

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 S. Potomac St., Centennial, CO 80112

DATE FILED: October 16, 2017 9:32 AM
FILING ID: 6B50F2AE4CAC6
CASE NUMBER: 2016CR2686

THE PEOPLE OF THE STATE OF COLORADO
v.

JUAN SANTOS SAN AGUSTIN, Defendant

COURT USE ONLY

Attorney:
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Attorney
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Atty. Reg. #: 25910

Case Number:
2016CR2686
Division/Ctrm:
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MOTION TO DISMISS

COMES NOW, GEORGE H. BRAUCHLER, District Attorney in and for the Eighteenth Judicial District, County of Arapahoe, State of Colorado, by and through his duly appointed Assistant District Attorney, respectfully moves the Court to dismiss the indictment against Juan San Agustin, and as grounds therefore, states that:

1. On May 25, 2016, the Grand Jury for El Paso County indicted defendant, Juan San Agustin on various charges stemming from conduct occurring generally in 2013 and 2014. At all pertinent times, the Defendant worked at the El Paso County Sheriff's Office. At the time of the indictment, the People believed there was probable cause for the charges against the defendant.
2. The Grand Jury indicted defendant San Agustin two counts: one count of Second Degree Kidnapping, a class four (4) felony, and one count of False Imprisonment, a class five (5) felony.
3. The indictments were the culmination of five separate sessions of testimony in front of the Grand Jury, during which sessions nineteen separate witnesses testified pursuant to the Grand Jury's investigation. Moreover, over seven hundred fifty pages of testimony were received prior to the Grand Jury considering charges and returning the indictments at issue here. In summary, the pertinent portions of the indictment alleged that a former Sheriff's Deputy, Travis Garretson, assaulted his then girlfriend, Kellie Trull. Mr. Garretson was arrested on August 12, 2013. On September 11, 2013 it is alleged one of the co-defendants called Ms. Trull and ordered her to report to the El Paso County Sheriff's Office the next day to change her story. On September 12, 2013, Ms. Trull did exactly that. After recanting her earlier statement, Ms. Trull was arrested. It is alleged that arrest occurred without probable cause and

was ordered by the defendant, who was employed as an Inspector with the El Paso County Sheriff's Office.

4. After the Grand Jury returned a true bill, it was apparent that former Sergeant Robert Jaworski was going to be a key prosecution witness at trial. The prosecution anticipated that he would have testified that he heard the defendant order the arrest of Ms. Trull. This, obviously, would have been a key piece of evidence. Shortly after the indictment, the People received information that Mr. Jaworski made racial comments towards then President Barak Obama, including calling him "n---r." Although the defendant is not African American, he is a person of color and the People believe that evidence of this statement would have been admissible on cross-examination to show bias on the part of Mr. Jaworski, which the People believe would severely damage not only the credibility of this key witness, but the value of his testimony in general.
5. Even with the issues related to Mr. Jaworski, the People believed that they should continue with the prosecution of this defendant, because they anticipated that Detective Lisa Kaiser would be a key witness as well. The prosecution anticipated that this witness would have testified that she felt there was no probable cause for the arrest of Kelli Trull, thereby making the arrest illegal. She also would have testified that she was ordered to arrest Ms. Trull by her superiors, which most likely included the defendant and then Chief Deputy District Attorney Shannon Gerhart. On June 14, 2017, in preparation of trial of co-defendant Terrance Maketa, Detective Kaiser said that it was definitely Chief Deputy District Attorney Gerhart who ordered Ms. Trull to be arrested and not the defendant or any of her supervisors. Again, this called into question the testimony of a key witness.
6. Finally, in late June and early July co-defendant Terrance Maketa was tried to a jury of twelve. The prosecution desired to call another witness whom they thought could offer relevant testimony related not only the co-defendant, but this defendant as well. This witness was Travis Garretson. Notwithstanding tireless, and herculean efforts to serve Mr. Garretson by the Colorado Bureau of Investigation, they were unable to do so, and the People have no reason to believe that there will be a different result in the future.
7. Although several of the charges against co-defendant Maketa resulted in a hung jury, those charges related to offenses unrelated to the allegations against this defendant. In fact, the charges that relate to the defendant resulted in a not guilty verdict in the co-defendant's trial.
8. In the weeks since trial, the People have attempted to shore up the case against the defendant, but without luck.

9. Over the past two weeks, the People have attempted to comply with the Victim Rights Amendment by notifying the victim, Kelli Trull, of this motion. She has not returned repeated emails and telephone calls.

10. At the time of the indictment the People believed that they could prove the charges against this defendant beyond a reasonable doubt. As with any case, over time evidence can change for better or worse. In this case, evidence changed entirely for the worse making it impossible for the People to prove a case beyond a reasonable doubt. This Motion in no way is a comment on the guilt or innocence of the defendant, but rather a statement as to our ability to prove a case beyond a reasonable doubt. In light of our ethical obligations, we have no choice but to ask the Court to dismiss the indictment against Mr. San Agustin.

WHEREFORE the People respectfully ask this court to dismiss the charges against the defendant Juan San Agustin.

Dated 10/16/2017

George H. Brauchler, District Attorney

By /s/ Mark Hurlbert
Mark Hurlbert
Assistant District Attorney
Registration No. 24606

BY THE COURT:

Judge

Case: **16CR2686**

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CERTIFICATE OF SERVICE

I certify that on _____, the foregoing **PEOPLE'S MOTION TO DISMISS** was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES

By _____

