

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 21-029

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Judge:

Complainant:

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**ORDER**

April 7, 2021

The Complainant alleged an appellate court judge improperly denied his petition for review due to a clerical error.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Roger D. Barton, Michael J. Brown and Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on April 7, 2021.



## Memorandum Of Points And Authorities

On \_\_\_\_\_ I filed a petition for review on a denial from my post-conviction relief. The case number is \_\_\_\_\_ Within the petition, argument number \_\_\_\_\_, was an issue which stated:

"Counsel was rendered ineffective when the court changed its ruling on the use of hearsay recordings to prove the truth of the matter after all witnesses had testified, been excused, and no longer available for cross-examination on the portions the State used to prove its case."

During trial the prosecutor motioned the court to allow her to play the recorded interviews of the children in the case conducted by the \_\_\_\_\_ Police to rebut the claims the defense made that the interviews were tainted due to improper police questioning. (each child was forced to discuss in great detail the \_\_\_\_\_ crimes they performed \_\_\_\_\_). The police then used that information to impeach other children and threaten them with prosecution for failure to cooperate with crimes they wanted to charge me.) The court approved the motion.

My attorney, \_\_\_\_\_, wanted to make sure that the prosecutor could not use the hearsay recordings to

prove the truth of the matter. Judge ruled the recordings were only to be used as rebuttal evidence and guaranteed counsel he wouldn't even use them during his Rule 20 hearing.

Even though the reason the prosecutor played the interviews, to prove no improper police questioning existed, Judge allowed her to redact the interviews to remove that improper sexual questioning which the defense claimed led and contributed to the false allegations and she claimed did not exist. (upto )

instructed me not to worry about redactions because the children did not testify to any crimes so they must be dismissed. See Exhibit "A" Because of Judge ruling, (and the prosecutors motion on their intent to use the interviews only to rebut the defenses claims of improper police questioning) Mr. did not, nor did he have a reason to, cross-examine any witness on any count not proven by in-court live testimony from the witnesses. Id.

After the trial was over told me most if not all of the charges must be dismissed because there was no evidence (testimony) sufficient to convict. In fact one boy didn't even identify me. ( ) Judge

read the jury instruction and within the instruction he stated the interviews were not introduced to prove the truth of the matter and could not be used for that purpose. The prosecutor began to argue that unless the court allowed her to use the interviews to prove the truth of the matter the jury:

(the witnesses). At first Judge [redacted] refused to change the ruling, but the prosecutor threatened him that if he did not change the ruling they would reopen the case, call detectives back to the stand to read the interviews line by line to ensure the evidence got introduced. Because of the threat Judge [redacted] changed the jury instruction and allowed the jury to use the interviews in lieu of trial testimony. Mr. [redacted] complained and instructed Judge [redacted] his ruling was inconsistent with the prior ruling he relied on, but Judge [redacted] kept the new instruction to appease the prosecutor. This new jury instruction rendered counsel ineffective because Judge [redacted] changed the rules of the trial after the trial was over without providing Mr. [redacted] with an opportunity to cross-examine the witnesses on the evidence the prosecutor used to prove the truth of the matter.

During appeal I raised the issue that allowing the prosecutor to use hearsay evidence to prove her case violated the Confrontation Clause and the evidence did not comply with Rule 803(5), (the Rule the prosecutor used to argue the use as substantive evidence)

In order to use recordings as substantive evidence the recordings must have been conducted or from the alleged event, the witness must testify under oath the interview is true, the witness must testify their memory was better at the time of the interview and the interview must be trustworthy. (In other words there can be no manipulation by adults) State v. Alatorre, 191 Ariz 208 (1998); State v. Robinson 153 Ariz 191 (1987)

On I received the ruling on my appeal. Judge failed to properly analyze the 803(5) requirements and in fact created testimony that did not exist to fulfill the Rule 803(5) requirements. See: Exhibit "B" pp 13-14 ¶ 47. The interviews were conducted from the alleged events, the boys did not testify the interviews were true, (some even testified they lied during the interview), the boys did not testify their memories were better at the time of the interview and the interviews were so tainted the prosecutor had to redact

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