

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2024-006850-002 DT

05/16/2025

HONORABLE SAM J. MYERS

CLERK OF THE COURT

D. Chase
Deputy

STATE OF ARIZONA

NICHOLAS KLINGERMAN
KRISTA WOOD
CASEY BALL
KIMBERLY HUNLEY

v.

TYLER BOWYER (002)

ANDREW CHARLES PACHECO
STEPHEN JAMES BINHAK

JUDGE SAM MYERS
VICTIM WITNESS DIV-AG-CCC

MINUTE ENTRY

Following an oral argument on April 17, 2025, the Court took under advisement Defendants Bowyer, Lamon, Montgomery, Bobb, Eastman, and Cottle's motions to remand (and/or joinders thereto). The Court has considered the briefing on the motions, the authorities cited, the record in this matter, and the arguments of counsel.

The instant motions were filed pursuant to Rule 12.9, Arizona Rules of Criminal Procedure. That rule permits a defendant to challenge the findings of the grand jury if the defendant was denied a substantial procedural right. If the defendant's challenge is successful, the case must be remanded to the grand jury for a new finding of probable cause.

All moving defendants argue that the case must be remanded due to the State's failure to properly instruct the grand jury as to the applicable provisions of the Electoral Count Act of 1887 (codified at 3 USCA Ch.1) ("ECA"). The State does not dispute that the ECA was not provided to the grand jury but argues that relevant portions were provided via a portion of Kenneth

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2024-006850-002 DT

05/16/2025

Chesebro's memorandum and interview, a letter from Jacob Hoffman's counsel, a CNN article by Lawrence Lessig, and another Chesebro memo.

A review of the grand jury proceedings in this matter demonstrates that the ECA was central to the Defendant's claims that they were acting lawfully and without an intent to defraud. At the oral argument on the instant motions, the State confirmed that at the time of the grand jury proceedings it was aware that at least some of the Defendants claimed that their actions were authorized by the ECA. The ECA was discussed during the presentation of the case to the grand jury; the grand jury asked a State's witness about the requirements of the ECA. Grand Jury Transcript, March 4, 2024, p. 142. However, the actual text and provisions of the ECA were never provided to the grand jury.

A prosecutor has a duty to instruct the grand jury on all the law applicable to the facts of the case. *Trebus v. Davis*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997); *see Crimmins v. Superior Court*, 137 Ariz. 39, 42, 668 P.2d 882, 885 (1983). "This duty includes providing instructions on justification defenses that, based on the evidence presented to the grand jury, are relevant to the jurors determining whether probable cause exists to indict the defendant. *Korzepp v. Superior Court*, 172 Ariz. 534, 540–41, 838 P.2d 1295, 1301–02 (App. 1991); *see also Francis v. Sanders*, 222 Ariz. 423, 426–27 ¶¶ 12–16, 215 P.3d 397, 400–01 (App. 2009) (discussing prosecutor's duty to instruct grand jury on relevant defense of entrapment)." *Cespedes v. Lee*, 243 Ariz. 46, 48–49, 401 P.3d 995, 997–98 (2017).

Due process compels the prosecutor to make a fair and impartial presentation to the grand jury. *Crimmins*, 137 Ariz. at 41, 668 P.2d at 884. "This requires the prosecutor to instruct the grand jury on all the law applicable to the facts of the case, even if the grand jury does not make any specific request for additional legal instruction. [citation omitted]." *Trebus v. Davis In & For Cnty. of Pima*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997).

Because the State failed to provide the ECA to the grand jury, the Court finds that the defendants were denied a substantial procedural right as guaranteed by Arizona law. Although moving defendants raised additional grounds for remand, the Court will not address those arguments because the ECA argument is dispositive of the motion.

IT IS ORDERED granting the motions to remand.