

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-009242-001 DT

05/27/2009

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
S. Yoder
Deputy

STATE OF ARIZONA

SHEILA SULLIVAN POLK
MELVIN R BOWERS JR.

v.

DONALD T STAPLEY JR. (001)

TOM HENZE

VICTIM SERVICES DIV-CA-CCC

MINUTE ENTRY

The Court has under advisement the Defendant's Motion to Remand for New Determination of Probable Cause Pursuant to Rule 12.9. Defendant argues that he was denied his right to a "fair and impartial" presentation of evidence to the Grand Jury. Specifically Mr. Stapley argues that there was false and misleading testimony or evidence, material omissions of evidence, no evidence presented as to some counts and that the prosecutor failed to adequately instruct the on Arizona law as the Grand Jury's legal Advisor.

The Court has reviewed the pleadings filed by both parties, including all supplemental briefing and the Grand Jury transcript. The Court determines that the Defendant was not denied a "substantial procedural right" and denies the Defendant's motion for the following reasons.

The Court is satisfied that the County Attorney for Maricopa County did not fail to adequately instruct the Grand Jury on the law. Defendant disagrees with the County Attorney's interpretation of the law on the facts involving certain matters presented to this grand jury, but this disagreement does not give rise to a denial of a substantial right requiring remand. An example was when the Deputy County Attorney presented evidence that the financial disclosure forms were substantially the same after the changes in the 1990's. This was not false or misleading evidence but an opinion regarding the evidence. This difference, if any, and its

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significance is ultimately a matter for the trial judge and petit jury to determine, not the grand jury.

The Grand Jury had the applicable statutes read to it on September 2, 2008 and November 20, 2008. The Grand Jury either had no questions regarding these statutes or had any questions answered.

The prosecutor did not deny any Grand Jury request for explanation of any statute and the Grand Jury made no requests for additional evidence (such as the forms completed by Mr. Stapley) or legal opinions. It appears therefore that the Grand Jury heard all “relevant, non-protected” evidence and statutes that it wanted to consider. *Maretick v. Jarrett*, 204 Ariz. 194, 62 P.3d 120 (2003).

The evidence challenged by defendant as false and misleading is more correctly viewed as a dispute between the parties as to the quality and weight of the evidence. For example, it is for a trial jury/trial judge not a Grand Jury to determine whether certain property had to be disclosed or whether Defendant or an entity under his control “dealt in real property.”

This a very complex series of statutes and this Court cannot find that the prosecutor deliberately or negligently mislead the Grand Jury as to the evidence or law under the circumstances.

Any mistake in the presentation to the grand jury regarding Lot 26 or the “Schwab” account has been corrected by the Special Prosecutor by his motion to dismiss/amend the indictment, which was granted. These mistakes here in the presentation of evidence to the grand jury do not lead this Court to conclude that the indictment is fatally defective under Rule 12.9 and that a remand is necessary. This Court is not convinced that the Grand Jury’s decision regarding this indictment would have been different. *State v. Bible*, 175 Ariz. 549, 858 P.2d 1152 (1993).

Simply put the prosecutor’s conduct here is not of the nature found in *Crimmins v. Superior Court*, 137 Ariz. 39, 668 P.2d 882 (1983) or *Maretick, supra*, which would justify a remand under Rule 12.9.

The Motion is denied.

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