

DA Witness Scott Troxel framed Austin Davis as a potential "mass shooter" suspect to protect a Mann Act Federal crime cover-up. DA Glenn Funk's "Conviction Review Unit" memo states that a prosecutor "shall seek to remedy the conviction" to protect the innocent and to seek truth and justice if a defendant did not commit an offense of which the defendant was convicted. Mr. Harris was provided exculpatory Covenant Board Minutes via Discovery. Judge Thomas Brothers provided DA Funk "Mann Act" evidence on Sept 27, 2018.

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

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VS.

CASE NO: 2017-A-62

WILLIE AUSTIN DAVIS

STATE'S RESPONSE TO DEFENDANTS MOTION FOR NEW TRIAL

Comes now, the Office of the District Attorney General, prosecuting on behalf of the State of Tennessee to respectfully request this this honorable Court deny the defendant's "Motion for New Trial," and respectfully submits the following:

PROCEDURAL HISTORY

The defendant was arrested for the offense of Criminal Trespass on November 15, 2015. The defendant made bond, and his case was subsequently set three different times before it was bound over via preliminary hearing on April 20, 2016 before General Sessions Judge Casey Moreland. The Davidson County Grand Jury returned a true bill on charges of Aggravated Criminal Trespass on August 5, 2016 and the defendant was arraigned on August 24, 2016 in Division I Criminal Court in Davidson County. On January 30, 2017, the Davidson County Grand Jury returned a superseding indictment in case 2017-A-62 on charges of Aggravated Criminal Trespass. The defendant was represented by defense counsel Lauren Wills from General Sessions through his initial arraignment, his superseding indictment, and until March 10, 2017 where the defendant waived his right to counsel and elected to proceed pro se. Case 2017-A-62 was tried starting on September 11, 2017, and a jury returned a guilty verdict on September 12, 2017. The defendant was sentenced to 11 months and 29 days supervised probation and required to attend

family counseling sessions, stay away from Covenant Presbyterian Church, and to have no contact with any present or former members. On October 21, 2017, the defendant was arrested on a probation violation warrant for sending messages to current or former members of Covenant Presbyterian Church and served eighteen days in jail before being reinstated to probation. On October 23, 2017, Judge Steve Dozier entered an order recusing himself from the case and the case was ultimately reassigned to this court. The defendant filed a hand-written “Motion for Mistrial and New Trial” on October 27, 2017 alleging a litany of violations¹. That motion has been pending since and until Phillip Harvey, on behalf of the defendant, filed an amended Motion for New Trial in this matter on July 12, 2019.

ARGUMENT

I. DEPUTY HOLLEY’S INVOLVEMENT, IF ANY, AS A GRAND JUROR IN THE DEFENDANT’S CASE DOES NOT COMPEL A NEW TRIAL AND DISMISSAL OF THE INDICTMENT

The defendant’s primary argument relies on his assertion that the true bill returned by the Davidson County Grand Jury in case 2017-A-62 on January 30, 2017 is invalid because a deputy of the Davidson County Sheriff’s Office, Solomon Holley, who was also a potential witness in the case, signed the final Grand Jury report. Notwithstanding any facts that allege that Deputy Holley actually heard proof when this case was presented to the Grand Jury, the defendant’s claim that somehow his indictment is defective is without merit on a number of grounds.

The defendant seeks this Court exercise its Thirteenth juror role and order a new trial in this matter primarily because the defendant alleges that since a potential witness in this case *may* have served on his grand jury, the indictment is defective. The State submits that this issue, regardless of if the defendant became aware of it after trial, was waived under Rule 12(b)(2) and

¹ Since it is clear the defendant’s newest filing has superseded his previous request for a new trial, this brief will only discuss issues raised in the defendant’s most recent filing.

12(f) of the Tennessee Rules of Criminal Procedure. Rule 12(b)(2) states: The following must be raised before trial: (A) a motion alleging a defect in the institution of the prosecution; (B) a motion alleging a defect in the indictment, presentment, or information—but at any time while the case is pending, the court may hear a claim that the indictment, presentment, or information fails to show jurisdiction in the court or to charge an offense . . . Tenn. R. Crim. Pr. 12(b)(2). Rule 12(f) provides the impact of failing to raise any of the issues stated in Rule 12(b). Rule 12(f) states: Unless the Court grants relief for good cause, a party waives any defense, objection, request, or failure to comply with: (1) rules requiring such matters to be raised pretrial; (2) any deadline set by the court under Rule 12(c); (3) any deadline extension granted by the court. Tenn. R. Crim. Pr. 12(f).

At a hearing on this matter, the defendant testified that he had previously raised issues with the Grand Jury on different grounds before; that all grand jury reports dating back to 1993 are available online; that he has was previously represented by counsel; and that approximately five months existed between the time of the end of the grand jury term that indicted him and the date of his trial. It is obvious the defendant has always raised issues with procedures relating to his prosecution, including the grand jury albeit on different grounds, and it is even more obvious that he defendant could have raised this issue and argued a violation, if any, before his trial date. The State submits that as a matter of law, since the defendant could have raised this issue pretrial, and did not, he has waived the issue as a basis to order a new trial in this case and has not shown good cause as to why the issue is not waived. Tenn. R. Crim. Pr. 12(b)(2); Tenn. R. Crim. Pr. 12(f).

Even if this court determines that the defendant has shown good cause, Deputy Holley's potential presence on the grand jury is not sufficient for this court to order a new trial in this matter. The State submits that Deputy Holley is a lawful grand juror and does not fall under a category of people disqualified from service. Tennessee Code Annotated § 22-1-101 provides the

qualifications for potential jurors to serve on both petit and grand juries. That provision states: It is the policy of this state that all qualified citizens have an obligation to serve on petit juries or grand juries when summoned by the courts of this state, unless excused. Every person eighteen (18) years of age, being a citizen of the United States, and a resident of this state, and of the county in which the person may be summoned for jury service for a period of twelve (12) months next preceding the date of the summons, is legally qualified to act as a grand or petit juror, if not otherwise incompetent under the express provision of this title. Tenn. Code Ann. § 22-1-101. The following section provides the express provisions for disqualification of potential grand and petit jurors and states: The following persons are incompetent to act as jurors: (1) Persons convicted of a felony or any other infamous offense in a court of competent jurisdiction, or; (2) persons convicted of perjury or subornation of perjury. Tenn. Code Ann. § 22-1-102. Rule 6(c) of the Tennessee Rules of Criminal Procedure specifically provides for the disqualifications of grand jurors for interest. That rule states: No member of the grand jury shall be present during—or take part in—the consideration of a charge or the deliberation of the other grand jurors, if: (A) the member is charged with an indictable offense; (B) the member is a prosecutor; (C) the offense was committed against the member’s person or property; or (D) the member is related to the person charged or to the victim of the alleged crime by blood or marriage within the sixth degree, computed by the civil law. Tenn. R. Crim. Pr. 6(c).

The State submits that the defendant has not shown Deputy Holley should have been disqualified as a grand juror in the defendant’s second indictment because he falls under none of the categories, *infra*, expressly outlining what shall disqualify a grand juror in this State².

² The defendant does not argue Holley was not qualified under the age, or residency requirements set forth in Tenn. Code Ann. 22-1-101, so this brief will not address that issue.

The defendant instead cites dictum from *Rippy v. State*, 550 S.W.2d 636, 642 for the proposition that law enforcement officers are inherently biased and should not serve on grand juries. *Rippy*, 550 S.W.2d at 642. His logic follows that since Deputy Holley is a law enforcement officer, his presence on the grand jury tainted the defendant's true bill and thus a new trial should be ordered. This logic is problematic.

What the dictum in *Rippy* actually states is, "The interest and appearance of justice, however, demand that every reasonable effort be made to insure that grand jurors are reasonably free from prejudice. For example, active or career police officers tend to have an inherent prejudice that should preclude their service." *Id.* at 642. The defendant transposes "police officer" and "law enforcement" to argue the same basis for why Deputy Holley should have been precluded from the defendant's grand jury. There is a material difference in this respect between the more specific "police officer" and broader "law enforcement". If this court were to attribute any weight to this dictum in *Rippy*, the State submits Deputy Holley would still fall outside the plain language interpretation of police officer because he is not in fact police. As the court noted in the hearing on this matter, Deputy Holley is a Davidson County sheriff's deputy and as prescribed by the Metropolitan Nashville Charter, the Davidson County Sheriff and his deputies have no law enforcement power or abilities and are not trained peace officers. Metropolitan Nashville, Tenn. Charter § 16.05 (2019) (Stating, "The sheriff . . . is hereby recognized as an officer of the metropolitan government, He shall have such duties as are prescribed by the Tennessee Code Annotated, section 8-8-201, . . . except that within the area of the metropolitan government the sheriff shall not be the principal conservator of peace. The function as principal conservator of peace is hereby transferred to the metropolitan chief of police. . .")

The State further submits that the dictum in *Rippy* is not an absolute proscription on police officers, or any other law enforcement serving on grand juries; and further because it is dictum, it may be persuasive, but is non-binding nonetheless. The first reason is that that Tennessee Code Ann. §§ 22-1-101—02 specifically and exclusively outline what can disqualify a person from serving on a petit and grand jury; and further, were enacted well-after the decision in *Rippy*. Both of those statutes expressly provide both basis, and only those basis as reasons a person is automatically disqualified from jury service. The second reason is that Rule 6(c) of the Tennessee Rules of Criminal Procedure provides the basis for why a person shall be disqualified for interest. Deputy Holley is neither a grand jury member charged with an indictable offense, grand jury member who is a prosecutor, a grand jury member who is the victim or had property in issue in the case, nor is he related to any party by consanguinity or marriage to the sixth degree. Tenn. R. Crim. Pr. 6(c). The third reason is that the dictum in *Rippy* indicates police officers “should” not serve on grand juries, as opposed to “shall,” and thus leaves open for the possibility that a police officer could serve in that role under certain circumstances.

II. THE RECORD DOES NOT SUPPORT THIS COURT EXERCISING ITS ROLE AS A THIRTEENTH JUROR

The defendant has also raised issues pertaining to the sufficiency of the evidence the jury considered before rendering its verdict. Specifically the defendant argues that the evidence was insufficient to allow the jury to conclude the defendant had notice from the Church that he was not allowed on the property; that the court erred in not rendering a judgment of acquittal regarding whether the defendant was reckless that his presence would cause fear of those on the property; and that Judge Dozier should have disqualified himself from hearing the case.³

³ This court has indicated it will not consider the defendant’s declaration as attached in his most recent motion. Since this declaration serves as the basis for the final issue he has raised relating to Judge Dozier’s alleged conflict of interest, this brief will not address it.

The State submits the trial record is very clear that two different witnesses testified at length regarding the authority the Session held to bar a person from the premises of the church and this Court should not exercise its Thirteenth Juror role to overturn this conviction on that basis. The State further submits that there is significant proof in the record, as testified by two witnesses, that the defendant was aware that his presence on the church property scared people and that in spite of that he continued to go on to the property and that denying a judgment of acquittal with that proof in front of the court was not error.

The State respectfully requests this Court deny the defendant's motion because he waived the issue by not alleging it pretrial, has not shown good cause as to why it was not or could not have been raised, and also because Deputy Holley is not a police officer in the sense it could bar his service on the grand jury. Further, the State submits there is not a basis in the record to allow this court to exercise its Thirteenth Juror role to overturn the jury's verdict.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed to **Phillip Harvey and Greg King**, on this the 31 day of July, 2019.


