

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION FOURTEEN**

STATE OF KANSAS,)
 Plaintiff,)
)
vs.)
)
JASON M. JUDD,)
 Defendant.)
_____)

Case No. 08CR 1035

ORDER
Motion for Reconsideration

On July 29, 2009, Associate Counsel for Devin Llamas and Daniel Llamas filed a Motion for Reconsideration of this court’s Order Granting the State’s Motion to Dismiss. Defendant Jason Judd’s counsel filed a response to that motion on August 6, 2009. The court, having thoroughly considered the motion, denies the Motion for Reconsideration.

In the Motion for Reconsideration, Associate Counsel Irigonegaray stated that the Llamas brothers take exception to a paragraph on page 7 in the court’s Memorandum Decision and Order in which the court summarized some of the testimony of Detective Mummey and Travis Jepson. Detective Mummey testified that Judd had stated that Devin Llamas pointed a firearm at off-duty officer Travis Jepson. Mr. Jepson also testified that Devin Llamas had aimed a gun at him. The court on July 2, 2009 provided a full opportunity

for all counsel to call witnesses and present testimony. Although Devin Llamas was in court and available to testify on that date, he was not called to testify by either his counsel, Mr. Irigonegaray, or by any other party. While there was no explanation offered as to how Devin Llamas came into the possession of a firearm that had been held by Daniel Llamas, no one testified that Devin Llamas did *not* have a weapon in his possession when he was shot.

The court's ruling, however, was not based on whether Devin Llamas possessed a gun or not. The court did not make any findings of fact in its ruling. The court's ruling was based on Kansas law which clearly places the control of a criminal prosecution under the control of the county or district attorney. The court in the Memorandum Decision and Order cited numerous cases including *State v. Williamson*, 253 Kan. 163, 853 P.2d 56 (1993) as authority.

A county attorney or district attorney is the representative of the State in criminal prosecutions. As such, he or she controls criminal prosecutions. It is the county or district attorney who has the authority to dismiss any charge or to reduce any charge. *State v. Turner*, 223 Kan. 707, 709, 576 P.2d 644 (1978). The prosecuting attorney has broad discretion in discharging his or her duty. The scope of this discretion extends to the power to investigate and to determine who shall be prosecuted and what crimes shall be charged. *State v. Dedman*, 230 Kan. 793, 798, 640 P.2d 1266 (1982); *State v. Blount*, 13 Kan. App. 2d 347, 351, 770 P.2d 852, *rev. denied* 245 Kan. 786 (1989). *The prosecuting attorney has discretion to dismiss charges, and the court cannot refuse to allow a dismissal.* (Emphasis added.) *Foley v. Ham*, 102 Kan. 66, 67-72, 169 Pac. 183 (1917). Similarly, the court cannot restrain a prosecutor from prosecuting an action. *State, ex rel., v. Rohleder*, 208 Kan. 193, 195, 490 P. 2d 374 (1971).

Williamson, 253 Kan. at 165-66.

As stated by defendant in his response, the Llamas brothers do not argue that the court failed to correctly apply Kansas law nor do they cite any additional legal authority for the

court to consider. This court's decision was based on the longstanding and clear statutory and case authority that places a criminal prosecution under the control of the prosecutor.

This court summarized some of the testimony presented at the July 2, 2009, hearing as a part of the court's analysis of the reasons cited in the prosecutor's motion to dismiss and the court's determination as to whether the motion was filed in good faith. In the Supplemental Motion to Dismiss, the prosecutor alleged that there was a lack of sufficient credible evidence necessary to obtain a conviction and that there was reasonable doubt about the guilt of defendant Judd. In order to convict Judd, the prosecutor would have to prove beyond a reasonable doubt that Judd committed the crimes with which he was charged. The court did not make findings of fact but instead reviewed the facts presented at the evidentiary to consider whether the State's Motion to Dismiss had been filed in good faith based on the prosecutor's determination that there was not sufficient credible evidence to obtain a conviction.

As the court stated in the Memorandum Decision, while there were reprehensible actions and excusably bad judgment displayed by Judd and the other off-duty officers, the issue before the court was whether the State had legal authority to dismiss the criminal charges against Judd. This court found that the Motion to Dismiss was filed in good faith within the discretionary authority and control the law grants to every prosecutor in Kansas. The Llamas brothers provided no authority nor argument that this court incorrectly applied Kansas law. Therefore, the court denies the Motion for Reconsideration. The above constitutes this court's order and no further journal entry is required.

IT IS SO ORDERED.

Dated this _____ day of September, 2009.

Nancy Parrish
District Judge, Third Judicial District
Division Fourteen

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing **ORDER** was mailed, hand delivered, or placed in pick-up bin this 4th day of September, **2009**, to the following:

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