

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-009416-001 DT

05/24/2013

HON. PAMELA GATES

CLERK OF THE COURT
D. McGraw
Deputy

STATE OF ARIZONA

KARIN TANG HOM

v.

PETER J WORKUM (001)

IVAN K MATHEW

VICTIM WITNESS DIV-AG-CCC

UNDER ADVISEMENT RULING

The Court has considered the following Motions as well as the Responses, Replies and Supplements: 1) Defendant's Motion to Unseal Search Warrant Affidavit related to SW2012-005070; 2) Defendant's Motion to Modify Conditions of Release to Allow Defendant to Attend Court Proceedings; 3) Defendant's Response to State's Motion for Appointment of Counsel and Motion to Vacate Order; 4) Defendant's Motion to Remand to the Grand Jury for a Redetermination of Probable Cause; and 5) Defendant's Motion to Compel Disclosure of Exculpatory Information.

1. Defendant's Motion to Unseal Search Warrant Affidavit related to SW2012-005070

The Court received and reviewed the Defendant's Motion to Unseal Search Warrant Affidavit related to SW2012-005063 and SW2012-005070. During the oral argument on April 30, 2013, the State agreed to disclose the Seizure Warrant and supporting affidavit in SW2012-005063 to Defense counsel on or before May 3, 2013. Since the April 30, 2013 oral argument, the Court has reviewed the State's Motion for *In Camera* Review of Law Enforcement Records [SW2012-005070 and the supporting affidavit] to Determine if the Records Contain *Brady* or Other Relevant Material.

The Court finds that the Seizure Warrant, SW2012-005070, and the attachments thereto, including the supporting affidavit do not contain information that must be disclosed to the

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Defense under Rule 15.1 of the Arizona Rules of Criminal Procedure or *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its progeny. Therefore,

IT IS ORDERED denying Defendant's Motion to Unseal Search Warrant Affidavit related to SW2012-005070.¹

2. Defendant's Motion to Modify Conditions of Release to Allow Defendant to Attend Court Proceedings

The Court also considered Defendant Peter Workum's Motion to Modify Conditions of Release to Allow Defendant to Attend Court Proceedings. Specifically, the Defendant requested permission to allow Mr. Workum to attend Court proceedings in civil cases and ancillary proceedings where Mr. Workum is accompanied by his counsel and where Mr. Orlo Ison, the alleged victim may be present. The State declined to take a position on the Motion. The Defendant's current release conditions include that the Defendant may not initiate contact with the alleged victim. In addition, the release conditions provide that the Defendant shall not have any physical contact with any alleged victim.

IT IS HEREBY ORDERED granting the Defendant's pending Motion to Modify Conditions of Release to Allow Defendant to Attend Court Proceedings. Specifically, the Court hereby modifies Defendant Peter Workum's release conditions to provide that Mr. Workum may attend Court proceedings, whether in civil, bankruptcy or criminal court where Mr. Orlo Ison and/or Devera Ison may be present; provided however, that Mr. Workum shall not initiate any verbal contact directly with the alleged victims prior to, during or following the proceedings. In addition, other than as allowed herein, Mr. Workum is prohibited from having any direct physical contact with the alleged victims.

3. Defendant's Response to State's Motion for Appointment of Counsel and Motion to Vacate Order

The Court also considered Defendant's Response to the State's Motion for Appointment of Counsel and Motion to Vacate Order, appointing counsel for Mr. Chad Kennedy.

IT IS ORDERED denying Defendant's Motion to Vacate Order, appointing counsel for Mr. Chad Kennedy.²

¹ Defendant's Reply to the State's Response to the Motion to Compel Exculpatory Information suggests this issue is moot. See Defendant's Reply State's Response to Motion to Compel Exculpatory Information at 6 ("Indeed, the warrant affidavit which the State provided to the Court for an in camera review as [sic] copied numerous times and sent to parties in Case No. CV2012-009324.").

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4. Defendant's Motion to Remand to the Grand Jury for a Redetermination of Probable Cause

The Defendant alleged that his due process rights were violated by the lack of a fair and neutral presentation to the Grand Jury, thus necessitating a remand of the case to the Grand Jury.

Defendant claimed, *inter alia*, that the State presented false and misleading evidence to the Grand Jury. Specifically, the Defendant alleged that the State misled the Grand Jury regarding the Defendant's relationship with Orlo Ison and failed to inform the Grand Jury that Mr. Ison obtained a loan from the Defendant prior to the Defendant's alleged criminal conduct.³

Defendant also claimed that the State failed to present exculpatory evidence to the Grand Jury, thereby violating the Defendant's due process rights. Although the State is not required to present all exculpatory information to the Grand Jury, the State is required to ensure that the Grand Jury receives a fair presentation of the evidence.

In addition, Defendant alleged that the State, through Agent Scozzari, provided the Grand Jury with incorrect statements of the law. In part, the Defendant alleged that Agent Scozzari told the Grand Jury that Chicago Title was unaware of the deeds of trust thereby attempting to convey that the documents were a forgery and that the deeds of trust were fraudulent because Agent Scozzari could not trace the funds. In his Reply, the Defendant also asserted that Agent Scozzari erroneously misled the Grand Jury when she testified that Orlo Ison's quitclaim deed was a nullity. However, the Grand Jury Transcript revealed that the Grand Jurors addressed the issues associated with the quitclaim deed. Agent Scozzari testified to the Grand Jury that the LLC owned the home, but that the LLC was non-existent at the time Mr. Ison executed the quitclaim deed. Demonstrating their understanding of this issue, one Grand Juror stated, before a True Bill

² Defendant alleged in footnote 1 of the Motion that the State contacted the Court without notifying Defense counsel of the communication and the Court granted the motion without Mr. Workum being allowed to present the Court with a response. The Court clarifies that it had no *ex parte* communication regarding this case. Counsel for the State filed a Motion for Appointment of Counsel for Mr. Chad Kennedy related to an interview set for April 17, 2013. Defense counsel was copied on the pleading. The Court granted the Motion on April 17, 2013. To the extent that the Court ruled prior to submission of Defendant's Response, the Court has now reviewed and considered Defendant's objection to the appointment of counsel and affirms its prior order issued April 17, 2013, appointing Michael Lee through the Office of Public Defense Services to represent the State's witness, Chad Kennedy, for purposes of a defense interview.

³ In response to a question from a Grand Juror regarding the connection between the Defendant and the victims, Agent Scozzari testified that the parties' relationship was "loosely" characterized as a business relationship. Agent Scozzari went on to state, "there was a partner in a business that Orlo Ison was involved in, and that partner had dealings with Workum, but Orlo [Ison] never really had direct dealings with Workum himself." Grand Jury Transcript, pg. 21:15 -18. Mr. Workum claimed that the testimony of Agent Scozzari was false and misled the Grand Jury.

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was returned, “so basically [the Isons] gave up ownership to something that didn’t exist.” Grand Jury Transcript pg.20: 12-13.

It is a “long established rule that an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence.” *State ex rel. Collins v. Kamin* 151 Ariz. 70, 725 P.2d 1104, 1106 (1986), *quoting State ex rel. Preimsberg v. Rosenblatt*, 112 Ariz. 461, 462, 543 P.2d 733, 774 (1975). The role of the Grand Jury is to determine whether probable cause exists to believe that the crime has been committed and that the person being investigated committed the crime. *See State v. Sanchez*, 165 Ariz. 164, 171, 797 P.2d 703, 710 (Ct. App. 1990). The Court shall not make an independent inquiry to determine the kind of evidence considered by the Grand Jury in making its decision. *See State v. Jacobson*, 22 Ariz. App. 128, 524 P.2d 962 (Ct. App. 1974)(finding that the attack on the indictment constituted no more than an attack on the sufficiency or competency of the evidence presented to the grand jury, a matter beyond the scope of judicial inquiry)(citations omitted). The United States Supreme Court has held that “[i]t would run counter to the whole history of the grand jury institution” to allow an indictment to be challenged “on the ground that there was inadequate or incompetent evidence before the grand jury.” *Costello v. United States*, 350 U.S. 359, 363-64, 76 S. Ct. 406, 409 (1956).

In making a determination of probable cause, there is no “mechanical test” to decide if due process has been satisfied. What is necessary for a fair and impartial presentation will vary from case to case. Due process is violated when perjured or false testimony is material to the indictment, thus precluding a Grand Jury from being able to find the existence of probable cause. *Trebus v. Davis, supra; Nelson v. Royston*, 137 Ariz. 272, 669 P.2d 1349 (1983); *State v. Jacobson*, 22 Ariz. App 128, 524, P.2d 962 (App. 1974); *United States v. Basutro*, 497 F.2d 781 (9th Cir. 1974). When courts have remanded cases to the Grand Jury, they have done so upon findings that the prosecution knowingly used false or misleading testimony, and that the testimony was material to the Grand Jury’s finding of probable cause.

Here, the Court finds that the State made a fair and impartial presentation of the evidence to the Grand Jury. *See Trebus v. Davis*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997). Moreover, the Court finds that the State did not withhold or fail to present any clearly exculpatory evidence. *State v. Coconino County Superior Court (Mauro)*, 139 Ariz. 422, 678 P.2d 1386 (1984). Furthermore, the Court fails to find that the State provided the Grand Jury with incorrect statements of the law.

The Defendant argues that some of the evidence could be interpreted in his favor. However, at the Grand Jury stage, the Defendant may not attack the facts or argue the conclusions to be drawn from the evidence. The Grand Jury is not the place to try the case. At

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trial, the Defendant may argue the interpretation of evidence and raise any defenses; he may not do so at the Grand Jury level.

Accordingly,

IT IS ORDERED denying Defendant's Motion to Remand to the Grand Jury for a Redetermination of Probable Cause.

5. Motion to Compel Disclosure of Exculpatory Information

The Defendant filed a Motion to Compel, which requested the following information:

- Any and all exculpatory material;
- Any and all impeachment material;
- Any and all benefits given by the State to Orlo Ison;
- Any and all benefits given by the State to Chad Kennedy;
- The informant file of Orlo Ison;
- The informant file of Chad Kennedy;
- All witness interviews and statements in this case;
- All reports pertaining to any witnesses;
- An Order that exculpatory or impeachment materials shall be preserved and not destroyed; and
- Any information which would mitigate a sentence.

In its Response, the State indicated that it has provided all exculpatory and impeachment material. The State further stated that it has not provided any benefits to Orlo Ison or Chad Kennedy. Moreover, the State affirmed that neither Mr. Ison nor Mr. Kennedy is an informant. The State also affirmed that all witness interviews in this case as well as all statements and reports pertaining to any witness in the case have been provided to the Defendant. The State also set forth that no known exculpatory or impeachment material has been destroyed and that the State is unaware of any information that would mitigate the Defendant's sentence. Having reviewed and considered the Motion to Compel, Response, and Reply, as well as the attachments,

IT IS ORDERED denying Defendant's Motion to Compel without prejudice.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.