

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

STATE OF NEW MEXICO,

Plaintiff

v.

No. CR-11-560  
Judge Leslie C. Smith

MICHAEL MURPHY,

Defendant

**MOTION TO DISMISS INDICTMENT (#3)**  
**(FOR FAILURE TO PRESENT EXCULPATORY INFORMATION)**

**COMES NOW** the defendant, Michael Murphy, through his attorneys, The Law Offices of Michael L. Stout, and respectfully moves the Court to dismiss the indictment in this cause.

As grounds, counsel states that:

1. The defendant is charged by indictment with four counts.
2. NMSA §31-6-1 et. seq., Rule 5-302A of the New Mexico Rules of Criminal Procedure, and the United States and New Mexico Constitutions require the presentation of exculpatory evidence.
3. In the grand jury context, exculpatory evidence is defined as “evidence that would disprove or reduce the charge or accusation or that would make an indictment unjustified.” (See Defendant's Memorandum Re: New Mexico Grand Jury Law).

4. In this case, the prosecutor failed to present several pieces of exculpatory information. These include:
- A. Judge Martin's testimony, that nothing inappropriate occurred at the lunch where alleged bribery occurred.
  - B. Judge Martin's testimony that Judge Schultz never spoke to him and Judge Murphy about what she felt was inappropriate behavior.
  - C. Judge Schultz's testimony that she thought what Judge Murphy was saying might be untrue because he has a penchant for saying outrageous things. Grand Jury Transcript (hereinafter TR) at Pg 64 Lns 17-24.
  - D. Judge Murphy's bank records showing innocent transactions and showing no payment for \$4,000 for his appointment.<sup>1</sup>
  - E. Testimony from Edgar Lopez, in response to questions from the grand jury, 1) that governors appoint judges from their own political party, and 2) that it helps increase someone's chances of being appointed to a judgeship if they are active in the political party of the governor. (These two pieces of testimony were solicited by a grand juror and the prosecutor objected to Mr. Lopez's answer.) TR at Pg 180 Lns 3-17 and Pg 186 Ln 6 thru Pg 187 Ln 4.
  - F. The entirety of the recording made by Judge Schultz of her conversations with Judge Murphy, in which she discusses her own issues with the Judicial Standards Commission and shows the full context of her

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<sup>1</sup> Omission of this critical and exculpatory piece of evidence is especially egregious because the foreman of the grand jury *asked* to be provided with such information and was put off by the prosecutor. TR at Pg 204 Ln 5 thru Pg 207 Ln 10.

conversation with Judge Murphy. TR at Pg 87 Ln 17 thru Pg 88 Ln 3.

G. Statements of Norm Osborne concerning the context of the statements made by Judge Murphy and his perception of them that they were not serious.

H. Comments from Beverly Singleman concerning her perception of Judge Murphy making provocative statements. TR at Pg 42 Lns 10-16.

5. The prosecuting attorney, acting as an aide to the grand jury, had the duty to conduct himself in a fair and impartial manner and present exculpatory evidence to the grand jury. NMSA §31-6-7, NMSA §31-6-11. The prosecutor did neither in this case.

**WHEREFORE**, the defendant requests the Court to dismiss with prejudice the grand jury indictment in this cause.

Respectfully submitted,

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Michael L. Stout  
Attorney for Defendant  
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#### **CERTIFICATE OF SERVICE**

I, Michael L. Stout, hereby certify that a true and correct copy of the foregoing instrument was faxed to Special Prosecutor Matthew Chandler at 575-769-3198 on this \_\_\_\_\_ day of July, 2011.

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Michael L. Stout