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

9
10 THE STATE OF ARIZONA,)

11 Plaintiff,)

12 vs.)

13 JEFFERY KAY ROHOLT,)

14 Defendant)

) Case No.: CR 2020-00738

) MOTION TO REMAND FOR RE-
) DETERMINATION OF PROBABLE CAUSE

) (Assigned to the Honorable Dan Slayton,
) Division 2)

15
16 Defendant JEFFERY KAY ROHOLT, by and through undersigned counsel, and pursuant
17 to Rule 12.9 of the Arizona Rules of Criminal Procedure, respectfully requests that this Court
18 remand the case for a re-determination of Probable Cause as to all the counts in the indictment.
19 This motion is supported by the attached Memorandum of Points and Authorities.

20
21 RESPECTFULLY SUBMITTED this __9th__ day November, 2020

22 COCONINO COUNTY PUBLIC DEFENDER

23
24 _____/s/_____
25 Christine M. Brown
26 Deputy Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. Introduction**

4 Mr. Roholt has been denied a substantial procedural right as a result of the State’s failure
5 to provide exculpatory and accurate testimony to the grand jury which resulted in a failure to
6 present a fair and impartial presentation of the evidence to the grand jury. Further, Mr. Roholt
7 was denied his due process rights by the State’s failure to question the grand jurors decision to
8 add counts to the indictment which were not supported by the facts.

9 **II. Statement of Relevant Facts**

10 On September 17, 2020, Jeffery Roholt was indicted by the Coconino County Grand Jury
11 on one count each of kidnapping, custodial interference and theft. The kidnapping charge is
12 alleged to be a dangerous crime against children. The Grand Jury Transcript was filed with the
13 Clerk of the Superior Court on October 7, 2020.

14 The underlying facts, taken from Flagstaff Police Report DR#P20-12644 as well as body
15 cam footage and videos provided, are as follows: On September 3, 2020, officers responded to a
16 9-1-1 call from the Bashas store manager, Wayne, reporting an attempted abduction of “a child
17 in a shopping cart and a stroller.” The Bashas store is located on Woodlands Blvd in Coconino
18 County. Video footage of the incident was provided to responding officers. The footage clearly
19 shows Mr. Roholt looking to his left as he pushes a shopping cart containing a child in a car seat
20 away from the mother of the child. The footage further shows Mr. Roholt walking back towards
21 the self check-out register when stopped and grabbed by the mother. After the shopping cart was
22 retrieved by the mother, she went back to checking out grocery items and other witnesses went
23 on with their day. Mr. Roholt walked casually to his vehicle.

24 Upon his apprehension, Mr. Roholt was interviewed twice by Detective Seay of the
25 Flagstaff Police Department. The first interview occurred inside his home. The second interview
26 occurred at the police station. During the two interviews, Mr. Roholt provided the following
information: He told Detective Seay he was a chef at the Criollo Latin Kitchen and had stopped

1 working in March due to the restaurants closure during the pandemic. When asked what he did
2 that day, Mr. Roholt stated that he had woken at 5:00, done push-ups and yoga, checked his mail
3 and then went to Walmart¹. In the interview later at the station, when asked what he had done
4 that morning Mr. Roholt responded, “Nothing....I went on a bike ride.” It is clear from his earlier
5 statement coupled with this response that he believed Detective Seay was asking what he did
6 after leaving Bashas. Detective Seay asked no follow-up questions to clear up what part of the
7 morning she was referring to – before or after his trip to Bashas, even though she had arguably
8 received two inconsistent statements.

9 Mr. Roholt stated, a minimum of 15 times, during the two interviews that he did not see
10 the baby in the shopping cart. He repeatedly indicated he just pushed the shopping cart,
11 surmising that perhaps he pushed the cart because it was in his way, he subconsciously believed
12 it to have been his, it was reflexive, and/or he wasn't thinking. When asked when he noticed the
13 baby, on multiple occasions, Mr. Roholt stated that he never saw the baby. He said he saw the
14 basinet covered with a stripped blanket once the mother grabbed him (Jeffery Roholt #2.mp3 at
15 7:30, 20:23 and 45:13). Mr. Roholt stated on numerous occasions that he thought she stopped
16 him because he had forgotten some of his groceries. This statement is consistent with the video
17 footage which shows him walking back towards the check-out station he used and looking
18 around.

19 Mr. Roholt was cooperative but extremely emotional during the entirety of both
20 interviews. At points he sounds to be on the verge of tears.

21 **III. Grand Jury Presentation**

22 Detective Seay's testified, "I asked. him if he had went (sic) anywhere else today or did
23 anything else and he said no" "He said he saw the baby. It was in a carriage thing in the cart. He
24 then made the comment to me, so I did see it." Later, "I asked him what he saw in the cart and
25

26 ¹ While at Walmart, Mr. Roholt used a shopping cart to do his shopping.

1 he said a basinet with a covering on it. He said he stopped because he thought maybe he left a
2 bag.” Later, “I asked him what else was in the cart, he said that was all. He said he then realized
3 that wasn’t his cart.” Detective Seay said nothing about other potential witnesses who thought
4 nothing of the incident and continued on with their day. Nor did she testify that Mr. Roholt
5 walked casually to his vehicle and drove home.

6 Following deliberation, the grand jurors asked to add additional counts including
7 custodial interference and theft. The custodial interference and theft statutes had been read to the
8 grand jurors for the purpose of their consideration regarding a requirement in the kidnapping
9 charge, “to otherwise aid in the commission of a felony.” There was not sufficient evidence to
10 support these charges standing alone. The prosecutor failed to clarify with the grand jurors which
11 form of kidnapping they believed there was probable cause to support.

12 **IV. Law and Argument**

13 Rule 12.9 of the Arizona Rules of Criminal Procedure states that a grand jury proceeding
14 may be challenged for a new finding of probable cause upon motion “alleging that the defendant
15 was denied a substantial procedural right. The primary function of a grand jury is to determine
16 whether probable cause exists to believe that a crime has been committed and that it was
17 committed by those accused. *State v. Baumann*, 125 Ariz. 404, 408, 610 P.2d 38, 42 (1983).
18 The duties imposed on the prosecutor, those of fair play and impartiality, are meant to ensure that
19 the determinations made by the grand jury are informed, objective, and just. *Crimmins v.*
20 *Superior Court*, 137 Ariz. 39, 668 P.2d 882, 884 (1983). Due process requires the use of an
21 unbiased grand jury and a fair and impartial presentation of the evidence. *Crimmins v. Superior*
22 *Court* 137, Ariz. 39, 668 P.2d 882 (1983), *State v. Emery*, 131 Ariz. 493, 642 P.2d 838, (1982).
23 An indictment based on misleading (or false) testimony amounts to a denial of substantive due
24 process. *Nelson v. Royston*, 137 Ariz. 272 (App. 1983).

25 “The prosecutor’s role before the grand jury is unique in our system. The prosecutor acts
26 not simply as an advocate, but as a “minister of justice,” who assists the jurors in their inquiry.
See Ariz. R. Sup.Ct. 42, ER 3.8 cmt. Prosecutors bear a “particularly weighty duty not to

1 influence the jury because the defendant has no representative to watch out for his interests”
2 before the grand jury. *State v. Hocker*, 113 Ariz. 450, 454, 556 P.2d 784, 788 (1976),
3 disapproved on other grounds, *State v. Jarzab*, 123 Ariz. 30, 311, 599 P.2d 761,764 (1979). The
4 prosecutor therefore “must not take advantage of his or her role as the ex parte representative of
5 the state before the grand jury to unduly or unfairly influence it.” *Maretick v. Jarrett*, 204 Ariz.
6 194, 197, 62 P.3d 120, 123 (2003).

7 The State provided erroneous and misleading testimony to the grand jury when it
8 informed the grand jurors that Mr. Roholt indicated he had done nothing the morning of the
9 incident, that he had seen the baby, the point at which he was able to describe the blanket
10 covering the car seat and that he believed he was grabbed by the mother because he had
11 forgotten some of his groceries.

12 The State also did not present a fair and impartial presentation of the evidence when it
13 included misleading statements purportedly made by the defendant while omitting his positive
14 statements and acts, intentionally placing him in a negative light in an attempt to bias the jury.
15 For example, Mr. Roholt did not make the comment, “So, I did see it.” He never indicated it was
16 when he looked into the shopping cart that he realized it was not his cart. In fact, he maintained
17 throughout both interviews that he did not have a shopping cart.

18 The State then completely omitted information which placed Mr. Roholt in a positive and
19 sympathetic individual; his career choice, his nervousness and his continued attempts to explain
20 his actions of pushing the shopping cart. As well as the fact that less than one hour earlier he had
21 been shopping at Walmart while pushing a shopping cart. The grand jurors should have been
22 informed of these facts to ensure a complete and unbiased picture of who Mr. Roholt is.

23 The State’s manner of presentation once again misled the jury and was presented in a
24 biased manner. As a result of all of these errors, there was, (1) a failure to provide clearly
25 exculpatory information to the Jury; (2) resulting erroneous and misleading testimony provided
26 to the jury; and (3) a failure to present an objective, fair and impartial presentation of the facts to
the jury, whether considered collectively or individually, which deprived Mr. Roholt of his
procedural rights.

1 Mr. Roholt is charged with kidnapping. The charge requires probable cause that he
2 knowingly restrained this child with the intent to inflict death, physical injury or a sexual offense
3 or to otherwise aid in the commission of a felony, or to place her, or her mother, in reasonable
4 apprehension of imminent physical injury. From the introductory remarks of the prosecutor it
5 appears their theory of the case is that Mr. Roholt planned to commit a theft or custodial
6 interference and in so doing also committed a kidnapping. There was not a single bit of
7 testimony provided to the grand jurors regarding taking, enticing or keeping the child from the
8 lawful custody of the mother. Likewise, the grand jurors were provided no testimony regarding
9 the content of the shopping cart other than that it contained a baby in a car seat. Certainly, there
10 was nothing regarding groceries or personal items. To the contrary, the police report is clear that
11 Detective Seay specifically asked the mother what was in the shopping cart and the mother
12 indicated, just the car seat and baby (police report, Bates p. 20). It does appear from the video
13 that there may be additional items in the shopping cart. Those items would be the property of
14 Bashas; items that had not yet been scanned by the mother.

15 It is the duty of the prosecutor to ensure the grand jurors are provided testimony which
16 amounts to probable cause to support a charge. There was no testimony given to support the
17 charges of theft and/or custodial interference, let alone evidence sufficient to meet the probable
18 cause requirement. There was also no evidence presented which would legally allow the grand
19 jury to find probable cause for a kidnapping, in furtherance of either theft or custodial
20 interference.

21 **V. Conclusion**

22 While it may be tempting for this court to dismiss Mr. Roholt's interview demeanor and
23 statements as trivial, it is important to remember that the State has no story, theory or motive to
24 explain Mr. Roholt's actions. If it is the State's theory that he committed the kidnapping in
25 furtherance of a theft or custodial interference, it was necessary for them to provide testimony
26 regarding either one or both of those charges. While the State is not required to present a theory
to the grand jurors, there is clearly no evidence to support the other possible ways to commit a

1 kidnapping (death, physical injury or a sexual offense); no pornographic material, no weapons,
2 no writings and no stalking. Since there was no presentation of evidence to support the
3 “commission of a felony” theory, the State’s only chance of securing a true bill was to convince
4 the grand jurors that Mr. Roholt’s responses to the detective’s questions were evasive or
5 inconsistent. This is simply inaccurate when the videos are reviewed in their totality. Admittedly,
6 Mr. Roholt gave a variety of answers when asked why he pushed the grocery cart. When
7 reviewed in context, it is clear he was attempting to explain his unintentional act. Every one of us
8 has been in a situation where we try to explain why we acted in some manner that was
9 inadvertent, and certainly unintentional. For example, when Officer Cooke placed Mr. Roholt’s
10 wallet on the top of his police car and drove away, thereby allowing the wallet to fly off the
11 vehicle and get lost, he would probably have provided a variety of responses as to why he did
12 that. The truth would be because he wasn’t thinking and his mind was elsewhere. Likewise, it is
13 not inconsistent for Mr. Roholt to say he pushed the cart to get it out of the way, that he may
14 have subconsciously believed it to have been his cart, that it was blocking his exit from the store,
15 that he wasn’t thinking and that it was an accident when repeatedly pressed to come up with an
16 explanation. In order to get an accurate portrayal of these different answers, it was necessary to
17 describe his demeanor and emotions during the interview. A failure to describe the entirety of
18 the interview and his emotions is to deprive him of a fair and impartial presentation of the case,
19 thereby violating his due process rights.

20 There is little doubt that the State can steer a grand jury to indict on whatever they hope
21 to charge based solely on the presentation of the testimony. Since there is no one to present the
22 alternative view, it is mandatory that the State ensure protection of a defendant’s due process
23 rights. This duty includes fairly and accurately setting the tone of the interview, the incident and
24 perhaps most importantly assuring that the grand jurors apply the facts presented to the law and
25 not come up with their own set of facts.

1 This indictment is based on testimony that was misleading and subjective. The case must
2 be remanded to the grand jury and testimony presented in a fair, impartial and objective manner.

3
4 RESPECTFULLY SUBMITTED this ____9th____ day of November, 2020.

5 COCONINO COUNTY PUBLIC DEFENDER

6
7 _____/s/_____
8 Christine M. Brown
9 Deputy Public Defender

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11 Copy of the foregoing delivered
12 This __9th____ day of November, 2020 to:

13 Honorable Dan Slayton
14 Coconino County Superior Court Judge
15 Division 2

16 Deputy County Attorney
17 Attn: Ammon Barker

18 Defendant

19 By: _____cmb_____