

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2009-136467-001 DT

10/27/2009

HONORABLE SUSAN M. BRNOVICH

CLERK OF THE COURT
B. Kredit
Deputy

STATE OF ARIZONA

DANIELLE HARRIS

v.

JOHNATHAN RICHARD HOCK (001)

BRUCE E BLUMBERG

COUNTY ATTORNEY - GRAND JURY
VICTIM SERVICES DIV-CA-CCC

RULING

The Court has now considered defendant's Motion to Remand to Grand Jury and New Finding of Probable Cause, the State's Response, Defendant's Supplemental Motion for Remand, the State's Response, the Grand Jury transcript, and oral arguments of counsel. The Court makes the following findings and orders:

1. Defense first argues that his substantive procedural rights were irreparably violated by the prosecutor's statements regarding the media coverage. Defense argues that the State improperly used what was reported in the media as their summary of the case. It is clear, however, if one reads the entire transcript, that the State did not refer to "grossly inaccurate" or "highly inflammatory" media reports as a summary of the case. The State advised the jury of what type of media reports were out there so as to ascertain if any grand juror had seen any media. The grand jurors were then properly instructed that "any decision made by this grand jury in connection with this must be based solely upon the evidence presented during this hearing." THE COURT FINDS no violation of defendant's rights by the media commentary.

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2. Defendant next argues that Detective Albright lied about the length of the video. The transcript is clear that Det. Albright testified that she had viewed a 5-minute CD. That is absolutely true. The detective then went on to tell the grand jurors that some witnesses said the incident took 30 minutes to an hour. Defense argues that Det. Albright knew the witnesses were lying because of a letter from Sticky Drama. Defense claims that the letter to Det. Albright said that the five minute video was the complete version of what had happened on live fee. That statement is untrue. The letter provided to the Court says that the five minute video is the “only and entire recording Sticky Drama has of the incident.” The letter goes on to tell Det. Albright that she might be able to obtain more recordings from Stickam.com, where the incident was broadcast live. Therefore, **THE COURT FINDS** that Det. Albright’s testimony about the video was truthful and not misleading.
3. Defense argues that the State should have presented evidence that one person on the video said that he didn’t see the assault and that hundreds of other people may have seen the incident and have not been interviewed. **THE COURT FINDS** that information is not clearly exculpatory and goes solely to the weight and credibility of the evidence, which is precluded as a challenge to grand jury proceedings.
4. Finally, Defense argues that the State should not have elicited testimony that the defendant did not want to speak with the detective. The Court agrees. This error could have been cured if the grand jury had been give a curative instruction, but that was not done. See Maretick v. Jarrett, 204 Ariz 194, 62 P.3d 120, (2003). Therefore,

IT IS ORDERED remanding this case back to the Grand Jury for a new probable cause finding.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>