

IN THE SUPREME COURT

CAROL THOMPSON, CLERK

STATE OF WYOMING

JOHN HENRY KNOSPLER, JR,)	
)	
Petitioner,)	
)	
v.)	No. S-14-0222
)	
STATE OF WYOMING,)	
)	
Respondent.)	

**RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF REVIEW OR
CERTIORARI**

Respondent, State of Wyoming, through the Office of the Wyoming Attorney General, submits this Response in opposition to the Petition for Writ of Review or Certiorari filed by Petitioner, John Henry Knospler, Jr.

I. Statement of facts, nature of the case, and course of proceedings.

On October 4, 2013, Knospler shot and killed James Baldwin in Natrona County. (Pet. Appx. 1, Sub-appx. 1, pp. 1-2). The State charged Knospler with second degree murder. (Pet. Appx. 1, pp. 1-2). At a preliminary hearing, the circuit court found that probable cause existed to continue to trial. (Pet. Appx. 3, p. 1). The State subsequently retained John Daily of Jackson Hole Scientific Investigations, Inc. to review the evidence. (Pet. Appx. 1, Sub-appx. 1, p. 1). Approximately eight months after the

preliminary hearing, Daily reported his findings to the Natrona County District Attorney's Office. (*Id.*). Those findings provide some support for Knospler's theory that he killed Mr. Baldwin in self-defense, but stop far short of fully exculpating him.

Knospler moved the district court for dismissal of the Information on the basis that, because Mr. Daily's report supported his self-defense theory, there was no longer probable cause to continue with the trial. (Pet. Appx. 1). Among other arguments, the State responded that a district court has no authority to dismiss a criminal case for lack of probable cause after probable cause has been established at a preliminary hearing. (Pet. Appx. 3, p. 1). The district court held a hearing on Knospler's motion, during which the court allegedly stated that it lacked "legal authority to dismiss a case for lack of probable cause." (Pet. p. 5). The district court subsequently denied Defendant's Motion to Dismiss, but did not specify the reasons for denial, and specifically did not cite a lack of authority to dismiss for lack of probable cause. (Pet. Appx. 4). Knospler now asks this Court for discretionary review of the question: "Does a Wyoming district court have legal authority to dismiss a case for lack of probable cause?" (Pet. p. 6). The State believes a more accurate statement of the question is: Does a Wyoming district court have legal authority to dismiss a criminal case for lack of probable cause based on new evidence after probable cause has been established at a preliminary hearing?

II. A District Court does not have authority to dismiss a case for lack of probable cause after probable cause has been established at a preliminary hearing.

Knospler asks this Court to review whether the trial court had authority to dismiss the criminal case against him. Accordingly, this Court will not need to examine specific details about the evidence. Rather, this case presents only a question of law. The Court should deny review because there is no law supporting Knospler's position and because allowing dismissal as he requests would require trial courts to encroach on the prosecutorial authority of the executive branch.

A. No Wyoming statute, rule, or case specifically allows a district court to dismiss a criminal charge for lack of probable cause after probable cause has been established at a preliminary hearing.

Knospler has not directed this Court to any authority from Wyoming or any other jurisdiction that specifically allows a trial court to dismiss a criminal charge for lack of probable cause after probable cause has been established at a preliminary hearing. The Wyoming Rules of Criminal Procedure provide for a preliminary hearing at which the circuit court determines whether "it appears that there is probable cause to believe that the charged offense or lesser included offense has been committed and that the defendant committed it." W.R.Cr.P. 5.1(b). Once the circuit court determines that probable cause exists, the case is transferred to the district court for further proceedings. *Id.* Nothing in the rules allows the district court to revisit the issue and dismiss a charge for lack of probable cause after the circuit court finds that probable cause exists. Further, no statute or decision of this Court allows such a dismissal either.

If sound policy reasons existed for allowing a trial court to revisit the probable cause determination, this Court presumably would have provided a rule to that effect in the Wyoming Rules of Criminal Procedure. In fact, policy considerations support the status quo in which trial courts do not have that authority. If trial courts could review probable cause determinations, every new scrap of favorable evidence discovered by or disclosed to the defense could be the basis for a motion to dismiss. In effect, the district court might have to hold a series of mini-trials in advance of the jury trial. That, in turn, could clog the docket and make compliance with the speedy trial requirement virtually impossible.

Allowing district courts to dismiss charges for lack of probable cause after the preliminary hearing would also reduce the preliminary hearing in the circuit court to a mere “dress rehearsal.” The real probable cause determination would come later in the district court after the defense has had a preview of the State’s case. Again, the district court might have to hold mini-trials to revisit the circuit court’s determination that probable cause exists to bring the case to trial.

B. Dismissal for lack of probable cause after probable cause has been established at a preliminary hearing would encroach on the prosecutor’s authority.

The authority to prosecute criminal cases rests exclusively with the executive branch of government, specifically, the elected county and district attorneys. Wyo. Stat. Ann. § 9-1-804(a)(i). While this Court has not specifically addressed the question at hand, it has recognized prosecutors’ exclusive authority to determine whether a case will

be prosecuted. *Billis v. State*, 800 P.2d 401, 417 (Wyo. 1990) (“[w]ithin the judicial process of criminal prosecution the prosecutor’s power to dismiss charges, to reduce charges, to defer charges, in sum to control the prosecution, [is] exclusive and not shared by the judicial department.”). A trial court’s ability to encroach on that “exclusive” power is, and should be, limited to specific authority granted by statute or procedural rules.

The ruling Knospler seeks would also have the district courts encroach upon the prosecutors’ responsibilities under the Rules of Professional Conduct. Specifically, Rule 3.8(a) provides that a prosecutor must “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” If a prosecutor becomes convinced, even after the preliminary hearing, that there is insufficient probable cause to proceed to trial, Rule 3.8(a) requires that prosecutor to put an end to the proceedings. Unless this Court believes that Wyoming prosecutors will ignore their responsibilities under rule 3.8(a), there is no need for district courts to revisit the probable cause determination.

III. Conclusion.

For the foregoing reasons, the State asks this Court to deny Knospler’s petition.

Submitted this 22nd day of September 2014.

/s/David L. Delicath

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CERTIFICATE OF SERVICE

I, David L. Delicath, certify that the foregoing **RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF REVIEW OR CERTIORARI** was served electronically on the following individual(s) via the Wyoming Supreme Court C-Track Electronic Filing System this 22nd day of September 2014:

Tim Newcomb
Post Office Box 928
Laramie, WY 82073

I also certify that the foregoing **RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF REVIEW OR CERTIORARI** was served this 22nd day of September 2014, by placing a true and correct copy in the United States Mail, postage prepaid, addressed to the following individual(s):

Joseph H. Low IV
The Law Firm of Joseph H. Low IV
One World Trade Center, Suite 2320
Long Beach, CA 90831

I also certify that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.

/s/David L. Delicath
David L. Delicath
Deputy Attorney General