

BY *S. Keenan*

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF MARICOPA

12 STATE OF ARIZONA,
13 Plaintiff,

14 vs.

15 JONATHON RICHARD HOCK,
16 Defendant.

Case No: CR2009-136467-001 DT

MOTION FOR RELEASE

(Assigned to the Master Calendar)

BLUMBERG & ASSOCIATES
45 West Jefferson, Suite 210
Phoenix, Arizona 85003

17 COMES NOW Defendant Jonathon Richard Hock, by and through undersigned counsel,
18 and respectfully requests that this Honorable Court schedule an evidentiary hearing as soon as is
19 practicable, and subsequently order the release of Mr. Hock. Currently, Mr. Hock is being held
20 non-bondable at Lower Buckeye Jail, pursuant to A.R.S. § 13-3961.

21 This Motion is supported by *Simpson v. Owens*,¹ A.R.S. § 13-3961, and the following
22 Memorandum of Points and Authorities.

23 RESPECTFULLY SUBMITTED, this 26 day of August, 2009.

24 BLUMBERG & ASSOCIATES

25 By: *B. Blumberg*
26 Bruce E. Blumberg, Esq.
27 45 West Jefferson, Suite 210
28 Phoenix, Arizona 85003
Attorney for Mr. Hock

¹ 207 Ariz. 261, 85 P.3d 478 (Ariz.App. 2004).

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On June 5, 2009, Mr. Hock was indicted on two counts of Sexual Assault, a Class 2
4 Felony, and one count of Voyeurism, a Class 4 Felony. These charges arose from alleged
5 incidents on February 26, 2009. Mr. Hock was not arrested for any supposed crime until June 1,
6 2009.

7 Mr. Hock is the modern-day equivalent of a street performer. Prior to his arrest, he
8 hosted internet shows on <http://www.stickam.com> (hereinafter "stickam"). This website is
9 essentially an online video chat room, where individuals from around the world may access a
10 person's profile,² and communicate with others via web cam and an instant messenger.
11 Everything portrayed on this website is through live stream. This means that nothing is
12 digitally recorded or saved for future viewing on the website. Mr. Hock was somewhat of a
13 celebrity in this internet community, well known for his risqué internet productions. He had over
14 a million fans, including Hollywood starlets. All of these individuals would flock to their
15 computers, and sign in, to see what Mr. Hock would do next.

16 Just as famous individuals are loved, there is always an undercurrent of hatred. This was
17 no different for Mr. Hock. As his internet fame increased, so did the herd of individuals who
18 loved to hate him. Most notable of these enemies was the owner and creator of
19 <http://www.StickyDrama.com> (hereinafter "StickyDrama"). StickyDrama is the internet
20 equivalent of the *Enquirer* or other tabloid newspaper. Its online heading reads "The #1 Tabloid
21 about Internet Celebrities and Gossip."³ This website continuously urged individuals to rally
22 against Mr. Hock, even offering a reward to any individual who could "hack" into his stickam
23 profile, and destroy it.

24
25
26 ² This website is similar to a Myspace or Facebook, with personal profiles, except for the fact that
27 individuals may meet live via web cam.

28 ³ While writing this motion, defense counsel accessed this webpage. On the front page was an
article regarding counsel's prior motion to compel disclosure of the alleged video. See attached
Exhibit A.

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1 On February 25, 2009, Mr. Hock and his then girlfriend and alleged victim were enjoying
2 an evening of partying with friends. In the early morning hours of February 26, 2009, the two
3 individuals retired to the alleged victim's bedroom. She passed out in a deep alcohol-induced
4 sleep. Mr. Hock, however, remained awake and energetic.

5 At this time, Mr. Hock logged onto stickam, to entertain his fans and enemies. He set up
6 a webcam, and via live stream, laid next to his girlfriend, while she was fast asleep. He
7 smothered her face with sloppy-wet kisses, and stated that he could do anything to her that he
8 wanted. He then said that he would not, however, and confessed his love for her. **During the**
9 **entire five-minute video, he never sexually penetrated or otherwise assaulted her.** As the
10 *verbal statements* on the video became more and more lude, stickam cut the live stream.⁴ It
11 **deleted Mr. Hock's profile.** This prevented anybody from that IP address (any computer in the
12 house) from signing onto stickam.

13 During the episode, other individuals watched Mr. Hock and typed messages to each
14 other via the website's instant messaging service. They made jokes about how Mr. Hock was
15 raping his girlfriend online, and how his behavior was akin to necrophilia. **This all occurred**
16 **despite the fact that absolutely no penetration of any sort was visible or occurred.**

17 It was not long until StickyDrama received wind of what was occurring on stickam. The
18 owner and creator of the tabloid site, made a screenshot⁵ of the live stream, and saved it to his
19 computer. He later sent a copy of this to the Phoenix Police Department. It is believed that this
20 is the sole version of the internet episode available.⁶ Still images from the video covered the
21 front page of the website, making it appear as though Mr. Hock was lurking over the alleged
22 girlfriend while she was asleep. Enemies of Mr. Hock took advantage of the video and began
23

24 ⁴ The Form 4 received at Mr. Hock's Initial Appearance indicates that the video they viewed was not
25 complete. It was complete however it ended abruptly because of stickam cutting off the live feed.

26 ⁵ A screenshot is not the same as downloading an image or file. A screen shot means that an
27 individual is saving exactly what is appearing on their entire computer monitor in a specific
28 program, at that moment. Thus, the screenshot in this matter not only shows the live stream, but it
also shows the instant messages that people typed to each other, as well as the video images of some
of the viewers.

⁶ An image of the CD, complete in its addressed envelope, was posted on StickyDrama.com right
before being sent off to Phoenix Police Department. See Exhibit B.

1 spreading false rumors of Mr. Hock sexually violating his girlfriend via live stream over the
2 internet. The chaos that erupted was no different from the rumor mill found within high schools
3 nationwide.

4 As the exaggerated tales began to spin more and more out of control, the alleged
5 girlfriend's roommate and friend informed that images of her were posted on StickyDrama.
6 Known enemies of Mr. Hock's contacted the Phoenix Police Department, and falsely reported
7 that they had watched Mr. Hock sexually assault his girlfriend performing oral sex on her
8 through the live stream video.

9 An interview of the alleged victim indicated that she has absolutely no recollection of the
10 events. In fact, she did not know about the alleged incident until her friends notified her by text
11 message. Consequently, when Mr. Hock was arrested, the Phoenix Police Department had the
12 following information in their possession: 1) that Mr. Hock had performed one of his frequent
13 internet shows, 2) that his girlfriend was in asleep the entire time, and 3) that when Mr. Hock
14 scanned her body with the webcam, a glimpse of her unclothed lower half was visible.
15 Moreover, the police department was aware, from watching the video, that the image of the
16 alleged victim's lower half was not detailed, and merely showed a peek of her mons vernis.

17 18 II. DISCUSSION

19 A. Procedure

20 In November of 2002, Arizona voters passed Proposition 103, which amended Article II,
21 Section 22 of the Arizona Constitution. This section now provides in pertinent part that:

22 "All persons charged with a crime shall be bailable by sufficient sureties,
23 except for:

24 Capital offenses, *sexual assault*, sexual conduct with a minor under fifteen
25 years of age or molestation of a child under fifteen years of age when the
26 proof is evident or the presumption great.⁷"

27 The legislature also amended A.R.S. § 13-3961 to read:
28

⁷ Ariz.Const. Art. II, § 22(A); *Emphasis added.*

1 "A person who is in custody shall not be admitted to bail if the proof is
2 evident or the presumption great that the person is guilty of the offense
3 and the offense charged is either:

- 4 1. A capital offense.
- 5 2. *Sexual assault*.
- 6 3. Sexual conduct with a minor who is under fifteen years of age.
- 7 4. Molestation of a child who is under fifteen years of age.⁸

8 In short, a person charged with these offenses, including sexual assault, must be held
9 without bail, but only if the "proof is evident and the presumption great."⁹ In the present matter,
10 the State has not, and cannot, sustain its burden of showing that the proof is evident or the
11 presumption great.

12 The State's burden in this regard was described by the Arizona Court of Appeals in
13 *Simpson v. Owens*.¹⁰ The *Simpson* court noted that "the criminal jurisprudence of the United
14 States and any discussion of bail is founded on a presumption of individual innocence."¹¹ The
15 *Simpson* court relied upon the United States Supreme Court for the proposition that "[u]nless this
16 right to bail before trial is preserved, the presumption of innocence, secured only after centuries of
17 struggle, would lose its meaning."¹² As such, the *Simpson* court concluded that: 1) "there is a
18 *presumption* in favor of bail," and 2) that "the denial of bail is not for the purpose of
19 punishment."¹³ To ensure that § 13-3961 comports with the due process clauses of the United
20 States and Arizona Constitutions, the court held that:

- 21 • The burden of proving an exception to bail lies with the State.¹⁴
- 22 • To deny a defendant bail, the State must "make it plain and clear to the
23 understanding, and satisfactory and apparent to the well-guarded,
24

25 ⁸ A.R.S. § 13-3961(A).

26 ⁹ *Id.*

27 ¹⁰ 207 Ariz. 261, 85 P.3d 478 (Ariz. App. 2004); *Emphasis added*.

28 ¹¹ *Id.* at ¶ 22.

¹² *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1 (1951).

¹³ *Simpson*, 207 Ariz. at ¶¶ 22, 26 (emphasis added).

¹⁴ *Id.* at ¶ 27.

1 dispassionate judgment of the court that the accused committed one of the
2 offenses enumerated in A.R.S. § 13-3961(A)."¹⁵

- 3 • The State cannot simply rest upon the indictment of avowals of the State's
4 evidence, but must submit specific evidence in support of its contention that
5 the "proof is evident" and the "presumption great."¹⁶
- 6 • The State must satisfy its burden at an evidentiary hearing, in which the
7 defendant has the right to be represented by counsel and to cross-examine the
8 State's witnesses, to be held "as soon as is practicable to ensure that the
9 accused is afforded due process and to maintain the presumption of
10 innocence."¹⁷

11 Pursuant to the *Simpson* case and A.R.S. § 13-3961, Mr. Hock respectfully requests that
12 this Court conduct such an evidentiary hearing as soon as is practicable, to probe the issues
13 raised herein. Mr. Hock posits that the State cannot meet its burden that the proof is evident or
14 the presumption is great that Mr. Hock committed the alleged crimes.

15 **B. The Proof is Not Evident, Nor is the Presumption Great, that Mr. Hock**
16 **Committed the Alleged Sexual Assaults.**

17 Under Arizona law, persons charged with certain crimes may be held non-bondable
18 pending the outcome of the case. Such restraint is appropriate only when the proof is evident
19 and the presumption great that the individual committed the alleged crime. This standard is not
20 as stringent as probable cause or beyond a reasonable doubt. However, it does require a
21 "variation of clear and convincing or clear and strong evidence that the accused committed the
22 crime."¹⁸ As will be further discussed below, **the proof is not evident, nor is the presumption**
23 **great that Mr. Hock committed a sexual assault on the alleged victim.**

24 Purportedly, the primary evidence of any alleged sexual assault is the ostensibly
25 accurate recording of the original life feed. This is the same depiction that was supposedly

26 _____
27 ¹⁵ *Id.* at ¶ 40.

28 ¹⁶ *Id.* at ¶¶ 47-48.

¹⁷ *Id.* at ¶¶ 44, 55.

¹⁸ *Simpson*, 207 Ariz. at 271, 85 P.3d at 488 (2004).

1 watched live by numerous individuals, including those who reported a sexual assault to the
2 police. **Interestingly enough, this video does not depict a sexual assault at all.** Mr. Hock
3 did not engage in sexual intercourse with the alleged victim; the video does not display any
4 penetration. Mr. Hock did not perform oral sex on the alleged victim; the video does not show
5 this either. **Consequently, the crux of this case, the video, does not depict the alleged sexual**
6 **assaults for which Mr. Hock is charged.**

7 Moreover, this fact completely discredits the individuals who reported a sexual assault
8 to the police. As indicated above, Mr. Hock had made as many enemies as fans as a result of
9 his internet exploits. The individuals who initially reported Mr. Hock are also internet
10 performers. They, however, have not reached the notoriety online that Mr. Hock has reached.
11 They also are not fans of Mr. Hock's work; they are amongst the many enemies that Mr. Hock
12 has made along his path to stardom. Thus, their reports are also not evidence that Mr. Hock had
13 committed the crime of sexual assault. Rather they, along with the other allegations made by
14 supposed witnesses, are merely the products of a childish rumor mill. **A rumor is not evidence**
15 **of a crime.**

16 Finally, the information provided by the alleged victim is also not sufficient to establish
17 that the proof is evident and the presumption is great that Mr. Hock sexually violated her. She,
18 as the video shows, was wholly comatose during the internet episode. She did not even move
19 when Mr. Hock smothered her face with kisses and professed his love for her. In fact, she had
20 no idea that she supposedly had engaged in nonconsensual sex with Mr. Hock until her friends
21 contacted her! Thus her statements cannot be used as the evidence of any crime.

22 As a result, the proof is not evident, nor is the presumption great that Mr. Hock
23 committed a sexual assault on the alleged victim. In fact, it is the complete opposite. At this
24 point, absolutely no evidence that a sexual assault occurred has been provided by the State. All
25 that has been disclosed is a recording of the live video, depicting Mr. Hock, albeit intoxicated,
26 rambling on about his "hot" girlfriend, and exaggerated tales by supposed witnesses about what
27 occurred. **These are not evidence of a crime.** Rather, they are simply evidence of a modern
28 rumor mill at work.


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III. CONCLUSION

For the reasons set forth above, Mr. Hock respectfully requests that this Honorable Court calendar a hearing on this matter as soon as is practicable and at its conclusion, find that the proof is not evident, nor is the presumption great that Mr. Hock perpetrated a sexual assault on the alleged victim, and thus release Mr. Hock from custody forthwith.

RESPECTFULLY SUBMITTED, this 26 day of August, 2009.

BLUMBERG & ASSOCIATES

By: 
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Attorney for Mr. Hock

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EXHIBIT A



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In response to John Hock rap by Goss

30
Jul

Dick Hurz
in [Chris Goss](#), [John Hock](#), [MyDrama](#), [entertainment](#), [fail](#), [sex](#),
rap

My name is Chris Goss,
I think I'm the shit
I failpost on stickydrama and just don't quit.
Although people tease me and laugh at my life, my posts keep haunting these pages, like nags from a wife.
I think people have interest in what I have to say, so I use stickydrama as my Blog, each and every day.

I make lots of cash slingin my crap,
I try to make e-friends by posting my rap.

Wasting bandwidth on the internet,
why people don't like me, I just don't get.

So I'll continue to post and annoy all you fuckers, I'll be on here daily like ugly on truckers.
I'm in denial of failure of my life as a whole, I'll brown nose Sticky till my sphincter is swolt.

I'll leave you for now but not in sorrow,
I'll have a whole new failpost, for you to read tomorrow.

Love,
Dick

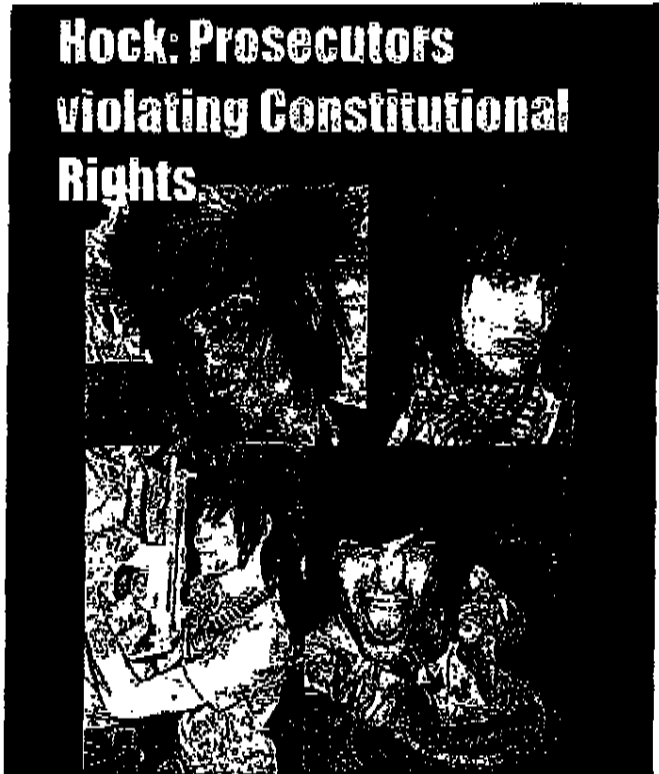
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Hock Slows Trial; Prosecutor Granted Rights to Video, Hock's Attorney Denied Access

29
Jul

thisiswhatever
in [John Hock](#), [SD](#), [entertainers in jail](#), [sex crimes](#)



John Hock was in the news on July 20th on 2 sites:

<http://www.eastvalleytribune.com/story/141940>

<http://licensing.copyright.net/users/viewFreeUse.action?uid=NDI5OTU2MjM763D%3D>

Apparently, John and his attorney are claiming a violation of his Constitutional rights because prosecutors have denied him access to the video of the alleged rape

Hock's attorney filed a motion saying the defense was, "at a standstill," until they are able to obtain the video... and was, according to one source, granted rights to view the video, however, is not in the works to see the video yet. ANY IDEA WHY THE PROSECUTION WOULD DENY HOCK AND ALLOW THE ATTORNEY WITH PERMISSION? IF I SAW THE VIDEO PRIOR TO THE TRIAL.

His lawyer said he needs to see it many times and possibly consult the experts to determine authenticity.

Still no word of if he is CURRENTLY in jail. There is evidence in the court documents to prove that he may be out of jail. Dont reply about previous documents and new reports concerning his whereabouts.



Retweet 57 comments

EXHIBIT B

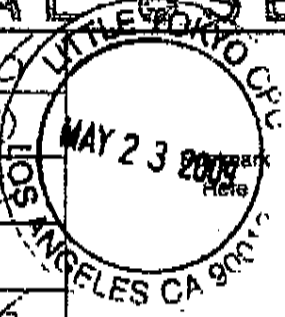
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