

**STATE OF ARIZONA
IN THE COURT OF APPEALS
DIVISION TWO**

STATE OF ARIZONA
Ex rel. M. LANDO VOYLES
PINAL COUNTY ATTORNEY,
Petitioner,

No. 2 CA-SA 2014-0050

v.

Pinal County CR 201201764

THE HONORABLE PETER J. CAHILL,
VISITING JUDGE OF THE PINAL
COUNTY SUPERIOR COURT,
Respondent,

And

RICHARD T. WILSON,
Real Party in Interest,
Respondent.

HEARING TRANSCRIPT: JANUARY 24, 2014

**M. LANDO VOYLES
PINAL COUNTY ATTORNEY**

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA,)
)
)
Plaintiff,)
)
vs.) No. CR201201764/DC
)
)
RICHARD TREY WILSON,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTIONS

Florence, Arizona
January 24, 2014
9:17 a.m.

BEFORE: The Honorable **BOYD T. JOHNSON**, Judge

TAKEN BY: LAURA MILLER, RPR
Certified Reporter
Arizona No. 50505
Official Court Reporter

APPEARANCES

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For the Plaintiff:

Mr. Matthew Long
Mr. Patrick Johnson
Deputy County Attorneys
Pinal County Attorney's Office
P.O. Box 887
Florence, AZ 85132

For the Defendant:

Mr. Bret Huggins
Attorney at Law
P.O. Box 1125
Florence, AZ 85132-1125

Mr. James Soslowsky
Attorney at Law
1729 N. Trekell Rd., Ste. 107
Casa Grande, AZ 85122

1 Florence, Arizona
2 January 24, 2014
3 9:47 a.m.

4 **THE COURT:** Okay. Folks, have a seat,
5 please.

6 Okay. This is CR201201764, State versus
7 Richard Trey Wilson.

8 Mr. Long is present representing the State,
9 along, I guess, with Mr. Johnson.

10 Mr. Huggins and Mr. Soslowsky are present
11 representing the defendant, Mr. Wilson, who is present in
12 custody.

13 This is the date and time that was set by
14 minute entry for a hearing on pending motions. There was
15 a pleading I received this morning, which is the reason I
16 am running late, which Mr. Long asserted yesterday that he
17 hasn't received minute entries both setting or assigning
18 this to me for the hearing or setting the hearing on
19 today's date. I asked the clerk, the JA and the clerk's
20 office through the JA to ascertain whether that was a
21 failure of the notification system within the court system
22 or failure of notification of distribution within the
23 County Attorney's Office.

24 The clerk's record clearly shows, and I
25 think that's been provided to Mr. Long and that his

1 office, at least, received distribution of those minute
2 entries on both January 8th and January 10th.

3 Mr. Long, have you had a chance to look at
4 those?

5 **MR. LONG:** I have.

6 **THE COURT:** Do you know where the problem
7 is?

8 **MR. LONG:** I do not, but I will certainly
9 investigate that after this hearing.

10 **THE COURT:** I am going to direct that you do
11 that, and I am going to direct also that Mr. Roche, the
12 clerk of the court, work with you if there were any
13 difficulties in distribution.

14 **MR. LONG:** Thank you, Your Honor.

15 **THE COURT:** I do not like to see from either
16 side motions that begin with "I didn't have notice."
17 There is notice, let's keep things working properly. My
18 concern is the administration of proper notice,
19 administration of the court.

20 Okay. Here's how I see it, and I would be
21 very happy to have some input from the attorneys. I have
22 read the files. There are now two files. There's a
23 number of pleadings, some of which are subsidiary to or
24 ancillary to earlier pleadings. But essentially what we
25 have is Judge Georgini received an ex-parte request to

1 issue an order, and Judge Georgini granted that order.
2 The order was issued.

3 As I read the pleadings, somewhere within
4 less than a month after the issuance of the order, the
5 County Attorney's Office filed essentially, whatever it's
6 labeled, essentially a motion to vacate that order, and
7 based that motion in effect on having access to the
8 ex-parte motion, the ex-parte order. Mr. Hazard indicated
9 that happened, if I remember his pleading, because a
10 paralegal found them on AJACS and they weren't labeled as
11 sealed. Mr. Long, in a later pleading, calls it an
12 accidental discovery.

13 So, as a result of that, Mr. Huggins
14 responded and calls it a Response and it is sort of. It's
15 a response which essentially doesn't address the
16 substantive issue raised in the State's Motion to Vacate,
17 and that is whether or not 15.9 applies, et cetera.
18 Whether it was properly an ex-parte request. But it does
19 address the greater issue and that is whether or not the
20 County Attorney's Office improperly or unethically had
21 access to information it shouldn't have had, which allowed
22 it to file that Motion to Vacate to begin with.

23 Mr. Long, in effect, put aside the Motion
24 for Remand. That's another pending motion. On that
25 issue, Mr. Long, in effect wants this hearing to be

1 nothing but a hearing as to whether or not it was a valid
2 order issued by Judge Georgini. That is whether it was
3 correctly requested and validly issued, I suspect.

4 And Mr. Huggins, at least as I read the
5 pleadings, wants to make it a little bit more than that.
6 In fact, wants to, I guess, ask for sanctions against the
7 State for either improperly or unethically accessing
8 information, which it acknowledged using, and impose
9 sanctions. The sanctions Mr. Huggins asked for, and he
10 lists three: Dismissal, potentially; removal of the
11 County Attorney's Office as the prosecuting agency in this
12 case; and requests that the Court order the event, the
13 information, referred to the ethical committee or ethics
14 committee in the State Bar, and that is as to the attorney
15 having access to the information and using that
16 information once having access to it. That is actually
17 making use of the information.

18 There are some things that are filed after
19 that. My notes indicate the County Attorney's Office,
20 Mr. Voyles, made a press release where he criticized
21 the -- at least in the press release, it would appear that
22 he was criticizing the Court for helping the defense
23 attorney hide that request for information. That was
24 immediately followed apparently by an email from -- I
25 think it was Mr. Knupp from the County Attorney's Office

1 to Judge Georgini and Mr. Huggins, copies to Mr. Voyles
2 and Mr. Wintry, essentially saying: Gee, the press didn't
3 quote me correctly, and I didn't want to imply that the
4 Court participated in hiding that request, essentially.

5 Mr. Huggins followed in effect a motion to
6 strike and what it says is to strike County Attorney's
7 communications, ex-parte communications with the Court,
8 asks for sanctions. But then in that one doesn't specify
9 what kind of sanctions the county attorney -- or
10 Mr. Huggins wanted issued.

11 Following that, leading up to the hearing
12 today, Mr. Huggins acquired -- had issued a number of
13 subpoenas. And I see people that were subpoenaed or
14 targets or people that were the targets of the subpoenas
15 are at least here in part. Ms. Apodaca is here from the
16 clerk's office; Mr. Roche, the Clerk is here; Mr. Hazard,
17 the Deputy County Attorney at that time who used the
18 information to file the Motion to Vacate in effect is
19 present; and I'm not sure who else is here. I see a whole
20 bunch of people from the County Attorney's Office sitting
21 in the back.

22 Okay. Now with that, Mr. Huggins, it's kind
23 of -- the issue of whether or not accessing or whether it
24 was -- knowing it was sealed or using it knowing it had
25 been sealed or knowing it was confidential information, I

1 would think is an ethical issue that should be addressed,
2 if you believe it to be an ethical violation, by the
3 Ethics Commission for the State Bar. I did have a
4 question for you that occurred to me when I was reading
5 through all this. My reading of your pleadings says you
6 believe that action to have been unethical.

7 Have you yourself reported it to the State
8 Bar? Which is what the "rat" rule, what the State Bar
9 rule says to do if you believe it, if you know it to be an
10 unethical transaction. Have you done that?

11 **MR. HUGGINS:** Your Honor, the rule does not
12 provide that. The rule I'm purporting requires you only
13 are required to report matters that would indicate that
14 the attorney engaged in the misconduct is not qualified or
15 fit to practice law.

16 **THE COURT:** Not an act done unethically?

17 **MR. HUGGINS:** No, acting -- violating the
18 rules is not a ground for mandatory report. And
19 additionally, Your Honor, I need to make a factual record.

20 **THE COURT:** Sure.

21 **MR. HUGGINS:** I alleged several things that
22 were not addressed by you in going through this --

23 **THE COURT:** Go ahead.

24 **MR. HUGGINS:** -- that I would like to point
25 out.

1 **THE COURT:** Okay. Which pleading did you
2 allege this?

3 **MR. HUGGINS:** Originally in the Motion --
4 Response to their Motion to Stay the Court's Ruling on
5 Medical Records.

6 **THE COURT:** Okay. August 22nd motion.

7 **MR. HUGGINS:** And then additionally I rested
8 in the Motion for Sanctions --

9 **THE COURT:** The supplemental one?

10 **MR. HUGGINS:** Yes.

11 **THE COURT:** Which was August.

12 **MR. HUGGINS:** -- and they never responded to
13 any of those pleadings, Judge, or contested any of those
14 facts. I am prepared today to prove, Your Honor, that the
15 County Attorney's Office on at least two occasions
16 illegally accessed ex-parte pleadings in the clerk's
17 office. In order to do that, I cannot just rely on my
18 pleadings, Judge, although they did not contest those
19 facts when I alleged them and, in fact, Mr. Hazard
20 admitted them.

21 **THE COURT:** Calm down, you are talking to
22 me.

23 **MR. HUGGINS:** When he filed his original
24 pleading, I called in Mr. Roche who has prepared a report
25 at the direction of the presiding judge, Carter Olson --

1 **THE COURT:** Right.

2 **MR. HUGGINS:** -- into improper illegal
3 access to ex-parte matters so he can talk about that. I
4 called in Odette Apodaca, a member of the clerk's office,
5 so she could make clear to the Court these matters were
6 not available to the public. They were sealed. They were
7 sealed, but the County Attorney's Office --

8 **THE COURT:** Let me stop you. Let me stop
9 you.

10 What you told me you were going to do is
11 tell me the additional facts that I haven't mentioned.
12 Don't tell me what you think you are going to prove, just
13 what were those additional facts.

14 **MR. HUGGINS:** Those are the additional
15 facts. The only way those matters were accessed, as we
16 know it, was because the County Attorney's Office used a
17 computer from the Clerk in their office to illegally
18 access these documents on two occasions. I have to make
19 this record, Judge, because they are trying to kill my
20 client.

21 And I would remind the Court that when death
22 is at issue, there are heightened standards of reliability
23 imposed by the Fourteenth, Tenth and Eighth Amendments.
24 If I don't make this record, 10 years from now, 20 years
25 from now, some court is going to say that stupid, idiot

1 defense attorney didn't make a record of wh
2 agreed to.

3 **THE COURT:** Slow down. I am
4 you for asking or doing what you're doing. You are a very
5 zealous representative of your client. I'm not
6 criticizing you on that, I'm trying to draw the parameters
7 of what you're doing today.

8 You believe that Mr. Roche is a necessary
9 witness. Of course, we have the State's Motion to Quash
10 all the subpoenas, including that for Mr. Voyles, but you
11 believe he's a necessary witness to establish what?

12 One, that there was this access that the
13 State actually acknowledges either explicitly or
14 implicitly by filing the motion.

15 And the second one?

16 **MR. HUGGINS:** I beg your pardon?

17 **THE COURT:** The second access.

18 **MR. HUGGINS:** He was actually -- yes. They
19 got first the motion, then they went back and got the
20 order. Mr. Hazard even in his motion admitted that. You
21 have a motion that says it's an ex-parte proceeding, you
22 see it. Under the ethical rules you have a duty to stop
23 reading and immediately bring it to the attention to the
24 other side I got access to something I wasn't supposed to,
25 and in this case bring it to the attention of the Court

1 whose records they have improperly accessed.

2 **THE COURT:** Okay. You are going back to
3 your argument again. Just tell me where you're headed. I
4 understand that. The two accesses, one was access to the
5 motion itself and the second one was the access to the
6 order. And the access to the order, at least you believe,
7 was made knowing that it was sealed because of the quality
8 or nature of the motion.

9 **MR. HUGGINS:** Now the County Attorney issues
10 a press release to say we did this right, we thwarted that
11 evil defense attorney who was having his tracks covered by
12 the judge.

13 **THE COURT:** Right.

14 **MR. HUGGINS:** And we are prepared to prove,
15 Judge, and I would make an offer of proof today that that
16 press release was sent to Chad Roche for comments, and
17 then he commented on it. Now if this is a confidential
18 document, you certainly don't send it to somebody outside
19 your office to refer to it, so I want to introduce the
20 documents that show they discussed it. Now I have got
21 communications by --

22 **THE COURT:** Whoa. Whoa. What document do
23 you want to introduce?

24 **MR. HUGGINS:** Email from the County
25 Attorney's Office, Jim Knupp, their information officer,

1 directed to Steve Hurley, I think.

2 **THE COURT:** Chad Roche. I'm sorry, go
3 ahead.

4 **MR. HUGGINS:** The assistant for Mr. Roche,
5 copy to Mr. Roche that says here is the press release,
6 Lando wants you or Chad to respond, to comment on it.

7 **THE COURT:** Interesting.

8 **MR. HUGGINS:** I made a public record's
9 request to the County Attorney's Office months ago. They
10 have ignored it, nothing, but I do have some of their
11 emails. Now Mr. Knupp, who is the employee of the
12 assistant of Lando Voyles, issues a press release and then
13 issues an email directly to the judge about communications
14 in the newspaper, so I want to make a record of what that
15 newspaper article said and what those communications are.

16 Judge, you can't have a non-lawyer sending
17 emails to the judge about pending litigation.

18 **THE COURT:** Actually any ex-parte
19 communication is inappropriate on pending litigation. I
20 thought I saw --

21 **MR. HUGGINS:** But he needs to prove that.

22 **THE COURT:** I thought I saw a copy of the
23 news article in the pleadings.

24 **MR. HUGGINS:** I have -- yes, it was. And I
25 have eight exhibits that I've provided to the clerk that

1 documents all this that I want to present.

2 Now, Judge, I subpoenaed previously Lando
3 Voyles so he could come in. It's his office prosecuting
4 this case, and to suggest that I have to personally
5 subpoena is ridiculous. The rules provide me serving it
6 on his office is good enough, during regular business
7 hours, but they want to quash that. And the other thing
8 they wanted to quash was my subpoena for Greg Hazard, who
9 was the attorney at the time and engaged in looking at the
10 ex-parte documents and filing a Motion for Affirmative
11 Action on it to prove what he did.

12 Now they've argued to you, we didn't know
13 all this was coming up. So I have an email that
14 Mr. Hazard received back on December 10th indicating all
15 these matters were at issue. That I intended to call him,
16 that I intended to call Lando Voyles, that I intended to
17 call Mr. Knupp, and that's why we needed a two day hearing
18 in front of Judge Georgini, which he agreed to.

19 **THE COURT:** You are escalating again.

20 **MR. HUGGINS:** Okay.

21 **THE COURT:** Now the point of the hearing
22 though is to what, convince the Court that there was
23 improper access and it was improperly used?

24 **MR. HUGGINS:** And to show the record of what
25 the County Attorney has done that may be extrajudicial.

1 **THE COURT:** Okay.

2 **MR. HUGGINS:** Judge, I need a complete
3 record if this ever goes up.

4 Now we have a problem.

5 **THE COURT:** But your end goal in creating
6 that complete record is what?

7 **MR. HUGGINS:** I believe that the County
8 Attorney's Office has violated my client's right to due
9 process and that appropriate sanctions need to be imposed.
10 We've asked for dismissal, but short of dismissal that
11 they be disqualified. They send it to an independent
12 agency that has no access to the ex-parte motion and
13 information they've already improperly granted and we go
14 from that point on.

15 **THE COURT:** Okay.

16 **MR. HUGGINS:** Now, Judge, we've got problems
17 additionally though. Normally when we have interested
18 parties that are employees of the court system, to
19 guarantee fairness to all the parties, the judges on our
20 bench here recused themselves and sent it out to an
21 outside judge. In this case they are making arguments
22 that the assistant for Carter Olson didn't properly notify
23 them of minute entries. Well, it happens to be his
24 judicial assistant is your wife. They're claiming an act
25 of notice that these matters were set for hearing,

1 although Mr. Hazard knew back in September.

2 **MR. LONG:** Your Honor, I object to that.
3 That's not what I am alleging. So I would like him to say
4 what he thinks he can show and not get in my mind.

5 **MR. HUGGINS:** I'm talking about a potential
6 conflict. He in his motion said I didn't receive these
7 things.

8 **THE COURT:** Right.

9 **MR. HUGGINS:** But the record reflects they
10 did.

11 **THE COURT:** Well, the record reflects --

12 **MR. HUGGINS:** He's trying to suggest that
13 it's the clerk's office or the judicial assistant that
14 didn't properly notice him, and I'm saying, Judge, that
15 directly strikes at home where you're at. And maybe
16 what's best is to take all these matters and to send them
17 to another county, to another judge that isn't -- doesn't
18 have a prior working relationship with all of the
19 witnesses that are going to testify in this matter.

20 **THE COURT:** Okay.

21 **MR. HUGGINS:** Now I don't know if this
22 County Attorney's Office is actually going to contest any
23 of my facts. They can stand up and say we agree with the
24 factual assertions that Mr. Huggins made, or we agree with
25 Mr. Huggins' avowal; we don't have to call Mr. Hazard, we

1 don't have to call Mr. Roche, we don't have to call Odette
2 Apodaca, we don't have to call Lando Voyles, we don't have
3 to call Jim Knupp, who have not appeared, Judge. They
4 avoided our service and I have noted that in my motion.

5 **THE COURT:** I saw it.

6 **MR. HUGGINS:** Whatever you do, if you decide
7 to go ahead and hear it, we can go with the witnesses here
8 or we can put it off to a different time in front of a
9 judge, another judge.

10 **THE COURT:** And that's what I am asking you,
11 and I will get back to you, Mr. Long. Specifically you
12 believe that it should be a judge other than a judge of
13 Pinal County, other than myself? Specifically is that
14 what you are requesting?

15 **MR. HUGGINS:** I have to, Judge, and I'm
16 sorry. There is nobody that has more respect for this
17 Court than I do of you as a judge, but frankly, I've got
18 to raise every potential claim for my client and assert
19 every possible ground for relief, so I have to make that
20 request.

21 **THE COURT:** Please do not apologize. No
22 attorney should for asserting a claim or a request that
23 is, they believe, appropriate. There is no problem with
24 that. If you think, whatever the connection, whatever
25 influence I might -- there might be because I've known

1 Odette Apodaca for 20 years or my wife who is the JA to
2 Judge Olson, if you think that's there, raise it. I'm
3 happy to have you do it.

4 Now let me let Mr. Long say what he wants to
5 at this stage. First, Mr. Long, do you disagree with the
6 fact that the State had access that it shouldn't have to
7 an ex-parte motion and an ex-parte order?

8 **MR. LONG:** Well, I agree we had access to
9 the ex-parte motion and the ex-parte order. Whether or
10 not we should have or not is potentially in dispute, but I
11 agree that we had access to the ex-parte motion, and I
12 concede that it appeared to be an oversight on the clerk's
13 office, whoever controls the AJACS system, in allowing
14 that access to be -- to be on the machine that it was.

15 **THE COURT:** One of the motions that
16 Mr. Hazard filed, the Motion to Vacate, in effect said
17 that on the AJACS system the documents weren't even marked
18 as sealed or ex-parte. I don't know. When I looked at
19 AJACS they were marked as sealed documents, but perhaps
20 that came later. Do you know?

21 **MR. LONG:** My understanding is it came
22 later.

23 **MR. HUGGINS:** Your Honor, I think we need an
24 offer of proof through Odette Apodaca that it was sealed
25 at that time and it was always sealed and it was never

1 available or indicated otherwise.

2 **THE COURT:** Well, I know within the court
3 file obviously it's sealed and it's very apparent if you
4 are looking at the paper file.

5 I'm kind of concerned also, Mr. Huggins,
6 with the totally -- with the issue you just raised about
7 whether I should make these decisions. And would it be
8 fair to say at this time that when the issue came up and
9 Judge Olson was involved, when Judge Olson made his
10 direction to Mr. Roche, to the clerk, to investigate the
11 number of occurrences, the manner of occurrences, I had --
12 Judge Olson consulted me on -- not the case, I knew
13 nothing about the case itself but the topic, and I have
14 certainly been aware of it since late July at least. No
15 doubt about it, you could not be and be a judge here in
16 the county involved in criminal matters.

17 I think perhaps if you feel that you or your
18 client would feel that a truly impartial judge, a judge
19 who does not know the players, does not know the
20 background would be the appropriate person to make these
21 decisions, I will let Mr. Long say what he wants on it,
22 but it certainly sounds like not an unreasonable decision,
23 certainly when it is a capital case and there is that
24 little extra scrutiny that must be given to every decision
25 made in a capital case.

1 You want to have any input on that,
2 Mr. Long?

3 **MR. LONG:** As to that, the only thing I want
4 to say, Judge, I object and move to strike his rhetorical
5 and inflammatory language. It's improper, it's
6 unprofessional and it's not conducive to what the
7 principles of this Court and the rules of Arizona that the
8 Supreme Court and all the courts have indicated is
9 appropriate, and so I move to strike that.

10 And in addition, the only other thing I
11 would like to state as to the conflict that he raises is
12 the State, specifically me, I was not -- certainly not
13 saying that there was some bad faith or even negligence on
14 the part of the Court, but was simply stating a fact.
15 That myself personally did not receive those minute
16 entries, acknowledging that the -- there might be a --
17 many steps along the way from the Court's order to my
18 desk. That's all.

19 **THE COURT:** It's been really common over the
20 years that I have been here for one side or the other to
21 say I did not get a copy of the minute entry. Only in
22 fairly recent years have we been able to, at least the
23 clerk's office, to track the delivery of those documents
24 and determine independently of the attorneys' claims
25 whether they were properly placed in the right mail box or

1 delivered by the right email to the office for
2 distribution within the office, which is why I was
3 concerned. And it was not me believing that you were
4 implying the Court did something wrong, it was me
5 concerned that notice was properly being given. The
6 clerk's office affirmed that it was properly given, at
7 least within their system. Whatever happened in your
8 office -- that's as to the January 8th and January 10th
9 minute entries.

10 Here's -- I believe Mr. Huggins has a very
11 valid point on a capital case involving this kind of issue
12 and that is whether your office should be struck, should
13 be disqualified. That I guess a judge without any
14 background information should be the one to evaluate the
15 system in total -- or the event in total, arguments in
16 total, which is a shame because I was certainly prepared
17 to listen and I hope make a reasonable decision, but -- in
18 that sense. It is not a shame that we recognize
19 everybody's right to a fair trial and the feeling that
20 they did have a fair trial, whether they like the outcome
21 or not.

22 So I am going to go ahead and all of you who
23 have been subpoenaed, you are released from those
24 subpoenas today. I am going to give this to the presiding
25 judge, who is now Judge McCarville, for assignment to a

1 non-county judge.

2 **MR. LONG:** Your Honor, I do have a
3 supplemental record I would like to make. The State
4 submits that the virtue of Mr. Huggins' issuance of a
5 subpoena for individuals on collateral issues and
6 potentially an ethical question should not necessarily
7 disqualify this Court. His act in doing that, which is
8 superfluous to what the facts that are known as the Court
9 has properly pointed out, absent a finding that those
10 individuals are and their credibility is really
11 dispositive of a particular factor of a particular issue,
12 would not give rise to that conflict. So the State would
13 just ask for a finding that those witnesses -- that the
14 Court's ruling that those witnesses are potentially
15 necessary and that's what creates the conflict, but by
16 virtue of him subpoenaing somebody should not in and of
17 itself give rise to a conflict the State submits.

18 **THE COURT:** To a what?

19 Wait a minute. Should not give rise to
20 what? I'm sorry.

21 **MR. LONG:** To a conflict.

22 **THE COURT:** To a conflict.

23 **MR. LONG:** Simply because he chose to
24 subpoena somebody who may in fact be a superfluous witness
25 to the issue.

1 **THE COURT:** No. In fact, my ultimate
2 decision that I announced is not really based on who the
3 witnesses are, but is based upon the information that I
4 have had from late July through the end of the year. It's
5 information about the event that a judge that comes in
6 from somewhere else would not know what Judge Olson wanted
7 to talk about in our conference, what Judge Olson
8 ultimately decided to do until it was properly presented
9 in court, and that's really not because Chad Roche is here
10 or Odette Apodaca or Greg Hazard or anybody else.

11 Yes.

12 **MR. HUGGINS:** Your Honor, I want to respond.

13 The County Attorney's Office made direct --
14 the County Attorney made direct comments about the judge
15 sitting on this matter that caused him to have to recuse
16 himself.

17 **MR. LONG:** I object to the grandstanding.

18 **THE COURT:** Wait. Let me stop you.

19 The newspaper said he made those comments.
20 Apparently Mr. Knupp, whatever his name is, on behalf of
21 Mr. Voyles is saying, well, he did not make those
22 comments, the newspaper made it for him.

23 **MR. HUGGINS:** No, Mr. Knupp said he didn't
24 make part of those comments. The rest of those comments
25 were the, quote, covering the defense attorney's tracks.

1 Mr. Knupp never disputed -- was made by Lando Voyles.

2 **THE COURT:** Right. But attributing it to
3 the judge acting in concert with the defense attorney was
4 essentially what they were denying. Whether or not that
5 solves the problem or means anything in this record, who
6 knows.

7 Look, let me just stop there, and without
8 telling you where I thought I was going today.

9 Since we have decided that this issue, which
10 is really an important issue, that is whether the
11 county -- Pinal County Attorney can continue to prosecute
12 the case, I think is a real sanction. I don't think --
13 again, I don't want to go into my thinking. Means even a
14 decision on the Motion to Remand probably ought not to be
15 made until that decision is made, who is actually the
16 prosecutor.

17 Do you disagree with that, Mr. Huggins?

18 **MR. HUGGINS:** No, Your Honor. And we would
19 waive time in regard to that.

20 **THE COURT:** Do you disagree with that,
21 Mr. Long?

22 **MR. LONG:** No, sir.

23 **THE COURT:** Look, and again I'm very -- I
24 don't want to say I'm reluctant to do this. I'm not
25 reluctant to do this when I feel it's necessary. I'm just

1 sorry that it can't be resolved quickly. And I thought I
2 had at least some idea of where to go with this, but
3 believe me, it's the right thing to do. I am recusing
4 myself from consideration and referring this to Judge
5 McCarville, who is now the presiding judge, for assignment
6 to a judge outside Pinal County to determine -- make the
7 determination on the State's motion effectively to vacate
8 the order on disclosure, the defendant's response to that,
9 and supplement, and the issue about the County
10 Attorney's -- the County Attorney, Mr. Voyles'
11 communications with the Court. Okay?

12 And any other issues?

13 **MR. HUGGINS:** Your Honor, could I ask that
14 the exhibits that I asked be marked remain in the court
15 file?

16 **THE COURT:** Yes. Let me do this. And thank
17 you, that will save them from having to preserve them
18 somewhere. I will order they be placed in an envelope,
19 sealed and held for any future hearing. That judge
20 determine whether any should be admitted and for what
21 purpose.

22 **MR. LONG:** We're asking for disclosure of
23 the items that are proposed as exhibits, Judge.

24 **THE COURT:** Okay. For disclosure of what?

25 **MR. LONG:** That --

1 **THE COURT:** Whatever they are?

2 **MR. LONG:** Whatever they are they be
3 disclosed.

4 **THE COURT:** Let's do this. I will order
5 that they all be copied.

6 Did you keep copies, Mr. Huggins?

7 **MR. HUGGINS:** I have extras I can hand them
8 right now.

9 **THE COURT:** Okay.

10 **MR. HUGGINS:** I intended to do that as I
11 went through them.

12 **MR. LONG:** I would have liked them prior to
13 the hearing, but I will take them now.

14 **THE COURT:** Okay. Well, let me ask you
15 this. Do you have the numbers marked on those so he'll
16 know what attaches to what?

17 **MR. HUGGINS:** Actually, no, I don't.

18 **THE COURT:** Here's what you are going to do.
19 Before she seals up the original exhibits, you're going to
20 mark the copies you give to Mr. Long with the exhibit
21 numbers, and your own copies, so everybody will have track
22 of the right -- of the correct numbering. Okay?

23 Does that makes sense, Mr. Huggins?

24 **MR. HUGGINS:** Yes, Your Honor.

25 **THE COURT:** That solves your problem,

1 Mr. Long?

2 **MR. LONG:** Yes, sir.

3 **THE COURT:** Okay. Okay. We were at recess
4 on this case and I will be talking to Judge McCarville.

5 (Whereupon, the proceedings concluded at
6 9:49 a.m.)

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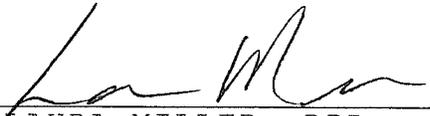
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I, LAURA MILLER, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered from 1 to 27 constitute a full, true and correct transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 5th day of April, 2014.


LAURA MILLER, RPR
Certified Reporter
Arizona No. 50505
Official Court Reporter

