

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2023-008495-001 DT

06/16/2024

HONORABLE GEOFFREY FISH

CLERK OF THE COURT
M. Mogel
Deputy

STATE OF ARIZONA

TODD C LAWSON
NICHOLAS KLINGERMAN
CASEY BALL

v.

PEGGY SUZANNE JUDD (001)

KURT MICHAEL ALTMAN
ASHLEY JEAN FITZWILLIAMS

JUDGE FISH
VICTIM WITNESS DIV-AG-CCC

MINUTE ENTRY

This matter was taken under advisement following oral argument on Defendant's Motion to Dismiss Prosecution for Lack of Jurisdiction filed February 28, 2024. Co-Defendant Crosby has joined in the Motion. The Court has considered the Motion, the State's Response, the Defendant's Reply and oral argument presented.

Defendant contends the indictment should be dismissed for lack of jurisdiction. Specifically, Defendant argues the state grand jury lacked the authority to investigate this case pursuant to A.R.S. §21-422.

Timeline of Events:

The following is taken from available public records including many exhibits submitted to the grand jury and attached as exhibits by the parties. Sometime prior to the general election in 2022, Defendants Judd and Crosby, Cochise County Supervisors, began inquiring about the ability to conduct a hand count of ballots for the upcoming election. In early October 2022, the Cochise County Board of Supervisors (referred to herein as CCBS) were advised by the Cochise

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County Attorney's Office at a work session they had no specific authority to conduct a hand count, no additional authority outside of statute and the Elections Procedure Manual (referred to herein as EPM) and changing procedures with a fast-approaching election was a significant problem. Defendant Judd indicated a desire to get a legal opinion from the Attorney General's Office.¹

Following the work session, State Elections Director, Kori Lorick, sent the CCBS a letter indicating a full hand count would be unlawful and violate the EPM. While a limited post-election hand count audit is proscribed, there are no procedures or law authorizing a full hand count. Arizona Counties Insurance Pool also sends a letter to the CCBS advising no coverage or legal defense if the CCBS moves forward with a hand count.²

A special Board of Supervisors Hearing was held on October 24, 2022. At that hearing, two items were placed on the agenda which if approved, would require a hand count of ballots. Many members of the public spoke at the hearing both for and against the proposal to hand count ballots. Cochise County Attorney, Brian McIntyre advised the CCBS that total hand counting was not permitted, violated elections statutes and the EPM and further he would not defend the action should they proceed. In addition, a representative of the Arizona Counties Insurance Pool spoke and indicated the county would not have insurance to count on and ACIP would not hire an attorney in the event of litigation. The CCBS voted in favor of conducting a hand count audit of all precincts to be completed prior to the canvas of general election results pursuant A.R.S. §16-602(B).^{3 4 5}

¹ See *CCBS meeting minutes October 11, 2022*.

² See *Grand Jury exhibit 1, Chronology*.

³ See *CCBS meeting minutes, October 24, 2022*.

⁴ Defendants Judd and Crosby voted in favor while Supervisor English voted against.

⁵ A.R.S. §16-602(B) states:

B. For each countywide primary, special, general and presidential preference election, the county officer in charge of the election shall conduct a hand count at one or more secure facilities. The hand count shall be conducted as prescribed by this section and in accordance with hand count procedures established by the secretary of state in the official instructions and procedures manual adopted pursuant to section 16-452. The hand count is not subject to the live video requirements of section 16-621, subsection D, but the party representatives who are observing the hand count may bring their own video cameras in order to record the hand count. The recording shall not interfere with the conduct of the hand count and the officer in charge of the election may prohibit from recording or remove from the facility persons who are taking actions to disrupt the count. The sole act of recording the hand count does not constitute sufficient grounds for the officer in charge of the election to prohibit observers from recording or to remove them from the facility. The hand count shall be conducted in the following order:

1. At least two percent of the precincts in that county, or two precincts, whichever is greater, shall be selected at random from a pool consisting of every precinct in that county. The county political party chairman for each political party that is entitled to continued representation on the state

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Following the October 24, 2022, hearing, the State Elections Director sends another letter to the CCBS warning not to conduct a full hand count of all ballots, but rather comply with the limited hand count audit as prescribed and requests assurances of the same.⁶ On October 26, 2022, the CCBS held an emergency hearing to respond to the Secretary of State's most recent letter. Defendants Crosby and Judd, on behalf of the CCBS, sent a letter back to the Secretary of State indicating there will not be a full hand count of "every item on every ballot". Another agenda item, obtaining outside counsel for the CCBS, was tabled after discussion.⁷

ballot or the chairman's designee shall conduct the selection of the precincts to be hand counted. The precincts shall be selected by lot without the use of a computer, and the order of selection by the county political party chairmen shall also be by lot. The selection of the precincts shall not begin until all ballots voted in the precinct polling places have been delivered to the central counting center. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted. Only the ballots cast in the polling places and ballots from direct recording electronic machines shall be included in the hand counts conducted pursuant to this section. Provisional ballots, conditional provisional ballots and write-in votes shall not be included in the hand counts and the early ballots shall be grouped separately by the officer in charge of elections for purposes of a separate manual audit pursuant to subsection F of this section.

2. The races to be counted on the ballots from the precincts that were selected pursuant to paragraph 1 of this subsection for each primary, special and general election shall include up to five contested races. After the county recorder or other officer in charge of elections separates the primary ballots by political party, the races to be counted shall be determined by selecting by lot without the use of a computer from those ballots as follows:

- (a) For a general election, one statewide ballot measure, unless there are no measures on the ballot.
- (b) One contested statewide race for statewide office.
- (c) One contested race for federal office, either United States senate or United States house of representatives. If the United States house of representatives race is selected, the names of the candidates may vary among the sampled precincts.
- (d) One contested race for state legislative office, either state house of representatives or state senate. In either case, the names of the candidates may vary among the sampled precincts.
- (e) If there are fewer than four contested races resulting from the selections made pursuant to subdivisions (a) through (d) of this section and if there are additional contested federal, statewide or legislative races or ballot measures, additional contested races shall be selected by lot not using a computer until four races have been selected or until no additional contested federal, statewide or legislative races or ballot measures are available for selection.
- (f) If there are no contested races as prescribed by this paragraph, a hand count shall not be conducted for that precinct for that election.

⁶ See *Secretary of State Letter dated October 25, 2022*.

⁷ See *CCBS meeting minutes October 26, 2022*.

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On October 28, 2022, a CCBS work session was conducted. The agenda item to be discussed was the possible direction regarding the expanded hand count of ballots as approved on October 24, 2022. Cochise County Elections Director, Lisa Marra, detailed the existing hand count process which is in line with the statutory scheme and EPM. Defendant Judd discussed an informal opinion issued by the Attorney General's Office which seemed to permit an expanded hand count of all ballots at all precincts and to perform a hand count audit of all early ballots. Attorney McIntyre took issue with the opinion and once again advised the CCBS against proceeding with the hand count. Ms. Marra voiced concerns including chain of custody issues if counts were conducted prior to the state canvass on December 5, 2022. Defendant Judd brought up the idea of doing the hand count after the canvassing as an audit to verify effectiveness.⁸

On October 31, 2022, a special action was filed in the Cochise County Superior Court by the Arizona Alliance for Retired Americans requesting a Writ of Mandamus to enjoin a hand count. The CCBS, David Stevens and Lisa Marra were named in their legal capacity.⁹ The next day, the CCBS held an emergency meeting to discuss selection of outside counsel and outside counsel were retained.¹⁰

On November 7, 2022, following an evidentiary hearing, the Hon. Casey McGinley granted a preliminary injunction and enjoined the full hand count audit of all votes cast and further ordered any hand count conducted would be held in accordance with A.R.S. §16-602.¹¹ An appeal of Judge McGinley's order was filed by counsel representing CCBS.

On November 8, 2022, the general election was held. On November 10, 2022, Cochise County Attorney McIntyre sent a letter to all parties involved in the litigation that his office was aware "certain actors may attempt go forward with an 'expanded hand count' despite the decision rendered Monday by Judge McGinley."¹² County Attorney McIntyre warned of possible criminal acts in proceeding with an expanded hand count.¹³

On November 14, 2022, Defendants Judd and Crosby, in their official capacity, filed a Special Action suit against Cochise County Elections Director, Lisa Marra. According to the complaint, Plaintiffs (Defendants Judd and Crosby) alleged the prior court order of November 7, 2022 "did not enjoin the County Recorder or Elections Director from conducting an expanded hand count of fewer than 100% of election day ballots".¹⁴ Further, Plaintiffs alleged Ms. Mara

⁸ See *CCBS meeting minutes October 28, 2022*.

⁹ See *CCBS meeting minutes November 1, 2022*.

¹⁰ See *CCBS meeting minutes November 2, 2022*.

¹¹ See *ruling in CV2022-00518 filed November 7, 2022*.

¹² See *November 10, 2022, letter from Cochise County Attorney, Brian McIntyre at page 2*.

¹³ *Id.*

¹⁴ See *Verified Complaint in CV2022-00533, Cochise County Superior Court, at page 2*.

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refused to turn over ballots to the County Recorder so he could comply with the Board's lawful command.¹⁵ ¹⁶ The complaint stated the CCBS had not yet held a meeting to vote to proceed with the lawsuit and therefore is named as a plaintiff through the use of "Doe X" designation.¹⁷

On November 15, 2022, the CCBS met in a regular board meeting. As part of that meeting, an agenda item was heard regarding approval of payment to outside counsel regarding the ongoing litigation. The issue was discussed and tabled.¹⁸ On that same day, a special board of supervisors meeting was scheduled and then cancelled. An agenda item was listed as follows "modify current standing action by the board of Oct. 24, 2022, regarding hand count audit pursuant to ARS 16-602 B; to be 99.9% of ballots will be counted."¹⁹

On November 16, 2022, Defendant's Judd and Crosby filed a motion to dismiss their Special Action complaint. Apparently, there was no board meeting to discuss and decide this action.²⁰ The Special Action was dismissed on November 17, 2022.

On November 18, 2022, a special board of supervisors meeting was held with the only agenda item being to accept the elections results as certified and submitted by the Cochise County Elections Department. The CCBS heard from Elections Director Marra as to the specifics of the election and tabulations. Following Ms. Marra, many persons from the public spoke to the CCBS both for and against accepting the results of the election. In addition, State Elections Director, Kori Lorick, also spoke to the CCBS to specifically address issues regarding the certification of voting machines. Discussion ensued about the accreditation of the voting machines. The Deputy County Attorney advised the CCBS they had until November 28, 2022, to certify the election results pursuant to law. Defendants Judd and Crosby voted to table certification until November 28, 2022, at 10:00 a.m. at which time the CCBS would hold a meeting and decide whether the machines were properly accredited.²¹

November 28, 2022, was the deadline for all counties to certify their elections. On November 28, 2022, the CCBS held a special meeting. The only item on the agenda for the meeting was the acceptance and certification of the results of the November 8, 2022, election. Defendant Crosby indicated the agenda was incorrect as it was missing the agenda item to

¹⁵ *Id.*

¹⁶ The Court notes there doesn't appear to exist any public documents relating (i.e. board minutes, work session minutes, etc.) documenting where the CCBS continued to move forward with hand counts or other election related action notwithstanding the allegations contained in the Special Action complaint.

¹⁷ See *Verified Compliant in CV2022-00533, Cochise County Superior Court, at page 3.*

¹⁸ See *CCBS Meeting Minutes from November 15, 2022, at page 7.*

¹⁹ See *Hand Count Litigation Chronology at page 3.*

²⁰ *Id.*

²¹ See *CCBS meeting minutes November 18, 2022.*

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provide interaction between subject matter experts on voting machines and representatives from the Secretary of State's Office. Defendant Crosby moved to table the certification until December 2, 2022, where a new agenda to include the hearing on the voting machines could be issued. Chairman English restated the Board had the necessary information for the non-discretionary duty. A vote was held and the motion to table was approved.²²

Following the CCBS meeting, the Secretary of State filed a Special Action under SO200CV202200552 in the Cochise County Superior Court. The matter was assigned to the Hon. Casey McGinley once again. In addition, the Arizona Alliance for Retired Americans filed an Order to Show Cause. An emergency CCBS meeting was called for November 29, 2022. The agenda item was for the purpose of obtaining outside counsel in the new litigation filed by the Secretary of State. Judge McGinley had set the matter for hearing on December 1, 2022, and ordered any responses due by November 30, 2022. The CCBS approved obtaining outside legal counsel.²³

On December 1, 2022, an emergency meeting of the CCBS was held. The item to be discussed was approval of outside counsel in both the Secretary of State's special action and the new suit from Arizona Alliance for Retired Americans.²⁴

Later that same day, Judge McGinley held a combined hearing regarding the Secretary of State special action and AARA's complaint. Defendant Crosby appeared pro per and requested a continuance which was denied. Defendant Judd and Chairman English also appeared. After argument was presented, Judge McGinley ordered the CCBS to convene at 3:30 p.m. the same day to canvass the election with the canvass to be completed no later than 5:00 p.m. and presented to the Secretary of State.²⁵

At 3:30 that same day, the CCBS held an emergency session wherein Defendant Judd and Chairman English voted to accept the election results and submitted the election results to the Secretary of State. Defendant Crosby did not attend the emergency session. In addition, the CCBS voted to cancel the December 2, 2022, special meeting where the hearing regarding the certification of the machines was to be held.²⁶

On December 5, 2022, the Secretary of State, Katie Hobbs, Governor Doug Ducey and Attorney General Mark Brnovich certified the 2022 election.

²² See *CCBS meeting minutes November 28, 2022*.

²³ See *CCBS meeting minutes November 29, 2022*.

²⁴ See *CCBS meeting minutes December 1, 2022*.

²⁵ See *minute entry dated December 1, 2022, in Cochise County Superior Court case SO200CV202200552*.

²⁶ See *CCBS meeting minutes December 1, 2022*.

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At some point in 2023, the Attorney General's Office opened an investigation into the Cochise County Board of Supervisors relating to the 2022 election. Defendants Judd and Crosby were targets of the investigation. Both Defendants were subpoenaed to appear before a state grand jury. Defendant Judd appeared on November 13, 2023, and invoked her fifth amendment rights. Defendant Crosby appeared and testified. On November 27, 2023, the grand jury returned indictments against both Defendant Judd and Crosby for one count of Conspiracy, a class 5 felony and one count of Interference with an Election Officer, a class 5 felony. The grand jurors further found the offenses were committed in Cochise and Maricopa counties.²⁷

Law and Argument:

A state grand jury is limited by A.R.S. §21-422 in which matters it may criminally investigate. A.R.S. §21-422 describes the powers and duties of the grand jury as follows:

A. The law applicable to county grand juries, including their powers, duties and functions, applies to the state grand juries except insofar as it is in conflict with this article. The supreme court shall adopt rules to govern the procedures of state grand juries.

B. The state grand jury shall investigate and return indictments for only those offenses or violations of law arising out of or in connection with:

1. The determination or collection of state taxes, the registration or failure to register securities, the offer or sale of securities, the offer or sale of interests in land, the formation or operation of banks, insurance companies, pension funds, labor unions, professional sports enterprises, corporate enterprises or business enterprises, the making or collecting of loans, events leading to receivership or declaration of bankruptcy by a business enterprise, the sale or purchase of goods or services by or for the state or political subdivisions, bribery, obstruction of justice, hindering prosecution or any form of intentional, knowing or corrupt misconduct involving any person compensated by public funds.
2. Any fraud, theft or possession, receipt, sale or transportation of stolen property or other contraband, or gambling or prostitution or narcotics, that occurs in more than one county or that occurs in one county and affects the residents of another county or that may be prosecuted by more than one county attorney.
3. Perjury, false swearing or unsworn falsification, or any violation of title 13, chapter 28 in connection with any state grand jury proceeding, committed by any person testifying before it or in any trial or other proceeding involving any indictment returned by a state grand jury.

²⁷ See *Grand Jury Transcripts, November 13, 2023, and November 17, 2023.*

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4. Any perjury by subornation or attempted perjury by subornation relating to testimony before it or in any trial or other proceeding involving any indictment returned by a state grand jury.
 5. Any violation of title 13, chapter 23 or section 38-421 or 39-161.
 6. Any violation of title 13, chapter 35.1 if committed using a computer or network as defined in section 13-2301 and if any part of the conduct either:
 - (a) Occurs in more than one county, state or country.
 - (b) Affects the residents of another county, state or country.
 - (c) May be prosecuted by more than one county, state or country.
 7. Any violation of title 13 or 46 if the victim is a vulnerable adult as defined in section 13-3623 or 46-451.
 8. Any criminal wrongdoing that is referred in writing by a county attorney and that is accepted in writing by the attorney general.
- C. If a state grand jury, pursuant to an investigation under subsection B of this section, learns of an offense for which it lacks jurisdiction to indict, the grand jury shall direct the attorney general to inform the appropriate prosecutorial authority.
- D. This article does not limit the jurisdiction of the county grand juries or county attorneys, nor shall an investigation by a state grand jury be deemed preemptive of a previously instituted investigation by another grand jury or agency having jurisdiction under the same subject matter unless good cause is shown.

Defendant argues the state grand jury lacked jurisdiction as defendants were not charged with crimes the state grand jury had authority to investigate and indict and there was no written referral from the Cochise County Attorney and written acceptance by the Attorney General to accept the referral.

In response, the State argues the state grand jury had proper jurisdiction under A.R.S. §21-422(B)(1). The State further argues there was no need for a referral from the county attorney pursuant to A.R.S. §21-422(B)(8) as that would be duplicative.

A.R.S. §21-422(B)(1) allows the state grand jury to investigate, among other things, "...any form of intentional, knowing or corrupt misconduct involving any person compensated by public funds." There is no question both defendants are compensated by public funds. Defendants are county supervisors paid for with public tax funds.

In this case, the State alleges the defendants knowingly acted to interfere with an election officer in the discharge of duties and knowingly conspired to do so. The acts, as currently alleged, could constitute "misconduct." The acts are alleged to have occurred in both Cochise

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and Maricopa counties. The state grand jury did find probable cause to believe crimes were committed and defendants committed those crimes. Whether the conduct alleged does in fact amount to a crime is not an issue for this Court to decide, but rather a trial jury.

THE COURT FINDS the state grand jury did have jurisdiction pursuant to A.R.S. §21-422(B)(1).

IT IS ORDERED denying Defendant's Motion to Dismiss.