

Craig Williams, Attorney at Law, P.L.L.C.  
State Bar #014929  
P.O. Box 26692  
Prescott Valley, AZ 86312  
Email: craigwilliamslaw@gmail.com  
tel.: (928) 759-0000  
fax: (928) 441-1121

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2017 AUG 23 PM 4: 20

DONNA MCQUALITY, CLERK

BY: Melissa May

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

**IN AND FOR THE COUNTY OF YAVAPAI**

<b>STATE OF ARIZONA,</b>	)	<b>Case No.: P1300CR201600476</b>
	)	
<b>Plaintiff,</b>	)	<b>REPLY re: STATE'S RESPONSE TO</b>
	)	<b>DEFENDANT'S RULE 12.9 MOTION TO</b>
	)	<b>REMAND</b>
<b>ANTHONY RICHARDS,</b>	)	
	)	
<b>Defendant.</b>	)	<b>Hon. Tina R. Ainley, Div. 3</b>

The Defendant, by and through undersigned Counsel, hereby Replies to State's Response to Defendant's Rule 12.9 Motion to Remand (hereinafter, "Response").

The state argued that he did not understand the issues presented in the Addendum to Rule 12.9 Motion to Remand (hereinafter, "Motion to Remand"). However, on pages 2 and 3 of the Motion to Remand there are clearly listed 21 issues with jurisdiction.

In a footnote in its Response, the state claimed jurisdiction to all these charged crimes through A.R.S. §§13-108, 13-109, and 21-407(A). (Response, footnote pg. 7). However, these statutes were not presented to the Grand Jury. Instead the state vaguely told the Grand Jury:

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

(2-8-17 Grand Jury, pg. 10, lns. 1-3, italics added).

Nowhere in the Grand Jury Transcript is there any mention of A.R.S. §§13-108, 13-109,

and 21-407(A). Thus, there was no legally cognizable explanation given to the Grand Jury why any of the out-of-Yavapai-County and out-of-state events are within their jurisdiction.

Concerning §21-407(A), the Arizona Supreme Court wrote:

The question presented is whether the investigative powers of the county grand jury exceed its power to indict. A.R.S. §21-407(A) provides in pertinent part: "The grand jurors shall inquire into every offense which may be tried within the county ...." In Marston's Inc. v. Strand, 114 Ariz. 260, 560 P.2d 778 (1977), we discussed the function and powers of the grand jury. We said that the grand jury is an independent investigative body designed to bring to trial those who may be guilty and free the innocent from suspicion. *Id.* at 264, 560 P.2d at 782. To fulfill that function the grand jury has the right to every person's evidence, absent a constitutional, common law, or statutory privilege. *Id.* And a witness before the grand jury cannot set limits to the grand jury's investigation; furthermore, to fulfill its task of returning only well-founded indictments, the grand jury's power to investigate is necessarily broad. *Id.* at 264-65, 560 P.2d 782-83.

In Marston's, *supra*, we did not reach the precise issue presented today; however, the courts that have addressed this issue have resolved the issue in favor of the grand jury's right to investigate beyond its authority to indict. In Samish v. Superior Court, 28 Cal.App.2d 685, 83 P.2d 305, 306 (1938), the California Court of Appeals said:

One of the chief purposes of a grand jury is to investigate and ascertain whether crimes have been committed within the borders of its county and to institute criminal prosecutions thereof. A grand jury is not deprived of jurisdiction to investigate asserted public offenses merely because its members are uncertain as to whether a crime was actually committed, whether it was really committed within the borders of the county, or because of a lack of identity of the particular individual who perpetrated the crime. If it should develop after a thorough investigation by a grand jury that the alleged crime was really committed in another county that does not render the proceedings invalid or void, but merely precludes the presenting of an indictment therefor in that county ...

We agree with these courts that the grand jury's power to investigate may exceed its authority to indict. The grand jury's power to investigate events that occurred within the jurisdictional boundaries of another political entity exists only to the extent that the lead or tip being investigated is reasonably calculated to result in information concerning indictable criminal activity.

(Franzi v. Superior Court, 139 Ariz. 556, 559-60, 679 P.2d 1043, 1046-47 (1984)).

In this case, the state told the Grand Jury vague information concerning other jurisdictions without any legal foundation – the applicable law – as to its authority to indict for offenses outside of its jurisdiction.

We accept jurisdiction and grant relief because the State instructed the grand jury on only an inapplicable law, and it thus denied Petitioner a substantial procedural right in the grand jury, namely, the due process right to have the grand jury instructed on applicable law. Crimmins v. Superior Court, 137 Ariz. 39, 42, 668 P.2d 882, 885 (1983) ("We hold that the citizen's arrest statutes were part of the applicable law given the facts of the case, and it was the duty of the prosecutor as legal advisor to the grand jury to instruct on that law."); Trebus v. Davis in and for County of Pima, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997) ("[Due process] requires the prosecutor to instruct the grand jury on all the law applicable to the facts of the case.").

(Walker v. Superior Court, 191 Ariz. 424, 425-26, 956 P.2d 1246, 1247-48 (Ct. App. 1998)

The state also argued that State v. Mulligan (*infra*) did not apply because it had to do with a Trial Jury not a Grand Jury. Yet, when instructing the Grand Jury, the state chose to give the Grand Jury the definition for premeditation from *case law*:

Let 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.

It is this reflection, regardless of the length of time in which it occurs, that distinguishes first degree murder from second degree murder.

(2-8-17 Grand Jury, pg. 9, lns. 3-11).

By contrast, the statutory definition of premeditation is:

“Premeditation” means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

(Ariz. Rev. Stat. § 13-1101(1)).

Case law can be used to clarify statutes on a defendant's procedural rights, and case law is correctly quoted in the Motion to Remand.

It was incorrect for the state to tell the Grand Jury that, "We have documentation that shows Richards is a pretty angry person." (2-8-17 Grand Jury, pg. 13, lns. 8-9). This prejudicial and inflammatory declaration was a violation of the Defendant's right to substantive due process and a fair Grand Jury proceeding. It was offered to taint the Grand Jury. It was designed to draw the Grand Jury's attention from the real issues and to lead them unconsciously to render their decision in accordance with their view of defendant as a "bad man." (Paraphrasing State v. Mulligan, 126 Ariz. 210, 215, 613 P.2d 1266, 1271 (1980)).

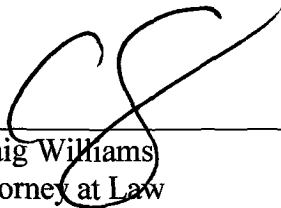
One of the reasons to challenge a Grand Jury proceedings under Rules of Criminal Procedure, Rule 12.9 is that the Defendant was denied a procedural right. One of the procedural grounds for a Grand Juror to be disqualified is "Persons biased or prejudiced in favor of either the state or the defendant." (Rules of Criminal Procedure, Rule 12.2(d)). This "bad man" testimony created a bias against the defendant and violated a substantial procedural right which prejudiced the defendant.

The Motion to Remand correctly pointed out that the "Grand Jury Presentation was a long, biased editorial commentary by Detective John McDormett, with very little questioning by the state." (Motion to Remand, pg. 2). This was combined with other prejudicial testimony, i.e. "*in our estimation ... Mr. Richards killed Mr. Powers;*" that Mr. Powers did not benefit from any of the purchases, etc. (See: Addendum to Rule 12.9 Motion to Remand). This Grand Jury was not "an independent investigative body designed to bring to trial those who may be guilty and free the innocent from suspicion." (Paraphrasing Franzi v. Superior Court, 139 Ariz. 556,


559-60, 679 P.2d 1043, 1046-47 (1984)(*supra*). It was a biased and prejudicial Grand Jury presentation.

Therefore, this Court should order a new determination of probable cause in this case.

RESPECTFULLY SUBMITTED this August 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  \_\_\_\_\_