

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2020-002309-001 DT

02/26/2025

HONORABLE ARYEH D. SCHWARTZ

CLERK OF THE COURT

D. Kulla
Deputy

STATE OF ARIZONA

TIFFANY LEIGH BRADY

v.

JAVIER LORENZANO-NUNEZ (001)

JESSICA VALDIVIA-LUNA

COUNTY ATTORNEY - GRAND JURY
COURT ADMIN-CRIMINAL-CCC
GRAND JURY CLERKS
JUDGE ARYEH SCHWARTZ

ORDER GRANTING MOTION TO REMAND

The Court has considered the *Motion to Challenge the Grand Jury for a New Finding of Probable Cause* filed by Defendant, Javier Loranzano-Nunez, the Response filed by Plaintiff, State of Arizona, Defendant's Reply, and the record, including the oral arguments presented to the Court on February 13, 2025, at which time the Court took this matter under advisement.

Issue

Defendant claims the State's presentation to the grand jury included false and/or misleading information such that the presentation lacked fairness and impartiality.

Law

The grand jury's role is to determine whether probable cause exists to believe that a crime has been committed and that a person being investigated committed it. *Sate v. Sanchez*, 165 Ariz. 164, 171 (App. 1990). To do its job effectively, the grand jury must receive a fair and impartial presentation of the evidence. *Crimmins v. Superior Court*, 137 Ariz. 39, 41 (1983). A prosecutor

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must present an accurate picture of substantive facts, including the presentation of exculpatory evidence. *Trebus v. Davis*, 189 Ariz. 621, 625 (1997).

Rule 12.9(a), Ariz. R. Crim. P., provides: “A defendant may challenge a grand jury proceeding only by filing a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right or that an insufficient number of qualified grand jurors concurred in the indictment.” A defendant’s substantial procedural rights include the right to a fair and impartial presentation of the evidence. *Trebus*, 189 Ariz. at 623; *Crimmins v. Superior Court*, 137 Ariz. 39, 41 (1983). If a prosecutor fails to correct misstatements or misleading information, the defendant is entitled to a remand for a new determination of probable cause. *See Maretick v. Jarrett*, 204 Ariz. 194, 198, ¶ 14 (2003).

Discussion

Here, Defendant argues that Detective Roestenberg’s testimony about eyewitnesses identifying Defendant in photo lineups, about Defendant living in the home where the crime occurred, about Defendant being on the lease for the home, and about Defendant renting other properties from the homeowner was at least misleading. *See Transcript*, pg. 12, ln. 20-21, pg. 14, ln. 21-25, pg. 17, ln. 14-15. Defendant argues, and Plaintiff does not dispute, that the person identified, *when the identifications were made*, was a person named Gilbert Noel Sanchez Rosado (“Gilbert”), not Defendant. Defendant contends, and Plaintiff does not dispute, that eyewitness Shannon Fisher knew the perpetrator of the crime as “G,” the photo used in the lineups was obtained from MVD records for Gilbert, Gilbert was a tenant in the home where the crime occurred, the owner of the home rented other properties to Gilbert, and a vehicle parked outside of the home was registered to Gilbert.

When Detective Roestenberg presented his testimony to the grand jury and discussed the identifications involving Gilbert, he essentially substituted Defendant’s name or identity for Gilbert’s, without addressing that Defendant and Gilbert are believed to be the same person. For example, without limitation, when asked whom Ms. Fischer recognized in the photo lineup, the detective testified, “She selected Javier Lorenzano-Nunez.” *See Transcript*, pg. 12, ln. 20-21. But that was a misstatement, misleading, inaccurate, or otherwise not fair because she identified Gilbert, who may or may not be Defendant. The issue of whether Defendant is Gilbert was not addressed, yet the detective presented his testimony to the grand jury as if it were an objectively established fact.

Under these circumstances, the presentation to the grand jury was at least a misrepresentation. The misrepresentation must have been material to the grand jury’s indictment, because the grand jury’s role, as discussed above, includes determining whether probable cause exists to believe that the person being investigated of a crime is the person who committed it.

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Findings and Orders

Based on the foregoing, the Court finds that Defendant sufficiently demonstrated a due process violation that was material to the indictment. The presentation was not fair and impartial. Accordingly,

IT IS ORDERED granting the *Motion to Challenge the Grand Jury for a New Finding of Probable Cause*.

Defendant requested that if the Motion were granted, the Court include an instruction that only information derived from admissible evidence may be presented to the grand jury. Defendant did not provide, and the Court is not aware of, legal authority supporting Defendant's request. It seems that Defendant intends to use the issue as both a shield and a sword, arguing on one hand that the grand jury was never told about the use of face-recognition technology to link Defendant to Gilbert, while urging on the other hand that Plaintiff should be precluded from presenting that information. The Court respectfully declines to give the instruction requested by Defendant.

IT IS FURTHER ORDERED vacating the Complex Case Management Conference and Oral Argument on to-be-filed motions set for March 21, 2025 at 1:30 p.m., the Final Trial Management Conference set for June 12, 2025 at 8:30 a.m., and the Trial Assignment date set for June 24, 2025 at 9:00 a.m.