

1-27-16

FILED 15 JUL 11 PM 3:53

ORIGINAL

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6 IN THE SUPERIOR COURT
7 IN AND FOR THE COUNTY OF COCONINO, STATE OF ARIZONA

8 STATE OF ARIZONA,
9 Plaintiff,

10 vs.

11 STEVEN EDWARD JONES,
12 Defendant.

Case No. CR2015-00862

MOTION TO REMAND TO THE
GRAND JURY FOR A
REDETERMINATION OF
PROBABLE CAUSE

(Hon. Dan Slayton - Div. 2)

EVIDENTIARY HEARING REQUESTED

13 Defendant, by and through undersigned Counsel, pursuant to Rule 12.9,
14 Ariz.R.Crim.P., and A.R.S. § 21-413, respectfully requests this Court dismiss the Indictment
15 against Defendant or, in the alternative, remand this matter to a new grand jury for a
16 redetermination of probable cause. This Motion is made because the instant Indictment was
17 obtained in violation of Defendant's procedural Due Process rights guaranteed under the
18 Fourth and Fourteenth Amendment as a result of the State's repeated failure to present the
19 grand jury with clearly exculpatory evidence or provide an accurate factual record for the
20 Grand Jury to consider.

21 MEMORANDUM OF POINTS AND AUTHORITIES

22 I. RELEVANT FACTS¹

23 On October 15, 2015, the State appeared before the 120th Coconino County Grand
24 Jury and indicted Defendant on one count of first degree murder and six counts of
25 aggravated assault. The only witness called by the State was NAU Police Department
26
27

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1 Sergeant Michael O'Hagan.

2 The charges arise from an incident occurring at approximately 1:20am on October 9,
3 2015 on the border of the NAU campus near Mountain View residence hall and the abutting
4 parking lot. On that date, 18-year-old NAU freshman Steven Jones and two of his friends
5 (Shay McConnell & Jacob Mike) were walking past the "Courtyard Apartments" located at
6 262 Franklin on their way to the parking lot across the street where Steven's car was parked.
7 While standing in front of the Courtyard, approximately 12 individuals came out of the
8 apartments and began yelling at Steven and his two friends (who also happened to be
9 freshmen). The subjects who emerged from the apartments appeared intoxicated and
10 surrounded the three freshmen. The group approached Steven, Shay and Jacob very
11 aggressively – calling them "faggots," stating "I am going to kill you, you pussy" and
12 "getting right in their faces". While the three were being accosted, a subject (later identified
13 as Colin Brough) punched Steven in the face with a closed fist. As a result of the unprovoked
14 attack by Mr. Brough, Steven's face was bloodied and his eyeglasses were knocked off his
15 face.

16 Steven ran away as fast as he could towards his car in the nearby parking lot and was
17 chased by several of the individuals from the Courtyard who were yelling "I'm going to kill
18 you, you pussy faggot." As Steven was attempting to retreat, someone attempted to grab
19 his shirt and he observed his two friends being grabbed by subjects from the Courtyard.

20 Steven reached his car and obtained a pistol from the glove box. Unsure of his exact
21 surroundings because his glasses had been knocked off his face, Steven announced that he
22 had a gun and yelled at the subjects to stop. Unbeknownst to Steven, the attackers had
23 discontinued their pursuit of him but two of them (Brough and his roommate Nicholas
24 Piring) quickly started running back towards him after hearing Steven shouting at them to
25 stop.

26
27 1 The facts contained herein are derived from, but not an exhaustive recitation of, the State's discovery and are not intended to operate as an expressed or implied admission by or on behalf of Mr. Jones.

1 Steven held his pistol in the "low ready" position and again yelled for them to stop.
2 Brough and Piring stated that they were going to kill Steven and "charged" towards him.
3 From a distance of approximately 5 to 10 feet, Steven fired his pistol at both subjects.
4 Brough and Piring were each struck with two rounds. Thereafter, Steven was tackled to the
5 ground by a large group of other subjects who punched him, kicked him and attempted to
6 take his pistol. Again fearing for his life, Steven fired multiple shots – striking alleged victims
7 Nicholas Prato and Kyle Zientek. The group dispersed, Steven eventually placed the gun on
8 the ground and surrendered himself to NAU PD Officer Park after he arrived on scene.

9 While in left alone in the back of Park's patrol vehicle, a surveillance system captured
10 Steven repeatedly stating "why did they chase me?" and "why did they punch me?" Officer
11 Park noted that Steven had a split lip and a bloody mouth. He transported Steven to CCSO
12 where further injuries were observed – including injuries to Steven's head, back, chest,
13 arms, knees and wrist. Police questioned Steven for several hours during which time he
14 provided much of the above-listed information and was thereafter booked into the CCSO
15 Jail on charges of murder and aggravated assault.

16 Paramedics later pronounced Brough deceased at the scene. Piring, Prato and
17 Zientek were all transported to Flagstaff Medical Center and survived their injuries. While in
18 the ED of Flagstaff Medical Center, Prato and Piring were interviewed by FPD Detective
19 Jacobellis who spent at least three hours at the hospital. Lab tests were conducted on all
20 three subjects very shortly after their arrival at Flagstaff Medical Center. All three subjects
21 had significant amounts of alcohol in their systems: Prato, Piring and Zientek's blood
22 alcohol concentrations were .092%, .208% and .181%, respectively.² Prato and Zientek also
23 tested positive for cannabis.

24
25
26
27 ² Although apparently not determined until after the grand jury presentation, Mr. Brough's BAC was .285%. In addition, he had both cannabis and benzodiazepines in his system. A sample of Mr. Jones' blood was also collected and subsequently tested negative for either drugs or alcohol.

1 II. LAW

2 Pursuant to Rule 12.9, Ariz.R.Crim.P., and A.R.S. § 21-413, an indictment should be
3 dismissed and the matter should be remanded to the grand jury for a new finding of
4 probable cause where the State fails to present the grand jury with clearly exculpatory
5 evidence which prevents the grand jury from basing its decision to issue an Indictment
6 against Defendant upon an accurate set of facts and the applicable law. **State v. Superior**
7 **Court (Mauro)**, 139 Ariz. 422, 425, 678 P.2d 1386, 1389 (1984).

8 "Clearly exculpatory evidence is evidence of such weight that it might deter the
9 grand jury from finding the existence of probable cause." **Mauro**, 139 Ariz. at p. 425, 678
10 P.2d at p. 1389; citing **United States v. Ciambone**, 601 F.2d 6166, 623 (2d Cir. 1979).
11 Relevant here, "[t]he prosecutor, as an officer of the court as well as the lawyer for the state,
12 is not just an adversary of the person under investigation. The interests of the prosecutor
13 and the state are not limited to indictment but include serving the interests of justice; thus,
14 the prosecutor's obligation to make a fair and impartial presentation to the jury has long
15 been recognized." **Trebus v. Superior Court (Davis)**, 189 Ariz. 621, 624, 944 P.2d 1235, 1238
16 (1997); See: **Crimmins v. Super. Ct.**, 137 Ariz. 39, 41, 668 P.2d 882, 884 (1983); See also:
17 **State v. Emery**, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982).

18 Furthermore, the grand jury is neither an arm nor a servant of the prosecution. It has
19 an independent responsibility to determine whether there is probable cause to believe a
20 particular crime has been committed. A further function is to protect citizens against
21 unfounded criminal prosecutions. **United States v. Calandra**, 414 U.S. 338, 343, 94 S.Ct.
22 613, 617 (1974). These principles are not confined to the federal system. The Arizona
23 Supreme Court has held that the initiation and control of inquiries into public offenses "rests
24 with the grand jury and not the prosecutor." **Gershon v. Broomfield**, 131 Ariz. 507, 509, 642
25 P.2d 852, 854 (1982). Further, the prosecutor's discretion is to be used "in assisting the
26 grand jury." **Id.** More importantly, the prosecutor's powers "are derived from the grand
27 jury; it is the grand jury that possesses the broad investigative powers, and . . . that must be

1 the decisionmaker" in exercising those powers. *Id.*

2 In a proceeding before the grand jury, "the prosecutor operates without the check of
3 a judge or a trained legal adversary, and virtually immune from public scrutiny." **United**
4 **States v. Serubo**, 604 F.2d 807, 817 (3d Cir. 1979). Accordingly, there is the "potential for
5 abuse" and the "devastating personal and professional impact that a later dismissal or
6 acquittal can never undo," *Id.* when the prosecutor is allowed to exercise control "over a
7 cooperative grand jury." **United States v. Samango**, 607 F.2d 877, 882 (9th Cir. 1979).

8 Moreover, the State has an obligation to present accurate evidence to the grand jury.
9 When the State presents false and misleading testimony to the grand jury, the defendant is
10 entitled to a new determination of probable cause. **Herrell v. Sargeant**, 189 Ariz. 627, 631,
11 944 P.2d 1241, 1245 (1997) (remanding when the "county attorney failed to present the
12 grand jury with an accurate picture of the substantive facts").

13 As set forth below, the State failed to present clearly exculpatory evidence that
14 would have deterred the grand jury from issuing an Indictment against Mr. Jones and
15 presented inaccurate evidence related to a critical aspects of the case.

16 III. ANALYSIS

17 THE STATE PROVIDED MISLEADING AND INACCURATE TESTIMONY REGARDING 18 ALLEGED VICTIM NICOLAS PIRING'S STATEMENT TO THE POLICE

19 As set forth above, Steven related to the police on multiple occasions that he fired his
20 weapon at Brough and Piring because they were both charging at him from a close distance
21 after he commanded them to stop with his gun unholstered.

22 When Piring was interviewed about the shooting in the emergency department of
23 the hospital shortly after the incident, Piring told Detective Jacobellis that he (Piring) "ran
24 up" to Brough's location because he "knew there was an altercation" and was "mainly trying
25 to calm [his] roommate (Brough) down." Piring stated that he came up running behind
26 Brough and "jumped over" a "two foot gap" between the elevated roadway and the edge of
27 the parking lot where Brough was located. Piring told Jacobellis that "at the exact moment

1 [Steven] said 'step back', [Piring] jumped from the top to the lower part". According to
2 Piring, it was that exact moment Steven began firing.

3 When Piring's statement at the hospital was described to the Grand Jury, however,
4 the State presented the following information:

5 A. ... [Piring] says a little bit later he hear something going on in the
6 front of the building, and he goes around to kind of check-out, see
7 what's going on. He sees Colin Brough across the street at this point,
8 and so he decides that, well, I'm going to go get Collin and get him
9 out of there. So he starts to kinds (sic) of follow -

10 Q. Let me stop you. Had Colin been at that party, too, at the Courtyard?

11 A. Colin had been at the party as well, yes.

12 Q. So Colin left the Courtyard -

13 A. Correct.

14 Q. -- Apartments to go out into the street?

15 A. Correct.

16 Q. Okay. Please continue.

17 A. Okay. So Piring says that he started to follow Colin, kind of running
18 trying to get to him. He says as he gets about 10 to 12 feet from him,
19 he sees Colin kind of turn to the right towards that parking lot, and he
20 sees Collin go down.

21 Q. All right. Let's back up.

22 A. Okay.

23 Q. So he comes out of the building?

24 A. He does.

25 Q. Right. And his friend Colin is already out of the building ahead of
26 him?

27 A. Correct.

Q. And Colin's headed to the parking lot.

A. Correct.

Q. Is that right?

A. That's correct.

- 1 Q. So once he sees that, he's going to try to intercept Collin and calm
2 him down?
3 A. Correct.
4 Q. So he crosses Franklin?
5 A. Mm-hmm.
6 Q. And he's now watching Brough in the parking lot?
7 A. Correct.
8 Q. And he sees Brough turning toward the parking lot?
9 A. Right.
10 Q. Then he takes a couple of steps towards the lot. He says he sees that?
11 A. Yes. He says he sees him take a couple of steps toward that lot.
12 Q. At that point how far is Piring?
13 A. He's 10 to 12 feet behind him.
14 Q. Okay. Does Piring see the flashlight?³
15 A. He does.
16 Q. Okay. Where does he see it?
17 A. Um -
18 Q. Is it in the parking lot?
19 A. It is.
20 Q. Okay. And does he hear anything?
21 A. He hears somebody say, step back, or back up, or heads up, or
22 something like that. He's not exactly sure.
23 Q. All right. And then what does he see?
24 A. He sees Brough drop to the ground.
25 Q. So does he go to Brough then?
26 A. He does. He says he instantly runs to Brough.
27 Q. How does he get to him?
A. He says that hedge is in the way, so he has to jump over the hedge to
get to him. And while he's in the air jumping across the hedge, is

³ Steven's pistol was equipped with a forward facing flashlight that was activated during the incident.

1 when he gets hit in the right bicep by a bullet, and then immediately
2 in the left hip, and he immediately drops.

3 GJT 57:11-60:5

4 This testimony not only mischaracterized Piring's statement, but also left the Grand
5 Jury with the misapprehension that Piring did not leap towards Steven until after Brough
6 was already shot. What Piring really told Detective Jacobellis was that he (Piring) leapt
7 toward Steven from an elevated position directly behind Brough as Steven was giving
8 commands at gun point to "step back" and that was when the first shots were fired.

9 Bearing in mind that Steven explained to the police that two subjects were
10 "charging" him when he fired his weapon, the fact that Piring (by his own account) was
11 already jumping towards Steven at the very moment when Steven was telling them to "step
12 back" at gunpoint was of critical importance. The erroneous description of Piring's
13 statement given to the Grand Jury prevented them from knowing that Piring himself
14 admitted that he was jumping towards Steven when he was shot – just as Steven told the
15 police. Instead, the State unfairly downplayed Steven's self-defense claims by telling the
16 Grand Jury that Piring contradicted Steven's factual account.

17 The State's failure to accurately convey this information alone requires a
18 redetermination of probable cause.

19 Similarly, the Grand Jury was also erroneously told that Piring said he didn't start
20 running until after Brough was shot. As set forth above, this testimony further
21 misrepresented what Piring actually said – that he was already running up from behind
22 Brough's location and towards Steven before any shots were fired.

23 Here, the State misrepresented Piring's statement at the defendant's expense. Had
24 the Grand Jury known that Piring essentially corroborated Steven's contention that two
25 subjects were aggressively advancing towards him when he fired, Steven's self-defense
26 claim could have been evaluated on an accurate factual record and the Grand Jury would
27 undoubtedly have been more inclined to find that Steven acted with legal justification.

1 **THE STATE OMITTED CLEARLY EXCULPATORY INFORMATION PROVIDED BY**
2 **ALLEGED VICTIM KYLE ZIENTEK**

3 Sergeant O'Hagan was present when Zientek was interviewed the day before the
4 Grand Jury presentation. During his taped interview, Zientek stated that immediately
5 before the shooting, Brough "steps up in the kid's (Steven's) face" while at a "pretty close"
6 distance. When describing Zientek's interview to the Grand Jury the very next day, O'Hagan
7 testified that Zientek had a "very limited" memory of Brough's shooting and withheld from
8 the Grand Jury that Zientek recalled witnessing Brough "step up in [Steven's] face" right
9 before Steven fired his weapon. GJT 77:3-10.

10 When viewed through the prism of Steven's self-defense claim, the prejudice
11 occasioned by this omission is nothing short of blatant. Here again, had the Grand Jury
12 known that Zientek observed Brough "step up" to Steven while in close proximity right
13 before he was shot, they would have been dissuaded from finding that Steven's actions
14 were unjustified – particularly given that Brough had punched Steven in the face moments
15 earlier. Unfortunately, the State withheld this clearly exculpatory evidence and misled the
16 Grand Jury into believing that Zientek's could not recall any details of Brough's shooting. Id.

17 **THE STATE PROVIDED MISLEADING AND CONFUSING TESTIMONY REGARDING THE**
18 **TRAJECTORY OF THE WOUND TO BROUGH'S CHEST**

19 When interviewed by the police, Steven maintained that Brough was in a "full
20 charge" towards him when the gun was discharged. Similarly, Shay McConnell told the
21 police that Brough "lunged" at Steven right before the shots were fired.

22 According to Medical Examiner Dr. Czarnecki, Brough was struck with two rounds –
23 one in the chest and one in the shoulder. Both wounds were described in his report as
24 having a downward path. Most notably, the entrance wound to the chest was up by the 4th
25 rib and the bullet was recovered down at the 11th thoracic vertebra. These medical findings
26 corroborated the statements of Steven and his friend Shay McConnell that Brough was
27 "charging" and "lunging" at Steven when they were shot. Inasmuch as conflicting accounts

1 from other witnesses regarding Brough's movements at the time of the shooting were also
2 presented by the State, it was important for the Grand Jury to have an accurate
3 understanding of Dr. Czarnecki's findings.

4 Unfortunately, that did not happen. The only discussion of the wound paths was
5 given towards the beginning of the Grand Jury presentation and consisted of Sergeant
6 O'Hagan testifying that both of Brough's wounds "were kind of at a down angle." GJT 38:6-
7 14.

8 This explanation was ambiguous at best.

9 In the absence of any clarification, this description could just as easily pertain to an
10 upward wound track. In other words, from what direction was there "kind of a down *angle*"?
11 When viewed from the perspective of the projectile and looking anteriorly, an upward
12 wound track would have a "down *angle*." By substituting the word "angle" for "path", the
13 State left the Grand Jury to speculate as to the viewpoint from which the "angle" was being
14 measured. Whereas the term "path" clearly conveys that the trajectory is determined by
15 looking at the bullet's path or direction of travel, the term "angle" provides no such guidance
16 and prevented the Grand Jury from having an understandable description of these highly
17 exculpatory medical findings.

18 Additionally, the State minimized the degree of the trajectory by stating it was "kind
19 of" at a down angle. Defendant respectfully submits that the Grand Jury's understanding of
20 the wound path was further muddied by the witness's attempt to minimize the trajectory
21 angle with the phrase "kind of." Inasmuch as the projectile entered above the nipple and
22 was recovered from just above the lumbar region of the decedent's spine, the "down angle"
23 of its path was significant and should not have been qualified with the vernacular "kind of."

24 Particularly when considering that the muddied explanation of these significant
25 medical findings was given in passing and well before the Grand Jury had any context to put
26 them in, Steven was denied a probable cause determination based on a clear and accurate
27 factual record.

1 **THE STATE OMITTED CLEARLY EXCULPATORY EVIDENCE PERTAINING TO THE**
2 **STATEMENT OF SHAY MCCONNELL**

3 Shay McConnell told Flagstaff PD Detective Turley that the subject who was first
4 shot (Brough) was the same individual who ran up and punched Steven in the face moments
5 earlier. Again, when considered against the backdrop of Steven's belief that Brough
6 represented a threat to his life, the fact that he was the same individual who had just
7 punched him for no reason was relevant and clearly exculpatory. Because this information
8 was not presented, the Grand Jury had no reason to believe that Brough was acting violently
9 toward Steven prior to the time when he charged at him. Had this evidence been
10 presented, the Grand Jury would not have been so dismissive of Steven's self-defense claims
11 or left under the misapprehension that Brough had not already acted violently towards
12 Steven that night.

13 Additionally, Sergeant O'Hagan testified that Shay admitted smoking marijuana
14 prior to the incident, GJT 46:14-15, but neglected to convey that the Detective to whom he
15 made that omission noted in his report that McConnell's "eyes were a little red but [he] did
16 not detect any real signs of impairment by either alcohol or drugs." While it is not the
17 defendant's contention that the absence of signs of impairment by itself is clearly
18 exculpatory, it simply cannot be said that the presentation was fair and impartial when the
19 State withholds this information but presents testimony of the admission to smoking
20 marijuana. Because Shay McConnell's statement was largely helpful to Steven, this
21 omission further prejudiced the defendant's due process rights.

22 **THE STATE OMITTED THE CLEARLY EXCULPATORY STATEMENT OF CHASE IRWIN**

23 Flagstaff PD Detective Mike Rodriquez conducted an interview with NAU student
24 Chase Irwin who described himself as a "really good friend" of Brough. Irwin told Detective
25 Rodriquez that right before the shooting, he witnessed Brough running across the street
26 toward the parking lot (where Steven was located). Similar to the omission of Shay's
27 statement that Brough punched Steven before the shooting, the State likewise failed to

1 inform the Grand Jury of this information. Because the reasonableness of Steven's
2 perception that Brough represented a threat to his life was essentially the central issue
3 determined by the Grand Jury, Irwin's observation of Brough running towards Steven was
4 clearly exculpatory and should have been presented.

5 **EVIDENCE REGARDING THE OBSERVATIONS AND STATEMENTS OF STEVEN JONES**

6 Steven surrendered himself to the police shortly after the shootings, was taken into
7 police custody and gave a lengthy statement. During the course of the Grand Jury
8 presentation, a significant amount of time was spent presenting evidence pertaining to
9 Steven's interaction with the police. As set forth below, numerous aspects of this testimony
10 either provided an inaccurate account or omitted clearly exculpatory information.

11 *UNSOLICITED STATEMENTS MADE IMMEDIATELY AFTER THE SHOOTING*

12 When Steven was left alone in the back of Officer Park's patrol vehicle unaware that
13 he was being recorded, he repeatedly stated "why did they chase me?" and "why did they
14 punch me?" while crying. These candid, unsolicited statements made while Steven was
15 clearly still reeling from the shooting that had just occurred provided the best evidence of
16 his mental state at the time of the incident – perhaps the most critical factual issue to be
17 determined by the Grand Jury. While making these statements, Steven clearly expressed
18 his belief that Brough and his friends forced him to take action by chasing and assaulting
19 him. Although the State elicited other, less flattering, excerpts from Steven's statements
20 while in police custody, these highly probative and clearly exculpatory remarks were not
21 presented.

22 *STEVEN'S INJURIES*

23 When Steven was initially contacted by Officer Park, he noted that Steven had a split
24 lip and bloody mouth. He transported Steven to CCSO where Steven spent several hours
25 with detectives who examined his body and took photographs. During that time, further
26 injuries were observed – including injuries to Steven's head, back, chest, arms, knees and
27 wrist. Despite the obvious exculpatory value and importance of the injuries sustained by

1 Steven during the incident, the State did not present any evidence of them to the Grand
2 Jury.

3 In fact, when asked "What were the results of [Steven] being punched in the face?"
4 the witness testified "His glasses get knocked off and he loses his balance." GJT 78:25-79:3.
5 This incomplete answer further compounded the prejudice occasioned by the State's failure
6 to inform the Grand Jury of Steven's injuries because the question and answer suggested
7 that the loss of his glasses and his balance was an exhaustive list of the consequences from
8 the assault. In reality, Steven had numerous visible injuries and also complained that he was
9 feeling "fuzzy" and hit the back of his head "pretty hard."

10 Defendant submits that it was impossible for the Grand Jury to make an informed
11 decision regarding the reasonableness of his actions without knowing how badly he had
12 already been injured – especially if they were under the under the mistaken belief that there
13 were no injuries at all. Unfortunately, this exculpatory information was not presented. This
14 critical evidence demonstrated Steven's innocence and should have been provided to the
15 Grand Jury.

16 **THE STATE FAILED TO PRESENT EVIDENCE OF PIRING, PRATO AND ZIENTEK'S**
17 **BLOOD ALCOHOL LEVELS**

18 While still in the ED of Flagstaff Medical Center, Prato, Piring and Zientek were
19 tested for their blood alcohol concentrations. All three subjects had impairing levels of
20 ethanol – especially Piring and Zientek who were 208% and .181%, respectively. While at
21 the hospital, Detective Jacobellis also noted that Piring's speech was slurred and the audio
22 recording of his contact with Piring reflects that he was clearly impaired. It was also
23 determined in the ED that Prato had cannabis in his system.

24 No evidence was presented to the Grand Jury regarding Zientek's alcohol
25 consumption. With regard to Piring and Prato, the witness merely testified that Piring
26 admitted having "some" alcohol, GJT 57:2-3, and that Prato "admitted to drinking." GJT
27 60:14-15. Piring and Prato's excessive ethanol levels were not presented to the Grand Jury,

1 nor was the presence of cannabis in Prato's system.

2 Predominantly in the case of Piring, this evidence was clearly exculpatory because it
3 corroborated the reasonableness of Steven's concern that Piring and his friends who
4 surrounded, chased and jumped towards him represented a threat to his life. In the absence
5 of this information, the Grand Jury indicted Steven without knowing that Piring was well
6 over twice the legal limit when he ran up behind Brough and jumped from an elevated
7 position towards Steven just as Steven was yelling for everyone to get back. At a .208%
8 BAC, Piring was no doubt displaying exaggerated emotions, lacking good judgment and
9 appearing disoriented. These manifestations of his severe alcohol intoxication again
10 contributed to the reasonableness of Steven's apprehension and the Grand Jury should have
11 been permitted to consider the alleged victims' alcohol levels before returning an
12 indictment.

13 IV. CONCLUSION

14 "Grand jurors have a right to hear all relevant, non-protected evidence that bears on
15 the case." **Maretick v. Jarrett**, 204 Ariz. 194, 197, 62 P.3d 120, 123 (2003) Thus, when the
16 State improperly withholds evidence from the grand jury, the case must be remanded.
17 **Herrell**, 189 Ariz. at 630,944 P.2d at 1244 (remanding for new probable cause
18 determination when "[i]nformation contained in ... records [in the State's possession] could
19 have been but was not made available to the grand jury to assist it in determining whether
20 to indict [the defendant]"); **Escobar v. Super. Ct.**, 155 Ariz. 298, 302, 746 P.2d 39, 43 (App.
21 1987).

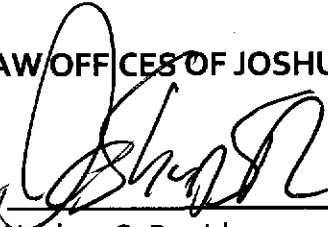
22 "The duties of fair play and impartiality imposed on those who attend and serve the
23 grand jury are meant to ensure that the determinations made by that body are informed,
24 objective and just." **Crimmins**, 137 Ariz. at 41,668 P.2d at 884. The grand jury presentation in
25 this case did not live up to these duties. The State failed in its role as legal adviser to the
26 grand jury through its presentation of inaccurate evidence and failure to present clearly
27

1 exculpatory evidence. As a result, the Grand Jury was prevented from making an
2 independent decision regarding the true facts of the investigation.

3 This biased presentation to the Grand Jury violated Defendant's right to due process.
4 He therefore respectfully requests that the Court dismiss the current Indictment or, in the
5 alternative, remand this matter to an independent grand jury for a new finding
6 of probable cause. Ariz. R. Crim. P. 12.9(a).

7 DATED this 20th day of January, 2016.

8
9 LAW OFFICES OF JOSHUA S. DAVIDSON, PLC

10
11 By 
12 Joshua S. Davidson
13 Attorney for Defendant

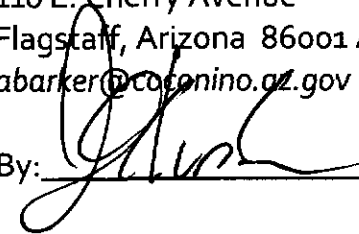
14 ORIGINAL mailed
15 this 20th day of January, 2016, to:

16 Clerk of the Coconino County Superior Court
17 200 N. San Francisco St.
18 Flagstaff, AZ 86001

19 COPY of the foregoing emailed
20 this same date to:

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