

**COCHISE COUNTY
ATTORNEY'S OFFICE**

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BRIAN M. McINTYRE
COCHISE COUNTY ATTORNEY

May 18, 2016

COCHISE COUNTY
SHERIFF'S OFFICE
OFFICIAL COPY

Cochise County Sheriff's Department
ATTN: Detective Borquez

Re: Richard McConnell and Susanne McConnell, DR #: 16-09465

Detective Borquez,

Prosecution is declined. There is insufficient evidence to ensure a reasonable likelihood of conviction.

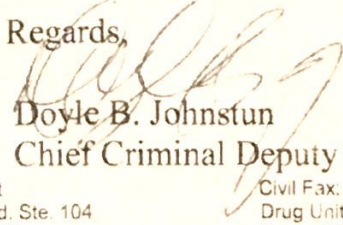
██████████ won't be four for another month. ██████████ is barely two years old. During the victims' interviews they were all over the place as to what had happened to them. Of course, at their ages that is to be expected.

A separate but related problem arising from the victims ages is that they lack testimonial capacity. They don't appreciate "the truth" or the significance of taking an oath to tell the truth. Besides age, testimonial capacity depends on the maturity and intellectual development of the child. Generally children should be seven or eight years old before they are deemed reliable to observe, understand, and narrate what really happened.

Nor is there any physical evidence or admissions by the suspects upon which to base a prosecution.

When to dispose of the evidence in this case is up to your department.

Regards,


Doyle B. Johnston
Chief Criminal Deputy County Attorney

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150 Quality Hill Rd.
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Bisbee, AZ 85603
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Drug Unit Fax: (520) 432-2487
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BRIAN M. McINTYRE
COCHISE COUNTY ATTORNEY

May 31, 2016

Cochise County Sheriff's Department
ATTN: Sgt. Parker

Re: Richard McConnell and Susanne McConnell, DR #: 16-09465

Sgt. Parker,

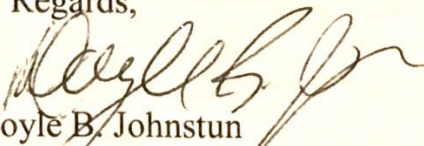
A couple of weeks ago I sent Detective Borquez a decline letter in this case, which also authorized disposing of the evidence.

At the request of the victims I am writing to request that the evidence not be disposed of at this time. Even though the children are too young to testify now, that won't always be the case.

Also, Mr. and Mrs. [REDACTED] the victims' parents, believe there are additional investigative avenues that Detective Borquez did not pursue. Mr. and Mrs. [REDACTED] are also requesting that some other Detective be assigned to the remainder of the investigation.

Of course, we will be happy to re-review the case if any additional evidence comes to light.

Regards,


Doyle B. Johnstun
Chief Criminal Deputy County Attorney

cc: [REDACTED] & Lesley [REDACTED]

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BRIAN M. McINTYRE
COCHISE COUNTY ATTORNEY

September 26, 2016

Cochise County Sheriff's Department
ATTN: Detective Borquez

Re: Richard McConnell and Susanne McConnell, DR #: 16-09465

Detective Borquez,

Thank you for the supplemental reports covering the additional investigation you have done on this case.

The case was extremely weak to begin with. In a criminal case our burden of proof is beyond a reasonable doubt. In my opinion the evidence does not even meet the much lower burden of proof in a civil case, which is "by a preponderance of the evidence" (50.1%).

The additional investigation consists of your having interviewed a number of potential witnesses who may have information that the suspects, or one of them, has a sexual interest in children and/or has acted on such interest. This was potentially a good avenue to pursue. This is because under Rule 404(c) of the Arizona Rules of Evidence, evidence that a defendant has a character trait giving rise to an aberrant sexual propensity (being a pedophile), proof of that character trait/aberrant sexual propensity is generally admissible to help prove that the defendant molested children in this case.

However, it turned out that the witnesses did not have evidence of the suspects having an aberrant sexual propensity. In fact, the witnesses unanimously believed

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Detective Borquez
September 26, 2016
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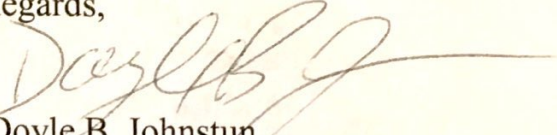
that the allegations against the suspects are not true, even to the point of being comfortable leaving their own children with the suspects notwithstanding the allegations. Even Mr. McConnell's ex-wives did not believe the allegations or that Mr. McConnell was capable of such behavior. Of course it is highly likely that an ex-wife would be the last person to protect Mr. McConnell if there was evidence of such behavior in Mr. McConnell's past.

As set out in my prior letter, the [REDACTED] children are far too young to be able to testify. Moreover, Mrs. [REDACTED] interviews of the children undermined the possibility of this ever being a viable case. Because of the children's ages at the time she interviewed them, the children were very susceptible to the power of suggestion, that is believing whatever their mother suggested to them during the interview. Any competent defense attorney would be able to make a plausible claim that any memories the children may have of being molested were planted by their mother's interview.

For these reasons a separate interview, even by a forensic psychologist would not make this a good case, no matter what the children might say during such an interview.

As before, there is no physical evidence and no admissions by the suspects upon which to base a prosecution. Further, now there are a number of character witnesses who believe that the suspects do not have an aberrant sexual interest in children.

Regards,


Doyle B. Johnstun
Chief Criminal Deputy County Attorney

cc: [REDACTED] and Lesley [REDACTED]