himself who had been using L.P. VISA card at the various locales laid
8 out in the Indictment (he had previously claimed L.P. has used the car either alone or in
9 Defendant's presence).

10 6. In September of 2016 YCSO did additional searching at Defendant's and L.P.'s
11 remote campsite. A disturbance in the ground was found close to the site. Digging revealed a
12 buried chair and tote. In January of 2017 YCSO returned to the same dig site for further
13 excavation. L.P.'s badly decomposed body was found buried and wrapped tightly in sheets.
14 During the autopsy process three expended bullets were found amongst/in the remains. The
15 Medical Examiner determined L.P.'s cause of death to be homicidal violence.

16 7. As a result of the discovery of L.P.'s body, Defendant was also charged with murder
17 in addition to the original fraud/theft charges.

18 **II. THERE HAVE BEEN NO PROCEDURAL VIOLATIONS ALLEGED & ALL OF**
19 **DEFENDANT'S COMPLAINTS DO NOT APPLY IN THE RULE 12.9 CONTEXT**

20 **A. Rule 12.9 & Grand Jury Remand**

21 Pursuant to Rule 12.9(a) a challenge to the Grand Jury's finding of probable cause may
22 *only* be challenged on two grounds: (1) Defendant was denied a substantial procedural right
23 and (2) an insufficient number of Grand Jurors concurred in the finding. The role of the Grand
24

1 Jury is to determine whether probable cause exists to believe that a crime has been committed
2 and that the person being investigated committed it. *State v. Sanchez*, 165 Ariz. 164, 171
3 (App. 1990). Expanding the Grand Jury's role beyond that point would put Grand Juries in the
4 business of holding mini-trials. *State v. Baumann*, 125 Ariz. 404, 408-409 (1980).

5 **B. Apparent Points Raised by Defendant**

6 Defendant, though unclear, appears to make a number of claims of impropriety but
7 provides virtually no authority that any of the imagined impropriety is improper or a substantive
8 procedural violation.

9 *1. Presentation was biased editorial commentary*

10 Defendant claims that the second Grand Jury presentation, "... was essentially a long,
11 biased editorial commentary by Detective John McDormett, with very little questioning by the
12 State." (Defendant's Motion, page 2). Defendant then points to passages and highlights via
13 italics that the State only asked one question during 17 pages of the transcript.

14 However, Defendant provides no authority that there is anything procedurally improper
15 about a law enforcement officer detailing his investigation to the Grand Jury or that there is a
16 minimum number of questions the prosecutor present is required to ask. This is likely because
17 no such authority exists and possible trial objections (e.g. narrative) are not applicable to
18 Grand Jury proceedings (discussed further below).

19 *2. Improper Legal Opinion*

20 Defendant alleges that Det. McDormett gave an inappropriate legal conclusion as to
21 premediated murder. (*Defendant's Motion*, page 4). Defendant however leaves out that Det.
22 McDormett was not providing legal advice, but was directly responding to a Grand Juror
23 question regarding what evidence YCSO had regarding premeditation, "... Maybe I missed it,

1 but what evidence did you have to show it was premeditated murder?" (GJT, page 30, line 25,
2 page 31, line 1). Det. McDormett responded to that question exactly as it posited, with the
3 evidence YCSO had regarding premeditation. Then, as Defendant pointed out in his motion,
4 Det. McDormett took the chance to emphasize that whether premeditation existed was for the
5 Grand Jury to determine.

6 Not only is Det. McDormett's response appropriate, but he was legally required to
7 answer the Grand Juror's question. *Franzi v. Superior Court of Arizona In and For Pima*
8 *County*, 139 Ariz. 556, 559 (Ariz.1984) (A witness before grand jury cannot place limits on the
9 questions they will answer, and the witness could be subject to contempt proceedings by a
10 failing to answer).

11 3. Failure to Provide Exculpatory Evidence

12 Defendant states, "Several issues remain from the first presentation to the grand jury,
13 including what the state knew, but did not tell the grand jury." (Defendant's Motion, page 2)
14 Defendant then asks the motion to remand filed by previous counsel, on a different grand jury
15 presentation before a different grand jury, should apply to the present Indictment.

16 First, there is no valid reason why a pleading filed in reference to a different
17 presentation should have anything to do with the present Indictment. Further, Defendant by
18 broadly stating that the "state knew" unspecified things that should have been presented not
19 only fails to state any valid Rule 12.9 claim, but leaves both the Court and the State guessing
20 as to what information Defendant is referring. As such, Defendant's vague unsupported claim
21 should be summarily discarded.

1 4. *Presentation of Inadmissible Evidence*

2 Defendant claims sporadically through his motion that the State presented “bad guy,”
3 “bad man,” and “bad man evidence.” Defendant then baselessly alleges that presentation of
4 negative information was done to taint the grand jury.

5 The only legal authority provided by Defendant apparent in support of this assertion is
6 *State v. Mulligan*¹ (Defendant’s Motion, page 4). The first issue with Defendant’s citation is
7 that *Mulligan* dealt with evidence that was submitted during trial, a venue with entirely different
8 procedural and evidentiary rules than a grand jury. The second, somewhat ironic issue with
9 Defendant’s reliance is that in *Mulligan* the Supreme concluded that the other act (i.e. “bad
10 man”) evidence was properly admitted.

11 Regardless, Defendant’s argument regarding “bad man” or other act evidence is
12 irrelevant as the Grand Jury in pursuit of its investigations is not bound by the traditional rules
13 of evidence, as doing so would greatly restrict their ability to engage in a general investigation.
14 *State ex. Rel. Berger v. Myers*, 108 Ariz. 248, 250, 495 P.2d 844, 846 (Ariz. 1972) *citing to*
15 *State v. Kemp*, 126 Conn. 60, 71, 9 A.2d 63, 69 (1939). Evidence that is presented before the
16 Grand Jury need not be admissible at trial. *State v. Fulminante*, 193 Ariz. 485, 491, 975 P.2d
17 75, 81 (1999). Given this, Defendant has no legal basis to object to evidence as being
18 inadmissible before a grand jury.

19 **III. WEIGHT & SUFFICIENCY OF EVIDENCE**

20 A challenge may not be made based on the nature, weight or sufficiency of the
21 evidence considered by the Grand Jury; such a challenge is beyond the scope of judicial
22 inquiry. *Crimmins v. Superior Court, In and For Maricopa County*, 137 Ariz. 39, 42-43 (1983);

¹ 126 Ariz. 210 (1980)

1 *State v. Guerrero*, 119 Ariz. 273, 276 (App.1978). In fact, a trial court has neither the power to
2 consider challenges to the sufficiency of the evidence, nor the power to hold a hearing for oral
3 argument on such matters. *State ex rel. Preimsberg v. Rosenblatt*, 112 Ariz. 461, 462 (1975).

4 Similarly to other issues, Defendant's Motion is difficult to discern, but seems to
5 sporadically suggest a claim of insufficient evidence: "Although the State did instruct the
6 Grand Jury regarding premeditation, the evidence presented did not rise to the level of
7 premeditated murder (Defendant's Motion, pages 3-4); "The State cannot designate a date nor
8 time of death of Mr. Powers, and they only guess as to the last time Mr. Powers was seen."
9 (Defendant's Motion, page 5).

10 What Defendant believes the power of the evidence is irrelevant in the context of Rule
11 12.9 as it the Grand Jury's evaluation of the evidence that matters. Defendant cannot dispute
12 such a finding based upon the evidence sufficiency, and the Court is specifically precluded
13 from considering such a challenge or holding a hearing (*Preimsberg supra*).

14 **IV. JURISDICTION & STAUTE OF LIMITATIONS**

15 Defendant also appears to claim that there are "jurisdictional flaws" and issues
16 regarding the statute of limitations, which he feels should have been explained to the Grand
17 Jury. (Defendant's Motion, page 6).

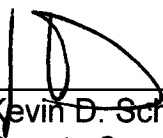
18 Again, in support of this Defendant provides absolutely no legal authority that these
19 purely legal concepts, which are appropriate for this Court's consideration², should be brought
20 before the Grand Jury, an investigative body who's role is determine if sufficient facts support
21 probable cause that a defendant committed an offense.

² Regardless of Defendant's contention, there is jurisdiction as to all charged crimes pursuant A.R.S §§ 13-108, 13-109 and 21-407(A). As was clearly laid out before the Grand Jury, Defendant murdered L.P. in Yavapai County and acquired personal property of L P , including L P.'s VISA card. This card was used in Yavapai County after L.P. was disposed of, and then the same card was used repeatedly from Arizona to California to Oregon.

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RESPECTFULLY SUBMITTED this 18th day of August, 2017.

Sheila Polk
Yavapai County Attorney

By: 
Kevin D. Schiff
Deputy County Attorney

COPY of the foregoing mailed/delivered this 18th day of August, 2017 to:

Craig Williams
Attorney for Defendant

Hon. Tina R. Ainley

By: 