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

STATE OF ARIZONA, Plaintiff, vs. MICHAEL LEE HAMM, Defendant.	Case No. P1300CR201901558 UNDER ADVISEMENT RULING	<p style="text-align: center;">FILED</p> DATE: <u>JAN 20 2021</u> ✓ <u>4:03</u> O'Clock <u>P</u> .M. DONNA McQUALITY, CLERK BY: <u>K. KENDRICK</u> Deputy
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HONORABLE DEBRA R. PHELAN DIVISION PRO TEM A	BY: Jennifer Jaramillo, Judicial Assistant DATE: January 20, 2021
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Pending before the Court is Defendant Michael Hamm's *Motion to Dismiss Counts 47, 57, 59, 71, 75, 77, 89, 91, 129, and 131 of the Indictment*, filed August 4, 2020. The State filed a *Response* on August 14, 2020. Defendant Hamm filed his *Reply August 21, 2020*. The Court conducted oral argument on December 14, 2020. At the conclusion of oral argument, the Court took the matter Under Advisement.

Defendant Hamm had also filed the following motions in addition to the *Motion* pending before this Court: *Motion to Dismiss Count 49 of the Indictment*, filed July 28, 2020, and *Motion to Dismiss Count 25 of the Indictment*, filed July 31, 2020. The State, in the State's *Reply*, as well as during oral argument, did not contest dismissal of the following counts from the indictment: Counts 49, 25, and 73.

For the pending *Motion to Dismiss* filed August 4, 2020, Defendant Hamm moves the Court to dismiss the following counts from the Indictment: 47, 57, 59, 71, 75, 77, 89, 91, 129 and 131. Defendant Hamm cites Rule 16.4(b) of the Arizona Rules of Criminal Procedure as support for Defendant Hamm's position. The crux of Defendant Hamm's argument is that the indictment is insufficient as a matter of law, asserting there is no evidence that Defendant Hamm committed money laundering as alleged in the named counts Defendant Hamm requests the Court dismiss.

Rule 16.4(b) of the Arizona Rules of Criminal Procedure requires, upon a Defendant's motion, the court to dismiss a count or counts if the court finds that the indictment is insufficient as a matter of law. An indictment is sufficient as a matter of law if it informs the defendant of the essential elements of the charges, is sufficiently definite so that the defendant can prepare to meet the charges, and protects the defendant from subsequent prosecution for the same offense. *State v. Rickard-Hughes*, 182 Ariz. 273, 275, 895 P.2d 1036, 1038, (App. 1995).

In this case, this Court finds the indictment sufficient as a matter of law as the indictment meets the criteria for a sufficient indictment. Specifically, the *Indictment* dated December 23, 2019 cites the name of each charge, identifies the applicable statutes allegedly violated for each count, and identifies by name the applicable defendant. For the counts moved for dismissal by Defendant Hamm in the *Motion to Dismiss*, the Court finds each count meets the criteria outlined by *State v. Rickard-Hughes* for sufficiency of an indictment.

Defendant Hamm cites in his *Motion to Dismiss Crimmins v. Superior Court*, 137 Ariz. 39, 668 P.2d 882 (1983) as support for his position that the evidence in this case that was presented to the grand jury does not constitute criminal conduct and therefore warrants dismissal of the named counts in the *Motion to Dismiss*. This Court does not find *Crimmins*, nor the other cases cited interpreting *Crimmins*, controlling in the present case as *Crimmins* addressed a defendant moving to challenge a grand jury proceeding pursuant to Rule 12.9 of the Arizona Rules of Criminal Procedure. In this case, Defendant Hamm did not file a challenge to the grand jury proceedings pursuant to Rule 12.9 of the Arizona Rules of Criminal Procedure, and the timeliness of such a motion has, at this point in the litigation, passed. Defendant Hamm instead filed his *Motion to Dismiss* pursuant to Rule 16.4(b), which is not interpreted by *Crimmins*, but by cases interpreting Rule 16.4(b) such as *State v. Rickard-Hughes*, 182 Ariz. 273, 275, 895 P.2d 1036, 1038, (App. 1995), cited and discussed previously.

The *Motion to Dismiss* also argues that dismissal is warranted because the evidence presented to the grand jury did not constitute fraud. In a defendant's motion to dismiss pursuant to Rule 16.4(b), factual defenses to a charge are irrelevant to the issue of legal sufficiency of the indictment. *State v. Kerr*, 142 Ariz. 426, 431, 690 P.2d 145, 150 (App. 1984). The factual disputes raised by Defendant Hamm in the *Motion to Dismiss* are arguments that could have been made either through a 12.9 motion, which timeline has now passed, through a Rule 20 motion at the conclusion of the presentation of evidence, or to the jury should the Court deny a Rule 20 motion.

Finally, Defendant Hamm argued in oral argument that the defendant named in the charges requested for dismissal were the business, Kokopelli Eye Institute, and not Defendant Michael Hamm. This Court does not find that is accurate. The counts named in the *Motion for Dismiss* identify Defendant Michael Hamm and not Kokopelli Eye Institute.

THEREFORE, IT IS ORDERED Defendant Hamm's *Motion to Dismiss Counts 47, 57, 59, 71, 75, 77, 89, 91, 129, and 131 of the Indictment* filed August 4, 2020 is DENIED.

IT IS ORDERED, per stipulation of the parties, DISMISSING without prejudice from the Indictment: Counts 49, 25, and 73.

cc: Brett Hames, Assistant Attorney General (e)
Edward F. Novak, Polsinelli PC (e)
Andrew Jolley, Prescott Law Group (e)

YAVAPAI COUNTY
SUPERIOR COURT



HEALTH & SAFETY
SCREENING
GUIDELINES

Effective June 1, 2020 the Yavapai County Superior Court will be practicing health and safety measures for those persons coming into the courthouses. Please note the following procedures that court staff will be following until further notice.

- All persons coming into the Superior Court facilities will be required to wear a mask at all times unless directed otherwise.
 - ◊ **Please bring your own mask.** If you do not bring a mask, one will be provided for you.
 - ◊ If you refuse to wear a mask, you will be denied entry into the courthouse.
- You will be asked the following three questions prior to entering through the magnetometer:
 - ◊ *Have you tested positive for COVID-19 in the past 10 days or are you currently waiting for test results?*
 - ◊ *Have you had contact with someone who has tested positive for the COVID-19 virus in the last 14 days?*
 - ◊ *Have you experienced any symptoms of COVID-19 in the last 10 days?*

** If you answer "yes" to any of these questions, you may be denied entry into the courthouse until cessation of symptoms, diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under the CDC guidelines. You may request an exception by completing a form and submitting it to Court Administration for consideration.*
- Court Security and/or other court staff will be checking your temperature upon entry.
 - ◊ Your temperature will be scanned by an infrared digital thermometer. It will be placed approximately two to five centimeters away from your forehead
 - ◊ If your temperature reads 100.4° F or higher, you will be denied entry into the courthouse and directed to contact the Division or department in which you had business by telephone or alternate means. *Upon request, you may re-test once after 15 minutes.*
 - ◊ Court Security Officers will be equipped with masks and gloves while conducting temperature checks and screening equipment will be frequently sanitized for everyone's protection.

Some activities can raise your body temperature. Heavy exercise and/or caffeine intake can raise your body temperature. Ensure these activities are limited prior to coming to the courthouse.

SYMPTOMS OF COVID-19
Shortness of breath or difficulty breathing
Muscle pain
Body temperature over 100.4°F
Sore throat
Cough
New loss of taste or smell

Some medical conditions can affect temperatures. If you are willing, please discuss with us if you feel a separate condition exists that may cause an elevated reading.