

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2023-008495-001 DT

06/15/2024

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

The Court has considered the Defendant's Rule 12.9 Motion to Remand to Grand Jury for New Determination of Probable Cause filed February 15, 2024, the State's Response filed March 1, 2024, the Defendant's Reply filed March 11, 2024, review of the grand jury transcripts, review of the exhibits and the oral argument held. The Court notes co-Defendant Crosby has joined in the Motion.

The defense challenges the State's presentation to the grand jury on a several grounds including failure to properly instruct on the Fifth Amendment, failure to instruct on legislative immunity and presenting misleading testimony to the grand jury.

The role of the Grand Jury is to determine whether probable cause exists to believe that a crime has been committed and that a person being investigated committed it. *State v. Sanchez*, 165 Ariz. 164, 171, 797 P.2d 703, 710 (App. 1990). Expanding the Grand Jury's role beyond that point would put Grand Juries in the business of holding mini trials. *State v. Baumann*, 125 Ariz. 404, 408-409, 610 P.2d 38, 42-43 (1980). Since the function of the Grand Jury is accusatory, not adjudicatory, the State is under no obligation to present an anticipated defense.

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Arizona courts will grant a motion for remand to the Grand Jury only if the prosecutor interferes with the jurors' inquiry into the evidence of the essential elements required for a particular crime to have been committed. *Nelson v. Royston*, 137 Ariz. 272, 276, 669 P.2d 1349, 1353 (App. 1983).

Additionally, 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. Furthermore, 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 defendant may not attack the "nature, weight or sufficiency of the evidence" presented to the Grand Jury. *State v. Jacobson*, 22 Ariz. App. 128, 524 P.2d 962 (1974). 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 trial, the defendant may argue the interpretation of evidence and raise any defenses; he may not do so at the Grand Jury level.

Failure to Properly Instruct Defendant Regarding Her Fifth Amendment Rights

Defendant first contends this matter should be remanded as the State failed to properly instruct Defendant about her Fifth Amendment rights. Defendant was given the following advisement when she testified at the grand jury:

"All right. And ma'am, as a target I do have an additional advisement to read you. You have a constitutional right to refuse to answer any question if a truthful answer to the question would tend to incriminate you." See GJT Nov. 13, 2023, at page 84, lines 12-16.

Defendant argues the instruction as given alludes "that her failure to answer questions meant she was hiding something." Further, Defendant argues the grand jury was never admonished to not consider Defendant's invocation of her Fifth Amendment right in deciding probable cause. Following the advisement to Defendant, Defendant answered her name and then invoked on every question thereafter.

Arizona Rules of Criminal Procedure, Rule 12.5 states:

Appearance of a Person Under Investigation

(a)The Person. A person under investigation by the grand jury may be compelled to appear before the grand jury, or may be permitted to appear upon the person's written

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request. The person must be advised of the right to remain silent and the right to have counsel present to advise the person while giving testimony.

(b) Counsel. If counsel accompanies the person under investigation, counsel may not communicate, or attempt to communicate, with anyone other than the person. The foreperson may expel counsel from the grand jury session if counsel violates this rule.

Per A.R.C.P. Rule 12.5, the State did advise Defendant of her right to remain silent. Defendant contends that by inserting the word “truthfully” into the advisement, the State left the impression that if Defendant would answer questions truthfully, they would tend to incriminate her. Defendant contends the advisement was not proper.

During her grand jury appearance, the Defendant invoked her Fifth Amendment right to all questions except her name. Questions in which she invoked included whether she was a member of the Cochise County Board of Supervisors and other more mundane questions. Her invocation was a blanket invocation, as was her right, and therefore the grand jurors were not left with certain questions answered and while others were not. In addition, the State used the same warning as is given before Federal Grand juries pursuant to the Department of Justice manual.

As for the argument the State failed to properly advise the grand jurors not to consider Defendant’s invocation similar to giving a trial jury an instruction to the same, the Court could not find any authority requiring such an instruction. The grand jury does not consider whether the Defendant is guilty, but rather, was there probable cause to believe a crime was committed and the Defendant committed the crime, a much lesser standard.

THE COURT FINDS the State properly advised Defendant of her Fifth Amendment rights pursuant to A.R.C.P. Rule 12.5 and was not required to separately instruct the jury to not consider Defendant’s invocation.

Failure to Instruct on Legislative Immunity

Defendant next argues Defendant’s due process was violated when the State failed to instruct the grand jury as to the concept of legislative immunity.

As with co-Defendant Crosby’s similar arguments in his Motion to Remand, the Court notes the issue of legislative immunity was addressed in the Motion to Dismiss. The Court found the act of canvassing the votes to be a ministerial duty without discretion and outside of the normal legislative function and not subject to immunity. The Court finds the issue of legislative immunity is a legal finding and not a factual finding for the grand jury.

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THE COURT FINDS the State was not required to instruct the grand jury as to legislative immunity.

Presenting Misleading Testimony

Defendant's remaining position is the State presented misleading testimony. "Due process compels the prosecutor to make a fair and impartial presentation to the grand jury." *Trebus v. Davis*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997).

As with co-Defendant Crosby's Motion to Remand, most of the argument presented by Defendant on this issue would amount to factual disputes best settled by a trial jury. The examples cited by Defendant do not amount to misleading testimony. No one knew what would happen if the votes were not canvassed timely. The fact a lawsuit was filed on behalf of the Board without a meeting referencing the lawsuit, presumably indicates one or more people talked to the attorney filing the lawsuit before it was filed. In addition to the oral testimony, the grand jury presentations in this case included a large assortment of documentary evidence. Defendant also argues that conclusions or discussions regarding Defendant centered on her role as a supervisor and thus further protected under legislative immunity. This is an issue already addressed in this ruling and in the Motion to Dismiss.

THE COURT FINDS the testimony presented was not misleading.

THE COURT FURTHER FINDS that the presentation of evidence to the Grand Jury was fair and impartial and Defendant's due process was not violated.

Accordingly,

IT IS ORDERED denying Defendant's Motion to Remand.