

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-333

Complainant: No. 1352710051A

Judge: No. 1352710051B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature. Since the commission is not an appellate court and cannot change a judge's decisions, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: January 26, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on January 26, 2009.

This order may not be used as a basis for disqualification of a judge.

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December 23, 2008

I have a complaint against As _____ court judge by the name of _____
 . This complaint is about the judges personal conduct, as well as abusing the power of authority of the judicial office and delay in making decisions.

ON November 3rd 2008 my attorney of record Richard Schenck Bar of _____ filed motions to remand on Cases. _____, Case _____. Both these remands clearly stated that this motion is based on the Arizona rules of Criminal Procedure, Rule 12.9 and the Due process and Equal protection clauses of the Arizona State Constitution and the U.S. Constitution. Even though these motions were supported by the attached memorandum of points and authorities to _____ Judge still failed to see the facts in the remands that were presented before him.

I'm sitting here looking at his rulings of the matters that were under advisement and he's saying that the court has considered the arguments and pleadings of counsel; having reviewed the grand jury transcripts; The court finds, as follows: 1. That the defendant was not denied a substantial due process right at the grand jury presentation of this case; 2. That the release conditions previously imposed herein are appropriate pursuant to A.R.S. 13-3697, and court Rule. It is ordered, as follows: 1. Denying the motion to remand this matter for a redetermination of probable cause; 2. Denying the defendant's request that the release conditions previously imposed be modified.

ON CR my attorney is stating the defendant's grand jury indictment for count 1, Theft, a class 6 felony, count 2 Aggravated assault, a class 3 dangerous felony and count 3, Theft of means of transportation, a class 3 felony is fatally defective based upon the evidence presented to the grand jury.

with regard to count 1 Theft, a class 6 felony, the state never introduced the evidence essential to establishing all the elements of that charge as required by A.R.S. Section 13-1802 (A)(1) and A.R.S. Section 1801 and the right of self-defense available to the defendant

Count 2, Aggravated Assault, a class 3 dangerous felony, the state never introduced the evidence essential to establishing all the elements of that charge as required by A.R.S. Sections 13-1204 (A)(2) and A.R.S. Section 1203 and the right of self-defense available to the defendant.

with regard to count 3, Theft of means of transportation, a class 3 felony, the state never introduced the evidence essential to establishing all the elements of that charge as required by A.R.S. Sections 13-1814 and A.R.S. Sections 28-3304.

Indeed the state introduced no evidence that the defendant intended to permanently deprive the alleged victim Jane Fontenot of the vehicle. Rather, the transcript indicates the defendant merely used the vehicle as a means to flee the encounter with the alleged victim, Aayna Gonsalves with no intent to permanently deprive the alleged

victim of the vehicle. The state did establish that the defendant was present at the (county) home of a friend with the alleged victim on August 24, 2008 and the Alleged victim displayed a .380 Bersa firearm at the defendant. The state neglected to inform the grand jury that the defendant had a right under the circumstances to defend himself from the assault of the alleged victim.

, During the grand jury proceedings, the state offered testimony of Detective (name) of the (name) police department while detective (name) was not involved in the defendant's case initially, she appeared instead of officer (name) the case investigating officer. She testified that in pertinent Part: see page 4 of the remand for CR-200801512 The state adduced no further evidence for the grand jury. Based upon Detective (name) recitation of officer (name) account of the alleged crimes, the grand jury indicted the defendant by A vote of 12 to 0. GJ 137: 23-25 Transcript enclosed.

Determining whether remand is appropriate requires assessing whether errors alleged were material to the determination of probable cause and therefore prejudicial to the defendant. pg 5

in this case I think the errors alleged were very prejudicial. The Deputy county attorney (name) not only failed to inform the (name) county grand jury of my constitutional right to self-defense. He let another officer testify instead of the original case

Investigating officer. This was a very legible case for the judge to not only Deny my remands for a redetermination of probable cause. He also Denied the order(s) for an Evidentiary Hearing. In rule 404 of ARIZ, Rules of Evidence, The risk of prejudice from "prior bad act" evidence is so severe that an Evidentiary rule has been created to minimize it. See (IA) John H. Wigmore, evidence 58.2 at 1212 (Tillers rev. 1983) "The natural and inevitable tendency of the Fact Finder ... is to give excess weight to the vicious record of crime thus exhibited and either allow it to bear strongly on the present charge or take proof of it as justifying a condemnation, irrespective of the accused guilt ...

; ONCR. The motion to remand and order(s) were denied on this case as well by Honorable . This case was very legible also. I'm going to show you not only how all 3 of us co-defendants were indicted for the same charges, but how prior criminal history was elicited by the Deputy county attorney prosecuting this case for an indictment.

on page 92:10-12 grand jury transcript a question is asked By the deputy county attorney Any physical evidence found in apartment that helps us along with this case? The witness officer states: "NO SIR"

on page 93:25 Grand jury transcript, The Deputy county attorney starts Eliciting prior criminal history. question: Have you done Research into prior, page 94:1-8 criminal history?

A. Yes, Sir., Q. He previously has been convicted of a felony offense?

A. Yes, Sir., Q. To the best of your knowledge his civil rights to possess fire arms has not been restored? A. Yes, Sir. GJ. 93:25-94:1-8

Q. The same thing about . Has she been previously convicted of a felony offense? A. Yes, SIR. Q. To the best of your ability has his rights to possess and bear firearms has not been restored? A. That's correct. GJ 94:9-14

on page 4 of my remand my Attorney shows what officer testified to at the grand jury. He clearly stated on page 4 Lines 11-15 that prior criminal history was elicited. He argues it under law and argument in the remand CR-200801670.

, The information relating to prior criminal history was irrelevant to the grand jury's determination of probable cause, it was classic bad act evidence offered to show that because Defendant's had prior record(s) He or they must be guilty of the current allegation(s) and that was unfairly prejudicial. The prosecutor never instructed the county grand jury to disregard that testimony or gave any limiting or legal instruction.

LAW: Rule 12.9 of criminal procedure provides grounds The grand jury proceedings may be challenged only by motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right or than an insufficient number of qualified grand

jurors concurred in the finding of the indictment in this case, the defendant was denied a substantial procedural right to fair and relevant law.

on page 94:15-18 Deputy county attorney asks the question. And finally have you been able to determine any motive for this incident in the course of your investigation. A. NO SIR, so now that there's NO physical evidence found in the case, and no motive in the course of this officer's investigation. See page 92:10-12 Grand jury transcripts.

on page 96:4-14 grand jury transcripts.

: Are all, any or all of these people gang members?

The cop: I can't -- one of them possibly.

County Attorney: NONE were clearly identified as a gang member?

The cop: correct

: they have gang participation?

The cop: I suppose.

: Any or all?

The cop: That's correct...

, Sir with all due respect not only did they elicit prior criminal history in a grand jury proceeding, they talked about gang members and gang participation, when none were clearly identified as a gang member. The officer states that's correct, that should of been the end of that direct line of questioning But it wasn't, The Deputy County Attorney prosecuting

this case for indictment lets the grand jury keep asking questions about gang participation. If the officer answers No to the question none were clearly identified as a gang member. Then why would he says yes to having gang participation? I'd like to point out that all three of us were indicted on the same indictment with a panel of 15 jurors. Not only was my criminal history elicited, but my co-defendant's as well, starting on page 93: 25, 94: 1-8, 94: 9-14, but on page 96: 17-22 their asking the question again if Mr. [redacted] and Ms. [redacted] did they have priors also? The deputy county attorney Mr. [redacted] states: Mr. [redacted]. We have that question answered, in terms of Ms. [redacted] we can't go into that question for you. No allegations she's a prohibited possessor.

I want to point out that my attorney argued this in my Remand stating the state never introduced evidence the defendant knowingly possessed a weapon while he had knowledge that he was a prohibited possessor pursuant to A.R.S. Section 13-3102 and A.R.S. Section 13-3101. My attorney also argued likewise with regard to Count 9, the statement officer [redacted] that his rights (the defendant's right to possess and bear arms) had not been restored does not demonstrate to the grand jury that the defendant knew or had reason to know his right to possess and bear arms had not in fact been restored. Indeed with regard to count 9, the lack of evidence that demonstrates the basis of officer [redacted] knowledge of the defendant's court proceedings and the lack

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of intent of the defendant to violate the law by possessing the fire arm under this part of the indictment insufficient as well. Accordingly, the grand jury received no substantial evidence of probable cause that the defendant intended to commit Aggravated Assault, Armed Robbery or Kidnapping Against any of the three victims. Likewise, there is no substantial evidence of probable cause that the defendant removed any property from the alleged crime scene. Finally the grand jury Transcript (supra) does not present evidence of probable cause that the defendant intended to possess the weapon while he had knowledge that his civil right to bear and possess the weapon had not been restored. indeed, these defects to the state's presentation of probable cause at the grand jury proceedings caused almost half the juror's to vote against the indictment. The vote was 9 to 6 on all nine charges, GJ97:1315

Conclusion: The testimony had nothing to do with whether he was present or participated in the earlier incidents. It was improper character evidence. This information pertaining to gang members and gang participation was an improper and highly prejudicial character evidence in a grand jury proceeding at which Defendant(s) in this indictment case could not object and upon which the prosecutor gave no limiting instruction which created an atmosphere of an improper presentation of the evidence when presented which ended up in a prejudicial, discriminatory and bias opinions being formed of the facts and the defendant(s). If you don't think my Due process rights weren't violated in a grand jury proceeding than scratch this complaint. I look forward to your response.