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Defendant's Rights to Present Evidence at Grand Jury Extremely Limited

The New Mexico Court of Appeals has drawn strict parameters around appeals of grand jury indictments. In so doing, it appears that the reach of *Jones v. Murdoch* has been sharply curtailed.

In *State v. Yaw*, the defendants through their attorneys issued a "Murdoch letter" to the prosecutor requested certain exculpatory information be presented to the grand jury under *Jones v. Murdoch*. The prosecutor did not comply with the request of the defendant.

Under *Jones v. Murdoch*, a hearing was held by the district court judge to determine whether the evidence should be presented. The district court judge determined that the evidence need not be presented to the grand jury.

The grand jury hearing was held. The proposed exculpatory evidence was not presented. The defendants were indicted. Following the indictment, the defendants appealed.

State v. Yaw sets forth some interesting and important guidelines regarding the operation and effect of *Jones v. Murdoch*. The Court of Appeals drew a distinction between appeals of grand jury process and reviews of grand jury evidence.

The Court asserted that violations of grand jury process are always appealable citing such improprieties as improper persons in the grand jury room or failure to instruct on the elements of the offense. To the contrary, the Court ruled that evidentiary findings by the grand jury would not be reviewed.

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This seems to be a rather odd ruling in light of *Jones v. Murdoch* since by definition, failure to present exculpatory evidence suggests a review of the evidence. To resolve this apparent contradiction, the Court distinguished between pre-indictment appeal and post indictment appeal then basically rules there are no rights to appeal on either.

Interestingly, the Court stated that *Jones v. Murdoch* provided for no appeal of the district court's ruling except under extreme circumstances on the filing of an extraordinary writ. These cases appear from the Court's ruling to be limited to cases of prosecutorial misconduct. The Court stated that the defendant must show bad faith on the part of the prosecutor in its failure to present the exculpatory evidence. Unfortunately, the Court failed to define precisely what it meant by bad faith or prosecutorial misconduct.

In light of the great deference provided to the district court in ruling on the admission of Murdoch letter evidence, the hurdle seems almost insurmountable. For all practical purposes, except in the most extreme cases, the ruling of the district court is final under *State v. Yaw*. Hopefully, the case will be taken up by the New Mexico Supreme Court. As it stands under *Yaw*, defendants are left with pretty no remedy for violations of their grand jury rights under *Jones v. Murdoch*.

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