

FILED

08 APR 22 PM 2:58

1 John-Chester: Stuart  
2 c/o: 21001 N. Tatum Blvd.,  
3 Suite 1360472  
4 Phoenix, Arizona state  
5 Pro Per

*John Stuart, the man, is unlawfully imprisoned and  
Propria Persona, without assistance of counsel and thus  
this document may only be judged by function and not form.*

6 SUPERIOR COURT OF THE STATE OF ARIZONA

7 IN AND FOR THE COUNTY OF MARICOPA

8 STATE OF ARIZONA, )

Plaintiff, )

9 vs. )

10 JOHN C. STUART, )

Defendant. )

Case No.: CR-2008-006332-001DT

*Petition for Dismissal  
with Prejudice for  
Prosecutorial Misconduct  
and purposefull  
Denial of Due Process*

11 \_\_\_\_\_ )  
12 John Stuart, Real Party in )  
13 Interest/Third Party Intervener )  
14 *having all rights and  
innocent of all crimes* )

15 Third Party Intervener appears and petitions, in the nature of a  
16 motion, *especially and not generally, for Dismissal*

17 *with Prejudice for Prosecutorial Misconduct and*  
18 *purposefull Denial of Due Process.*

19 *WHEREAS Prosecutor Charbel has committed*  
20 *numerous acts of Prosecutorial Misconduct in*  
21 *this case and another case involving the same*  
22 *man, Stuart, RPII/TPI; and Prosecutor Charbel*  
23 *has used her authority to falsely detain Stuart,*  
24 *the man even after Judge Sienle signed an*  
25 *order releasing Stuart the man, from any*  
*further liability; and Prosecutor Charbel is*  
*purposely, with malice aforethought denying*  
*Stuart, the man, "Due Process of Law."*

1 Due process of Law; Black's Sixth 500-501

2 i) "Aside from all else, means fundamental  
3 fairness and substantial justice";

4 ii) "forbids condemnation without a hearing" and  
5 RPII/TPI has been condemned and detained  
6 without fairness, justice or hearing;

7 a) Charbel's heinous act of removing exculpatory  
8 evidence to obtain a fraudulent indictment  
9 to prevent RPII/TPI from preparing  
10 an adequate defense is blatantly unfair  
11 and reeks of injustice; and

12 b) Com. Vanderburg "Kangaroo court" was not  
13 even a reasonable facsimile of a hearing.

14 iii) ... opportunity to confront accuser.

15 RPII/TPI has not been and will not be allowed  
16 to confront the "accuser" since there is no  
17 "accuser" in this matter, therefore there is  
18 no matter;

19 the STATE, Prosecutor, and/or any officer  
20 of the court CANNOT BE THE ACCUSER.

21 iv) ... present evidence on one's own behalf...  
22 ... guilt must be proven by "legally" obtained  
23 evidence...

24 Pros. Charbel's purposeful withholding of  
25 the exculpatory evidence from the document  
used as evidence made said document  
"illegally" obtained since it was altered and  
prevented RPII/TPI from presenting evidence on his  
own behalf.

1 Due process requirements apply to state action.

2 *Puros v. Hoemako Hosp.*, 140 Ariz 335, 681 P. 2d 918 (1984)

3 In deciding whether a person has been deprived of  
4 a protected liberty or property interest without  
5 due process of law a three-tier analysis is used:

6 1) does the states action implicate a protected  
7 liberty interest;

8 2) if so, does the state's interest justify the  
9 degree of infringement on the liberty interest; and

10 3) if so, is appropriate process provided to assure  
11 liberty is not arbitrarily deprived?

12 *see: Lurge v. Superior Court ex rel. County of Maricopa*,  
13 148 Ariz. 229, 714 P. 2d 399 (1986)

14 Stuart, the man, has according to this analysis  
15 been denied due process:

16 1) the only benefit and interest for the state  
17 to unlawfully detain Stuart, the man, is to  
18 prevent Stuart, the man, from preparing a  
19 proper defense, which is counter to the  
20 very essence of due process; and

21 2) since the state has no proper, legal and/or  
22 moral interest the state then has no  
23 justification in falsely detaining Stuart, the man;

24 and 3) the process was purposely denied to  
25 Stuart, the man, by Charbel as evidenced by  
Charbel fraudulently using the Grand Jury process  
to deny Stuart, the man, use of the exculpatory  
evidence Charbel purposely withheld from  
the Grand Jury.

Where a defendant has been denied an essential component of due process, such denial constitutes fundamental error,

State v. Flowers, 159 Ariz. 469, 768 P.2d 201  
(Ct. App. 1989)

Stuart, the man, as listed in this and previous documents, has been denied most if not all rights and effects of due process therefore. This case is fundamentally flawed and in error.

A person may be punished or deprived of property only after due process has been accorded

Olson v. Walker, 167 Ariz. 174, 781 P.2d 1015  
(Ct. App. 1989)

Charbel has used this false charge and unlawful detention to unlawfully punish Stuart, the man, as a means to appease the press and further her career.

Due Process of law requires the government of  
to follow the settled maxims of law and  
protect individual rights as those maxims  
prescribe. Government agents violating individual  
rights under color of law is the very  
essence of denial of due process

STATE of Az v. Arthur Douglas ROYER  
Court of Appeals 150 Ariz. 501; 724 P. 2d 587  
(1986)

"To prove the elements of a violation of ARS § 39-161, the state was required to prove the defendant filed an instrument he knew was false in a public office (underline mine).

Although, in this case defendant was found guilty, it still applies as the underline statement is palpable as to the necessity of "Knowledge" being of ~~utmost~~ important importance for the charge.

In this instant case, Stuart, the man, "knows" the document in question is NOT False, as does Charbel who purposely removed the defining page of said document before presenting to the Grand Jury. Also, the fact that Charbel opted for a Grand Jury so she could conceal the exculpatory document which would have obviously been seen in a preliminary hearing is prima facie evidence of Prosecutorial Misconduct.

State v. Royer 150 Ariz. 501, 724 P.2d 587  
(Co. App. 1986)

"To prove the elements of a violation of this section, the state was required to prove that the defendant filed an instrument that he knew was false in a public office"

The STATE of Arizona, Appellee v. Kenneth EDGAR, Appellant  
Supreme Court of Arizona 124 Ariz. 472, 605  
P.2d 450; 1979

"There are four elements... The elements are as follows: first, that the instrument in question was forged; second, that it was filed in the office of the state Treasurer; third that defendant knew of its falsity; and fourth, that so knowing he filed or caused it to be filed

as to first: Charbel knew the instrument was not forged and was personally informed by Judge Strenle he signed it; and as to second: the document was filed with the court and U.S. Treasury and possibly STATE, but was never filed with the state Treasurer per Stuart's knowledge; and as to third: it is not possible to know something is false when it is not false, and said documents are true and not false; and

as to fourth: Stuart did not file said documents and only agreed to allow, not cause, filing of said documents upon advice and council of Stuart's religious leaders, including without limits, Stuart's Rabbi, Ministers, et al.

As determined by the Supreme Court of Arizona there are four (4) requirements that must be met for ARS § 39-161 to be applied against Stuart, none of which has been met. Obviously proof evident and presumption great is absent in this matter. Such absence and Charbel's use of Grand Jury instead of a preliminary hearing are prima facie evidence of Prosecutorial Misconduct.

Baldwin v. Aetna Casualty and Surety Co.,  
24 Conn. Sup. 498, 194 A.2d 709, 712 (1963)

"Forgery cannot be committed by the making of a genuine instrument, although the statements made therein are untrue. The term 'falsely' has reference not to the contents or tenor of the writing, nor to the fact stated in the writing, but implies that the paper is false, not genuine. Fictitious, not a true writing, without regard to the truth or falsehood of

the statement it contains.

Pursuant to *Baldwin v. Aetna* the document cannot be "false" since it was a genuine instrument written by the acknowledged authors. Even if Pros. Charbel claims the statements are untrue she is not claiming the document is not genuine. If Pros. Charbel is claiming the IRS Forms 1099OID and 1040V are false she has committed perjury since the forms themselves come from the IRS. If Charbel's claim is the documents are incorrect it still does not rise to the level of a "crime", especially a violation of ARS § 39-161 and is truly just an administrative issue in need of an administrative remedy.

Thus proving once again Pros. Charbel's Prosecutorial Misconduct.



The legislative intent of ARS § 39-161 is to protect the integrity of the system of recordation. The Arizona Statute was adopted from the California statute: see West Annotated Penal Code, § 115. California Courts have held that intent is not an element of the crime of filing a false statement:

"... the actual effect of the false or fictitious instrument upon the record title is immaterial to the crime charged."

see: People v. Sandley, 126 Cal App 739, 245-46 15 P.2d 180, 183 (1932)

People v. Horowitz, 70 Cal. App. 2d 675, 161 P.2d 833 (1945)

Pros. Charbel has charged Stuart inappropriately according to the legislative intent of 39-161.

The effect said documents had on the court

- i) releasing Stuart, the man from liability; and
- ii) causing a tax debt for the court; and
- iii) informing the I.R.S. of said debt, et al;

are not grounds to prosecute Stuart, they are in fact only effects of the document and not a determination of genuineness or the like of the document.

Prosecutor Charber, in removing exculpatory evidence purposely and with malice aforethought committed numerous unlawful acts and caused a fraudulent indictment to be issued by the Grand Jury.

Purposeful failure to present exculpatory evidence by using ~~the~~ ex parte advantage is denial of due process. When such denial is purposeful and with malice and repetitive and done under color of law and against one man specifically the court must dismiss. All such cases with prejudice or forever taint the whole judicial process as nothing more than a political, self-serving tyrannical machine, one such as Americans would expect in a third world country.

"Prosecutor has an obligation in to seek justice. He must refrain from all use of improper methods designed solely to obtain a conviction."

State v. Bible 175 Ariz. 549, 600, 858 P.2d 1152, 1203 (1993)

"While a prosecutor may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods as it is to use every legitimate means to bring about a just one."

Bequer v. U.S. 295 U.S. 78, 88, 55 S.Ct  
629, 79 L.Ed. 1314 (1935) Id. at 440.

State v. Minnitt, 203 Ariz. 431, 440 44-45  
55 P.3d 774, 783 (2002)

accord In re Paisley, 208 Ariz. 27, 42 65, 90  
P.3d 764, 779 (2004)

Misleading testimony and/or omitted exculpatory  
evidence can render any indictment returned  
by the Grand Jury a violation of the Due  
Process Clause of the Fifth Amendment.

Basurto, 497 F.2d at 785

see also Wiles v. Maryland, 386 U.S. 66 81, 87 S.Ct  
793, 801 (1967)

Napue v. Illinois, 360 U.S. 264, 269, 79  
S.Ct. 1173, 1177 (1959)

Alcorta v. Texas, 355 U.S. 28, 31, 78 S.Ct.  
103, 105, (1957)

It is not the Prosecutor's job to obtain  
indictments, it is the Prosecutor's duty, their  
primary objective if not sole objective,  
to obtain justice. Such duty requires  
balancing the need to know relevant  
facts with regard to fairness and  
equity, and never with the goal of  
obtaining an indictment if such indictment

may be against an innocent man. Once a Prosecutor loses the ability to remain honorable and faithful to the cause of justice and seeks only indictments for the cause of the indictments themselves, our whole system loses the appearance of propriety and justice becomes nothing more than a luxury for politicians and the rich. Such impropriety reverse the foundation of due process and creates a new motto for this country's judicial system, "you are guilty until proven rich."

"Prosecutor therefore must not take advantage of its ex parte role as the representative of the State before the Grand Jury to unduly or unfairly influence it"

see: *Maratick v. Jarrett* 204 Ariz 194, 62 P. 3d 120 (App. 2003)

: *Marston's Law v. Strand*, 114 Ariz 260 264, 560 P.2d 778, 782 (1977)

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Prosecutor Charbel has clearly taken advantage of the ex parte representation to defeat the Grand Juries independent status and deflected the Grand Jury from its inquiry. Such Prosecutorial Misconduct may be excused as poor judgement but

when it is the second time in as many months against the same man, in this instant case, Stuart, it is no longer possible to conclude such was done out of ignorance, it must be stipulated the heinous acts committed by Charbel are retaliatory and vengeful in nature. Said acts being committed by Charbel are also done under color of law for personal gain and against one she took a solemn oath to protect. Thus, Charbel is in violation of her oath and has vacated her office through her felonious acts. It only stands to reason that since the indictment was obtained unlawfully and the man falsely indicted, Stuart, has suffered immensely by being unlawfully imprisoned, tortured, starved, etc., that the indictment and all charges against Stuart, the man, be dismissed with prejudice in the interest of justice and to protect the integrity of the court.

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"The Prosecutor also has a duty to present 'clearly exculpatory' evidence to the Grand Jury."

see: State v. Cocanino County Superior Court  
(Mauro), 139 Ariz 422, 425, 678 P.2d 1386, 88 (1984)

"Clearly exculpatory evidence is evidence of such weight that it might deter the Grand Jury from finding the existence of probable cause."

see: *Trebus v Davis*, 189 Ariz 621, 624-625  
9014 P.2d 1235, 1238-39 (1997)

*Crimmon v Superior Court* 197 Ariz.  
39, 44, 668 P.2d 882, 887 (1993)

Prosecutor Charbel's act of removing the single page from the document is not an act of negligence, which requires the absence of knowledge, but is in fact "willful" and criminal since said page is "clearly exculpatory" and invalidates the concept that anything in the document was forged. Charbel's act detracted from the Grand Jurors independent nature by dissolving their ability to make an independent decision based on fact and material evidence. The fact Charbel used her position and authority to prevent the Grand Jury from seeing the whole document, especially the most important page is prima facie evidence of Charbel's corrupt nature and criminal intent

THEREFORE it would be a travesty of justice and judicially abhorrent for the court to continue to allow this unlawful prosecution and personal persecution of John Stewart, the man, by the rogue Prosecutor Charbel. The acts committed by Charbel under color of law are heinous, unlawful and irreparable. Charbel is the criminal in this matter and John Stewart, the man, is a victim of Charbel's abuse of authority and treasonous acts.

THUS, the only just action for this court to be moved to is:

**DISMISS WITH PREJUDICE** and **RELEASE** John Stewart, the man, as originally ordered by Judge Sreale in the document Charbel is concealing, **FORTHWITH**.

John Stewart, the man, is currently being unlawfully detained, STARVED, TORTURED, and does not cooperate with his captors and only does as ordered vi et armis and under fear of death.

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Note: Inmate Legal Services has unlawfully denied ALL of Stewart's document request, as planned by Charbel.

AT NO TIME has Stuart, the man, requested or accepted counsel and thus forcing counsel upon him and/or denying him status of Propria Persona is again a purposeful denial of his right to due process of Law.

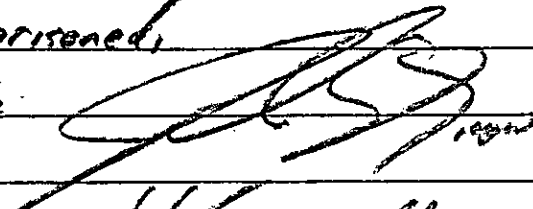
Stuart, the man, has not authorize anyone or anything, including without limitations, a legal fiction, to stand as his substitute or agent, nor does Stuart consent to such.

Stuart, the man, hereby rebuts the presumption that the fictional persona of "JOHN CHESTER STUART" exist now or has it ever existed.

The order of COURT that the hearing set for MAY 16, 2005 @ 10:00 am is rescinded and VOID.

Stuart, the man, is to be released from unlawful imprisonment FORTHWITH

Stuart, the man, while unlawfully imprisoned, is being prohibited from dealing in the private sector.

  
John Stuart, the man