

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-238

Complainant: No.1401110580A

Judge: No.1401110580B

ORDER

The complainant alleged that a superior court judge improperly allowed into evidence video-taped testimony that should have been considered inadmissible hearsay. The commission reviewed the issues and found no evidence of ethical misconduct on the part of the judge. Whether the evidence should have been allowed is a legal decision within the discretion of the judge and outside the jurisdiction of the commission. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 29, 2010

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed
to the complainant and the judge
on October 29, 2010.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY**2010-238****COMPLAINT AGAINST A JUDGE**

Your Name:

Judge's Name:

Date: 9/13/10

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times, and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

On 6/1/10 between 10:30AM and 4:30PM, I believe Honorable _____ was not acting in his official capacity. I believe his honor erred in deciding a matter of law, in allowing witness Carissa Rodriguez' out of court statements to police officers be admitted and published to the jury. I believe that the video that contained the out of court statements should never have been admitted, because the witness didn't remember saying anything that was said in that video. To my best knowledge that video wasn't supposed to be allowed in because I can't cross examine what the witness said in the video, because the witness is claiming she doesn't remember saying anything. But his Honor thought that it should be allowed so the jury can see it and make a decision of guilt based on that video. Only because he seen that the State no evidence at all to convict me, and believed that the video of the interrogation would strengthen the states case. He also let the jury take the video into deliberation and watch it, when he clearly stated on record that the jury can only come to a decision of guilty or not guilty due to the notes they took and from what they heard and saw through out the trial. They were not allowed to look at any transcripts or videos when they deliberate, but for some reason when the jury asked to watch the video of Ms. Rodriguez' interrogation his Honor told them yes. Even after we objected. The Arizona Rules of Evidence generally precludes out of court statements as hearsay. So I don't see how his Honor can allow something so crucial to my defense but in the long run damage his and the prosecutors credibility in trial matters. Rule 403 requires the court to weigh the probative value of the statement versus the danger of unfair prejudice, should the witness' prior statements be admitted. In *Staters Allied*, 134 Ariz, 274, 655 P.2d the Az Supreme Court took pains to discuss proper analysis for determining admissibility of prior inconsistent statements being used as substantive evidence. Impeachment testimony may be used substantively. The *Allred* decision established

(Attach additional sheets as needed.)

five factors for the trial court to consider in determining whether to allow prior inconsistent statements of a witness. These five factors include:

1. The witness being impeached denies making the impeaching statement, and
2. The witness presenting the impeaching statements has an interest in the proceeding and there is no other corroboration that the statement was made, or
3. There are no factors affecting the reliability of the impeaching witness, such as age, or mental capacity,
4. The true purpose of the offer is substantive use of the statement rather than impeachment of the witness,
5. The impeachment testimony is the only evidence of guilt. Id.

Cases since Allred have continued to reaffirm these five factors that were set out by the courts. These five factors are not an exhausted list nor should they be applied mechanistically. Instead they must be analyzed on a case by case basis. His Honor did not even take the time to consider these five factors because it took him approximately 3 minutes to decide whether or not to let the video in. I believe his Honor was being prejudice towards my case because of the seriousness of the crimes committed. Due to this I believe had an unfair trial and that this my life or the line. I would like the Judicial Qualification Commissions to take this complaint serious as they would any other complaint and to take into consideration the fact that his Honor did act out of his official capacity. I honestly believe he did wrong in my case. Thank you for your time.

Sincerely

9/13/10