

IN THE SUPREME COURT FOR THE STATE OF ARIZONA

In Re:
Will Graven,
Victim/Citizen/Petitioner,

v.
State of Arizona; Governor Doug Ducey; and
Attorney General Mark Brnovich,
Respondents

CRIMINAL CASE NO.'s: CR2014-001649;
CR2015-002486; and CR2015-006239

**VICTIM/CONCERNED CITIZEN'S PETITION
TO HAVE A "SPECIAL DEFENDER"
APPOINTED TO DEFEND THE STATE FROM
"Defamation" COMPLAINTS BY FORMER
CRIMINAL DEFENDANTS WHOSE CASES
WERE DISMISSED TO PROTECT THE
"Political Sponsor" OF THE ATTORNEY
GENERAL AND THE GOVERNOR**

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I. **INTRODUCTION:** When AG Brnovich learned of his Division Chief Don Conrad's *written approval* to indict Snell & Wilmer, three of its attorneys, and one other suspect (post an investigation approved by the previous AG Tom Horne), Brnovich ordered Conrad to shut the Snell Case down. He also ordered his Chief of Prosecution, Paul Ahler (*who had been Due Process Screened from all Graven Case matters, particularly the Snell Case, as his son is an attorney at Snell*), to ramrod the shut-down from behind the screen (see Exhibits below). *Ahler then removed the Snell names from the results of the investigation and having been approved for charging (Ex 10).*

Exacerbating matters was that Conrad, under pressure from senior Criminal Division staff for charging the Snell suspects following a lengthy and thorough investigation which resulted in unquestionable evidence, and a Plea Agreement from one of the six Snell Case suspects, approved charging the fifth (non-Snell) suspect, Daniel Esposito (my former in-house counsel) with conspiracy to commit fraudulent schemes by "engaging with outside counsel" ("outside counsel" being Snell). This mistakenly created the potential of Esposito testifying against Snell.

When Brnovich, and likely Snell heard this, and realized there were seven others charged in my Cases who could also testify against Snell, they had my three major Cases dismissed (even for those who had pled guilty).

Now, those suspects are claiming abuse by the State, and making multi-million dollar claims (e.g., Ex 1).

I believe these suspects and their attorneys have been following my civil cases, and seeing new evidence I have introduced in various proceedings, now know why they were dismissed, to "exonerate" Snell. So they believe they can leverage this knowledge to force Brnovich to readily settle, so he can avoid trying to explain: "*Yes, the original indictments were justified, there was no lack of evidence, but I can't tell why I dismissed your case.*"

So, it is likely that Brnovich et al will simply make payouts, to avoid explaining the root of the dismissals.

A "Special Defender" is needed to protect Arizona from paying millions of dollars in "hush money."

This Petition should be ruled upon quickly, in view of the errant and desperate acts of Brnovich et al.

Note 1: Special Agent Dan Woods filed a 55 page Sworn Affidavit reviewing these matters with this respected Supreme Court on May 13, 2016. Please see a copy of the first pages of his Affidavit as Ex 2.

Note 2: Much more incriminating evidence has been discovered since Woods filed his Sworn Affidavit.

Note 3: Coincidentally, I have a Petition before this Supreme Court (No. CR-17-0609-PR) which has its beginnings in the use of fraud on the (Superior) Court by prosecutors to have the above cases dismissed.

II. BACKGROUND

On November 3, 2011, I went to the AGO to report a number of criminal acts against me/my companies.

Special Investigation Section Special Agent Dan Woods met with me to listen to and review my allegations. I was to later learn that Woods had started his law enforcement career as a Maricopa County Deputy-Sheriff, from which he was recruited by and became a Special Agent for the FBI, from which he was recruited by and became a Covert Operations Officer for the Central Intelligence Agency. He had recently returned to Arizona due to his Mother's failing health. As there were no CIA postings in Phoenix, he joined the AGO.

Shortly thereafter, an official investigation case was opened (P-2011-2341). This first Graven Case later became known as the "Graven Master Investigation Case," with various cases later being separated from the Master Case for individual case prosecution.

By May of 2014, 8 former employees of mine had been charged for some 60 felony counts; CR2013-002659, defendant Greg Smolens, my former Director of IT; CR2013-005033, Doug Epley, my former VP of Finance; CR2014-001649; Martin, Groh, Esposito, Sobarnia, Dubree, and Johnson, my former President, Chief Financial Officer, General Counsel, Sr. VP; Sr. VP and Controller. Later, 2 more cases will be charged: CR2015-002486, Martin and Esposito (Esposito was charged for the Snell Case Crimes under this Case Number; and CR2015-006239, and Hesse, a former VP.

In May of 2015, the State received a \$45 million Asset Seizure Warrant (No. SW2014-010044) against Martin, Groh, Esposito, Sobarnia, Dubree, Johnson, Hesse and one more suspect yet to be charged, Marc Stricker (Smolens and Epley were not included in the Warrant as they were cooperating fully with the AGO).

Prior to the dismissals I described above, Smolens, Epley, Groh, Sobarnia, Dubree and Hesse, will all plead guilty and signed Plea Agreements which included Witness Agreements, and a seventh, Marc Stricker, was about to also sign his Plea Agreement with a Witness Agreement when cases started to be dismissed.

The first mention/description of what was to become the Snell & Wilmer Case was made in this May

20014 Asset Seizure Warrant (with these acts having been discovered in the ordinary course of investigating the Graven Case[s] during the previous 30 months, and guilty pleading defendants providing testimony). It will be the following April 2015 that Conrad approves charging the Snell & Wilmer Case suspects (as per above).

The pages of this 2014 Seizure Warrant that contain this first description of what was to become the Snell Case can be seen as **Exhibit 3**, in paragraphs 117, 119, 120, 121, 128, 134, 135, 136, 147 and 149.

Based upon these first suspicions of the Snell & Wilmer suspects and their acts, SA Woods wrote an Executive Summary of what he thought he had uncovered, and could prove. He specifically asked AG Tom Home, Assistant AG Rick Bistro, and Criminal division Chief Andrew Pacheco if they had the stomach to charge the powerful law firm of Snell & Wilmer should his suspicions be proven out through an investigation.

They all responded that if criminal acts had been committed, of course they (the Snell suspects, including Snell & Wilmer itself) would be charged.

Woods received the go ahead to investigate, and tacit approval to charge.

By the following April, 2015, Woods and fellow Special Agents had completed their investigation, which was detailed in a 47 page Written Investigation Report (**Ex 4**), and a 3 hour PowerPoint Report (with more than 1,000 slides) that detailed the crimes and evidence the evidence that had been collected during the investigation (the PowerPoint can be seen on YouTube at <https://www.youtube.com/watch?v=85oyv4Pow4g> [**Ex 5a**]). Please see the recommended charges slides from that PowerPoint Report as **Ex 5b**.

The investigation resulted in six Snell & Wilmer Case suspects being named for charging.

Just prior to the then Criminal Division Chief Conrad's approval to charge the Snell Case suspects (just months into the Brnovich Administration), one suspect (who had been charged in another related case), pled guilty and confessed to the Snell Case crimes, describing the five other suspects' participation.

On or about 4/22/15, with one Plea in hand, the 47 page Written Investigation Report, and the 3 hour PowerPoint Report, Conrad approved, in writing, separating the Snell & Wilmer investigation from the Master Investigation Case (of the Graven Cases) to open a separate case (**Ex 6**), as was their practice in the several other related cases, to charge and prosecute the five remaining Snell Case suspects: the four Snell party

suspects (three Snell attorneys, and Snell & Wilmer itself as a firm) and Esposito. This approval was shortly thereafter confirmed in a second Approval Form (Ex 7) (*Screened Ahler*, Sec. Chief, did not sign this Form).

Paul Ahler, who was the Chief Criminal Prosecutor (a section of the Criminal Division under Chief Conrad) at this time, notified the assigned prosecutor, Waters (who was the prosecutor for the several other Graven Cases), that he (Ahler) had a conflict with the Snell Case (again, Ahler's son [Colin Ahler] is an attorney at Snell & Wilmer). Ahler had already been screened from the Snell & Wilmer Case Investigation.

Following Ahler's notice of a conflict, Conrad issued a Screening Memorandum on 4/27/15 (Ex 8). The Memorandum *strictly* screened Ahler from all Graven Case information, *requiring files be marked restricted, that no one discuss these matters with Ahler, and notifying Conrad if a breach occurred.*

Apparently, Conrad was not aware of the depth of the debt that Mark Brnovich owed to Snell & Wilmer for his election to be Arizona Attorney General.

This brings us back around to page 1: Brnovich found out...he gave orders to Conrad...and Ahler.

Note 4: Nine months later, on 1/27/16, an Affirmation of the Screening Memo was issued (Ex 9), noting that Ahler had been screened on 4/27/15, and was yet screened, to "avoid conflicts" and "any sense of impropriety" (as per this Arizona Supreme Court in *State v. Latigue*, establishing the threshold for violating Due Process).

Continuing, following the two Approval Forms (Ex's 6 and 7) the Case Charging Form is issued (Ex 10).

Although Ahler was screened to avoid violating Due Process, the Case Charging Form *has his and then later Conrad's signatures* (page 5). They *rewrote* the description of the crimes committed (pages 2 and 3), an in doing so they controverted the Asset Seizure Warrant (Ex 3); findings of the 47 page Investigation Report (Ex 4) and the 3 hour PowerPoint Report (Ex's 5a and 5b); they controverted the Dubree Plea Agreement which detailed the crimes (Ex 11, third set of pages, pages 3 and 4); and they controverted the 2 detailed Charging Approval Forms (Ex's 6 and 7). They also *removed* the Snell parties' names and their participation in the crimes they (the Snell parties) designed. And they *made it* appear that Esposito (who was charged) was the architect of the Snell Case crimes by himself.

Ahler revising (although allegedly screened to avoid violating Due Process) who was approved to be charged, what acts were committed, therefore what crimes, and by whom, and Conrad participating, violates Due Process and it is criminal.

Ahler did not break his Due Process Screen to charge Esposito, he did do to "exonerate" Snell.

Finally, the Grand Jury Charging Papers for Esposito (Ex 12) show that he was charged for conspiracy to commit “fraudulent schemes and artifices” by “engaging with outside counsel.” But as Ahler and Conrad had removed the approved-for-charging conspirators/outside counsel’s names (the Snell parties), they were not charged (pages 2 and 3). This mistakenly created the potential of Esposito testifying against Snell.

When Brnovich, and likely Snell heard this, and realized there were 7 others charged in my Cases who could also testify against Snell, they had my 3 major Cases dismissed (even for those who had pled guilty).

Now, those dismissed suspects are coming back to haunt the State (again, e.g., Ex 1)

There are several more dismissed suspects that will likely follow the first.

III. AN OVERVIEW OF THE BRNOVICH-DUCEY/SNELL & WILMER RELATIONSHIP

Snell;


- is Mark Brnovich’s political “sponsor”
- donated two-thirds of Brnovich’s attorney campaign funds; and
- was working for the Attorney General’s Office at relevant times; and
- is where Paul Ahler’s son is an attorney; and
- is Arizona Gov. Ducey’s personal law firm; and
- is also Gov. Ducey’s gubernatorial law firm (Snell billed Gov. Ducey \$1.6m last year); and
- was working for the Gov. Ducey’s office at relevant times (and likely for personal matters); and
- Gov. Ducey’s on-staff general counsel is from Snell (Mike Liburdi); and
- Gov. Ducey has appointed at least ten Snell attorneys to various State positions; and
- Snell’s influence and power, broadly (e.g., over APS), speak for themselves; and more.

IV. REMEDY REQUESTED

I file this Petition as a prayer that this Supreme Court will hold appoint a “Special Defender” who will protect the State from paying millions of dollars in claims/hush money to suspects whose cases were dismissed to protect Brnovich/Ducey/Snell.

IV. CONCLUSION

Thanking the Supreme Court in advance for its time and efforts for considering the matters herein.

Respectfully submitted this 15th day of March 2018, by:  In Pro Per.
Victim/Concerned Citizen Will Graven

A copy of this Petition was filed with the Clerk of the Supreme Court on this 15th day of March, 2018

A copy of this Petition was delivered to a registered process to be served upon the Attorney General on this 15th day of March, 2018.

VERIFICATION of the above information and allegations is on the following page.

Victim/Concerned Citizen's Petition to the
Arizona Supreme Court to

Appoint

a

“Special Defender”

for the State of Arizona in

CRIMINAL CASE NO.: CR2013-002659

Case Filed: July 8, 2013; and

CRIMINAL CASE NO.: CR2013-005033

Case Filed: December 23, 2013; and

CRIMINAL CASE NO.: CR2014-001649

Case Filed: April 28, 2014; and

CRIMINAL CASE NO.: CR2015-002486

Case Filed: August 3, 2015; and

CRIMINAL CASE NO.: CR2015-006239

Case Filed: December 18, 2015; and

INVESTIGATION CASE NO.: P-21013-2449

Case Opened: 12/9/14; and

INVESTIGATION CASE NO.: P-2014-2355

Case Opened: 12/30/14; and

INVESTIGATION CASE NO.: P-2015-0615

Case Opened: 4/22/15

Exhibit 10

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CASE CHARGING APPROVAL

Complaint: Indictment: XX Estimated Length of Trial: 14 Days

Grand Jury Presentment / Direct Complaint: Date and Time: July 22, 2015

Name of Defendant: Michael Martin and Daniel Esposito

CHARGES:

**COUNT 1: CONSPIRACY, Class 2 Felony, in violation of A.R.S. § 13-1003
(Defendant 001 & 002)**

**COUNT 2: CONSPIRACY, Class 2 Felony, in violation of A.R.S. § 13-1003
(Defendant 002)**

**COUNTS 3-9: FRAUDULENT SCHEMES & ARTIFICES, Class 2 Felonies, in
violation of A.R.S. § 13-2310
(Defendant 001 & 002)**

**COUNT 10: FRAUDULENT SCHEMES & ARTIFICES, Class 2 Felony, in violation
of A.R.S. § 13-2310
(Defendant 001)**

**COUNT 11 & 12: THEFT, Class 2 Felonies, in violation of A.R.S. § 13-1802
(Defendant 001 & 002)**

**COUNT 13: THEFT, Class 3 Felony, in violation of A.R.S. § 13-1802
(Defendant 001 & 002)**

If drug related: N/A Weight: N/A

Name(s) of Victim(s): Arizona Building Systems

County: Maricopa Date of Offense: October 1, 2005 and May 3, 2007

Statute of Limitations: November 2018

Summary of Case and Evidence Available:

Arizona Building Systems (ABS) is owned by Will Graven. ABS is a steel fabrication and construction business. From 2005 to 2007, Will Graven's business was systematically dismantled by his executive team (Michael Martin and Daniel Esposito) with the intent of forming a competing business. During this time frame executive members pillaged ABS. ABS was decimated by a series of unauthorized spending and

compensation to employees and the executive team that was not authorized by the owner, Will Graven¹.

During the same timeframe as the unauthorized compensation, Daniel Esposito attempted to use attorneys at Snell & Wilmer to steal control over ABS, which will be outlined below. When this failed, Michael Martin, Daniel Esposito, and Michael Groh² formed two competing businesses, DSM and Commercial Steel Systems (CSS). DSM and CSS were created to perform steel fabrication and construction. DSM was the first entity that the executive teamed used to attempt to steal business from ABS and ceased operating by January of 2007. CSS was the second entity that was created after DSM failed and operated until 2011.

The investigation by S.A. Woods was completed by obtaining partial emails saved on the Exchange server of ABS³, search warrants of previous ABS employees who kept email personal storage table (PST) files related to their ABS employment, and witness interviews. Subpoenas were also obtained for bank documentation and for any other material referenced below. Finally, search warrants at Michael Martin and Michael Groh's residence located ABS records that ABS could not provide to the investigation due to the records being destroyed.⁴ Based upon this information, S.A. Woods investigated three projects that DSM stole intellectual property of ABS and five projects that CSS stole the intellectual property of ABS. The intellectual property was subsequently used at DSM and CSS. Based upon a review of the emails, these projects were identified as projects to steal from ABS because Michael Martin was left behind to hide the existence of any corporate espionage and theft by DSM and CSS. Will Graven was never aware that DSM or CSS existed and never gave permission for ABS intellectual property to be used at DSM or CSS.

* Snell and Wilmer

In December of 2005, Daniel Esposito, the legal counsel for ABS, was working with outside counsel for ABS, Snell & Wilmer, on a variety of projects related to ABS and to Will Graven. From December 2005 to March of 2006, Daniel Esposito conspired with the minority owner of ABS, Deborah Dubree, to have Snell & Wilmer re-write the corporate documents for ABS in an attempt to limit the power of Will Graven as the owner of ABS and to force Will Graven out as owner of ABS. Emails sent by Daniel

¹ The unauthorized compensation is currently being prosecuted and is set for trial in August of 2015. This new indictment will be joined with the unauthorized compensation indictment and the trial date will be reset.

² Michael Groh entered into a cooperation agreement with the State and will testify against Michael Martin and Daniel Esposito. He corroborated the investigation completed by S.A. Woods.

³ Complete records of email could not be obtained due an unknown party hacking into ABS and deleting files associated with email.

⁴ Witnesses have identified Daniel Esposito, Michael Martin, and Michael Groh as shredding numerous ABS documents. In addition, prior to Daniel Esposito resigning from ABS, he brought home numerous ABS legal documents claiming to have worked on them. When he resigned, he never returned the documents.

Esposito to Deborah Dubree confirm their intention as well as Deborah Dubree's testimony as obtained through a testimonial agreement.

DSM PROJECTS

RCR Project

In June of 2006, consultants brought a construction project relating to building a solid waste disposal facility to Michael Martin. The consultants brought this project to Michael Martin in his capacity as the owner of DSM. The value of this project was \$350,000. Michael Martin, Daniel Esposito, and Michael Groh actively worked the project with their competing company while employed at ABS. The executive team worked on the project during ABS business hours and while purporting to be loyal employees to ABS and receiving compensation from ABS. In addition, the executive team was using the resources of ABS to pursue this project.

Data Center Project

In March of 2006, Michael Martin obtained project information regarding a data center worth approximately \$70 million dollars. In May of 2006, Michael Martin approached Will Graven about a promising opportunity to build a data center and that ABS would make a ten percent profit on the project. ABS began to pay expenses and dedicated employee resources to this project. At the same time, DSM listed the Data Center as a project in their 2006 operating budget. The executive team emailed ABS intellectual property to their DSM emails in order to use DSM in an attempt to win the project.

Victorville Project

In June of 2005, representatives from the City of Victorville in California spoke with Will Graven about ABS building airport hangers for the city, potentially worth millions for ABS. Construction of the hangers began and substantial progress was being made. Eventually the city and ABS had a falling out over the building of the hangers as the city was not able to afford the construction and began to blame ABS for the lack of progress. The city and ABS were working on a mutual release and settlement agreement for the two parties to terminate the agreement to build the hangers. In April of 2006, the executive team was attempting to take the hanger project to their business, DSM. Michael Martin, Michael Groh, and Daniel Esposito were working together to secure ABS intellectual property and to use it at DSM to win the remainder of the hanger project. The executive team was working on obtaining this project while getting paid by ABS. In addition, the executive team was pressuring Will Graven to enter into the release agreement in order to further their plans. Will Graven never gave authorization for anyone other than ABS to use ABS intellectual property.

CSS PROJECTS

Circle G Pegasus Project

In late 2005, ABS began to pursue a project with Circle G Pegasus. Several ABS employees were paid by ABS and used ABS resources to pursue the project. In May of 2006, ABS received a signed letter of intent from Circle G Pegasus. Based upon this information, ABS ordered doors and steel for the project. In June of 2006, the contract between ABS and Circle G Pegasus was reviewed by Daniel Esposito. This contract was never presented to Will Graven for his signature. Instead, ABS intellectual property related to this project was stolen by CSS. The executive team of ABS informed Circle G Pegasus that ABS could not afford to complete the project and that ABS was going out of business. The ABS intellectual property was used by CSS to win the Circle G Pegasus Project which was valued at \$1.2 million.

Bioscience Project

Between March of 2006 and November of 2006, ABS employees began work for a request to handle the metal walls for the Phoenix Union Bioscience School. Based upon an interview of the owner of the general contractor for this project, the contract with ABS was revoked because they were told by an employee at ABS that ABS was going out of business and that a new company, CSS, would complete the project.⁵ The executive team of ABS used the intellectual property of ABS at CSS to win this project worth approximately \$102,337.

Kabookies Project

In late 2006, ABS employees were working on a project as a subcontractor for an architect firm. The project was aid in the design and build of a steel building for Kabookies, a sushi restaurant. The intellectual property used to create the designs for Kabookies was stolen by CSS and used by CSS to win the design phase of the Kabookies which was valued at \$19,878. The owners of Kabookies decided not to go forward with the project and CSS did not have the opportunity to win the build phase.

Big League Dreams Project

In late 2005, ABS engaged with Mortenson Construction to be a subcontractor for the design and building of small maintenance building and a large indoor sports pavilion at this sports complex. ABS created intellectual property during the bidding process in an attempt to win the project. Mortenson Construction awarded the contract to ABS and the last part of the process was for ABS to bond the job and sign the contract. Rather than brining the bonding issue to Will Graven, the executive team undermined the project by not returning calls or emails, and then they stole the ABS intellectual property. CSS used the ABS intellectual property in order to attempt to win the contract with Mortenson Construction. However, Mortenson Construction did not want any part of what they believed CSS was doing, which was undermining ABS and stealing their intellectual property. If CSS won this project, they would have obtained \$500,000 to \$1.2 million.

⁵ ABS was not going out of business based upon witness interviews and emails. However, the theft of projects did lead to ABS going out of business in June of 2007.

W.W. Williams Project

In early 2006, the W.W. Williams Company was attempting to locate a general contractor and was seeking bids from three different businesses, one business being ABS. The project was valued at \$2.5 million. ABS began to generate intellectual property during the bidding process. During the bidding process, Michael Martin provided the intellectual property that ABS was generating to Michael Groh who was no longer working at ABS. This intellectual property was provided to Hayward Builders who inflated the bid arbitrarily and named the bid as a joint ABS/Hayward bid for the W.W. Williams Project. Per Michael Groh, Hayward was only going to work on the project and the executive team would profit from winning the bid, not ABS. W.W. Williams did not award the bid to the executive team based upon the inflated prices and for not notifying W.W. Williams about a joint venture with Hayward Builders.

Amount of Loss: >\$1,000,000 .

Forfeiture/Seizure: None

Plea Offers to Date: None

Case Agent: Dan Woods

Agency: AGO SIS

If Warrant: X NCIC AZ Only

Submitted by Assistant Attorney General: Joseph Waters Date: 6/29/2015

APPROVALS



[Signature]

7/16/15

Section Chief Counsel

Date

[Signature]

7/23/15

Chief Counsel, Criminal Division

Date

#4514539v1