

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2010-007888-004 DT

07/29/2011

HON. KAREN L. O'CONNOR

CLERK OF THE COURT  
C. Smith  
Deputy

STATE OF ARIZONA

TODD C LAWSON

v.

AARON J LENTZ (004)

CRAIG MEHRENS

VICTIM WITNESS DIV-AG-CCC

**MOTIONS TO REMAND GRANTED**

After hearing, the Court took the Defendants' motions for remand to the Grand Jury under advisement. The Court has considered the pleadings filed and counsels' respective arguments.

The Defendants are entitled to due process. Due process requires a fair and impartial Grand Jury presentation. *Crimmons v. Superior Court in and for Maricopa County*, 137 Ariz. 39, 688 P.2d 882 (1983). That was not done here. The following undisputed facts were not presented to the Grand Jury in a fair, impartial and clear manner. Therefore, remand is warranted.

IT IS ORDERED granting Defendants' motions to remand. If the State elects to present these charges again, they shall remedy their first presentation by including the following information:

**AGREEMENT BETWEEN DEFENDANTS AND HOA**

There is no Phoenix Police Department (PPD) policy or requirement for off-duty security service agreements to be in writing, let alone any requirement for formal written contracts.

There was no requirement by the three home owner associations (HOAs) that such an agreement had to be in writing.

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In fact, there was no written agreement, contract or contract term between the HOAs and Defendants for off-duty services.

**OFF-DUTY SERVICE AGREEMENT AUTHORITY**

PPD gave Defendant, Officer Contreras, authority in his capacity as an off-duty coordinator, to enter into verbal agreements with the HOAs for off-duty police security jobs.

Defendant Contreras reported the schedules and the number of hours worked for each Defendant officer to the three HOAs in accordance with his duties as PPD off-duty coordinator.

Defendants Lentz, Sywarungsymun and Peck had no duty or obligation to report their hours to the HOAs and, in accordance with PPD policy, they did not report their hours to any HOA. Further, they never prepared or viewed the invoices for payment sent to the HOAs by Defendant Contreras.

**PAYMENTS TO OFF-DUTY OFFICERS**

Upon receiving invoices prepared by Defendant Contreras, the HOAs paid all Defendants in advance for their services directly.

**CALCULATING NUMBER OF OFF-DUTY HOURS WORKED**

Documentation:

PPD has no policy or requirement for Defendants to document their actual off-duty hours.

The HOAs have no policy or requirement for Defendants to document their hours on the days they actually worked.

There is no "sign-in" or "sign-out" document which establishes the hours the Defendants actually worked off-duty.

MDT:

There is no PPD policy which requires the Defendants to log into the MDT at the beginning of an off-duty shift or log off of the MDT after completing the shift.

Location of where shift begins or ends:

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There is no PPD policy defining where the off-duty job started or started. For example, there is no policy requiring the start and stop time to begin and end on-site of the HOA's property being served.

There is no PPD off-duty policy or agreement preventing the Defendants from starting their off-duty shift at the time they arrived at the precinct to get dressed out, or when they picked up their car, or when they were en route to the off-duty destination. Likewise, there is no PPD policy or agreement preventing the Defendants from ending their off-duty shift after leaving the off-duty site, or arriving back at the station, or returning their car, or dressing out.

Similarly, the HOAs had no policy requirement as to where the off-duty shift began or ended.

There was no agreement between the Defendants and the HOAs as to where the off-duty shift began or ended.

There is an off-duty *vehicle* log that reports when the off-duty shift begins and ends. This document reflects the hours of a particular off-duty shift. The document supports that the Defendants worked certain shifts on particular dates. The document reflects no off-duty hour shortage by Defendants.

Time for preparation/completion of shift:

There is no PPD policy that limits the amount of time the Defendants spent at the precinct in preparation for or completion of their off-duty jobs.

Likewise, there was no agreement between the HOAs and Defendants to limit any preparation or completion time for their shifts.

**VICTIM LOSS**

None of the three HOAs reported any financial loss from the payments they made to the Defendants.

The HOAs never tracked the number of off-duty hours worked to establish any loss.

The HOAs have no documentation showing any financial loss.

**THE RAPTOR BUSINESS**

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There was nothing illegal about setting up this business.

PPD policy does not prohibit setting up a business or an account to deposit payments for off-duty services and to make payments to off-duty officers.

In any event, the Raptor business was not involved in any way for off-duty payments to Defendants Lentz, Sywarungsymun and Peck for their off-duty services. The Defendants received payments directly from the HOAs..

**GRAND JURY PRESENTATION FOR SYWARUNGSYMMUN AND LENTZ**

The State must present specific instances of alleged misconduct for Defendants Sywarungsymun and Lentz. The Grand Jury should be told the dates of their shifts; the number of hours they worked; and the amount paid to the officers for each shift.

**AGGREGATION OF CLAIMS**

The State must advise the Grand Jury that in order to aggregate claims pursuant to A.R.S. §13-1801(B) in counts 4, 5, 6 and 7, they must find some connection with one or more of the co-Defendants that show a scheme or a course of conduct which include the individual Defendant's intent to deprive the HOAs of their property. Further, if accomplice liability is alleged, the State should advise the Grand Jury as to whom the accomplices are, if known.

**OTHER**

The State's witness should not use legal phrases such as "probable cause" when describing her analysis or calculations. Further, the witness should not couch her numbers with phrases like "giving them the benefit of the doubt". When presenting her testimony, the Grand Jurors should only be told of the facts: the numbers calculated and the basis for the numbers. In addition, the State is cautioned to present only factually accurate evidence throughout the entire Grand Jury presentation.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

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