

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

v.

WILLIE AUSTIN DAVIS

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Case No. 2017-A-62

ORDER

SEP 17 2019
FILED
CLERK
EWS

I. Introduction

This matter comes before the Court on the Defendant's motion for new trial.¹ After reviewing counsels' arguments, the testimony and exhibits,² and the trial transcript, the Court finds that Defendant's motions shall be DENIED for the reasons set forth herein.

¹ The Defendant filed original motion for new trial pro se on October 27, 2017. Thereafter, the Defendant retained Greg King as counsel and multiple status hearings were held in this Court while awaiting the transcript to be prepared. Prior to the scheduled motion for new trial hearing, however, the Defendant retained additional counsel from Memphis; Phillip Harvey filed the amended motion for new trial on July 12, 2019, which was accompanied by seven attachments labeled as exhibits 1-7. The Court advised the parties at the July 12 hearing that the attachments would be considered by the Court with the exception of the Defendant's declaration identified as exhibit 6 to the motion. The Court instructed the Defendant he would need to testify before the Court under oath. The Defendant was the sole witness at the motion for new trial hearing. The Court granted the State's request to file post-hearing briefing, and the State filed a response on July 31, 2019.

² The following exhibits were introduced into evidence at the July 12, 2019 hearing:

- Exhibit 1: Grand Jury Final Report (January – March 2017), signed by Grand Juror Solomon Holley (also attached to motion)
- Exhibit 2: Photograph of Grand Juror Solomon Holley, III (social media headshot) (attached to motion)
- Exhibit 3: Photograph of Grand Juror Solomon Holley, III (social media) (attached to motion)
- Exhibit 4: DVD containing two videos showing the Defendant's arrest at the church (referenced in the motion, which provides YouTube URLs) (first video shows Sergeant Holley advising the Defendant that the police have been alerted and are on their way to arrest the Defendant at the church if he continues to "cause a scene" and the second video shows the arrest of the Defendant)

At the hearing, defense counsel advised he had a copy of the trial testimony, but he had not received the requested transcript of the voir dire. The court reporter provided the Court and counsel a copy of the voir dire transcript on July 24, 2019. The Court designates the voir dire and trial transcripts as collective Late-Filed Exhibit 5.

II. Procedural History

The Defendant was arrested on November 15, 2015, at the Covenant Presbyterian Church on Hillsboro Road, and he was initially charged with criminal trespass. The State notes in its response brief that the case was set three times before bound over via a preliminary hearing on April 20, 2016.

On August 5, 2016, the Davidson County Grand Jury returned a true bill on aggravated criminal trespass, a Class B misdemeanor, the Defendant was arraigned in case no. 2016-C-1290 on August 24, 2016, in Division I of the Criminal Court.

On January 30, 2017, the Grand Jury returned a superseding indictment (2017-A-62) that charged the Defendant with aggravated criminal trespass—school, a Class A misdemeanor.

Attorney Lauren Wills has represented the Defendant during his General Sessions proceeding up until March 10, 2017, where the Defendant waived his right to counsel and elected to proceed pro se.

As such, the Defendant represented himself at his jury trial held September 11 and 12, 2017, in Division I of the Criminal Court. The jury found the Defendant guilty of aggravated criminal trespass on school property as charged. After a sentencing hearing on September, 28, 2017, the Court imposed a sentence of eleven months and twenty-nine days, suspended to supervised probation with conditions; specifically, the Defendant attend family counseling sessions, stay away from Covenant Presbyterian Church, and have no contact with any present or former church members.

On October 21, 2017, the Defendant was arrested on a probation violation warrant for sending messages to current or former members of the church.

On October 23, 2017, Judge Steve Dozier entered an order recusing Division I from any further proceedings, and the case was reassigned to Division III of the Criminal Court.

On October 27, 2017, the Defendant filed a pro se motion, styled "Motion for Mistrial and New Trial."

This case was first docketed in this Court on November 1, 2017, for the probation violation hearing. The hearing was continued to November 6, 2017, where the Defendant conceded his violation and the Court reinstated his probation. The Defendant had retained Greg King to represent him at the probation violation hearing. The Defendant requested to be represented by counsel on his motion for the trial.

Since Mr. King had not represented the Defendant at trial, he requested to obtain the trial transcript prior to filing an amended motion for new trial. Mr. King was directed to make arrangements with the court reporter to purchase the trial transcript. The Court continued to hold status hearings while awaiting counsel's receipt of the transcript. In May 2019, the Division I court reporter advised this Court that she received payment for the trial transcript, and she provided the trial transcript to the defense shortly thereafter. The Court docketed the case for July 12, 2019 to hold a hearing on the motion for new trial.

In early July 2019, attorney Phil Harvey advised the Court that his firm based in Memphis had been retained to represent the Defendant. Mr. Harvey filed the motion for new trial on the date of the hearing. The parties provided oral argument and four exhibits were introduced into evidence. At the time of the hearing, the parties were still awaiting the transcript of the jury selection, which was late-filed on July 24, 2019. The Court granted the State two weeks to file a written response. The State filed the "State's Response to Defendant's Motion for New Trial" on July 31, 2019.

III. Legal Analysis

Pursuant to Rule 33 of the Tennessee Rules of Criminal Procedure, the Defendant moves this Court for a new trial. The written motion sets forth four issues, and at the hearing summarized as follows:

1. The indictment should have been quashed due to one of the grand jurors being then employed as a "law enforcement officer,"
2. The trial court erred in not rendering a judgment of acquittal when the evidence was insufficient to show that the Defendant had notice from an authorized agent of the church that he was barred from returning to the premises.
3. The trial court erred in not rendering a judgment of acquittal due insufficiency of the evidence.
4. The trial court erred in not disclosing prior to trial "certain relations that may have provided a basis for a motion under Rule 10B for the disqualification of Judge Steve Dozier."

(Defendant's Motion for New Trial, filed July 12, 2019, at 1, 5). During oral arguments, the defense placed emphasis on the first issue concerning the indictment.

A. Indictment & Grand Jury

The Defendant submits he is entitled to a new trial because the Grand Jury was biased, rendering the superseding indictment defective. Specifically, the Defendant contends:

The Court erred in failing to quash Mr. Davis's indictment for defective indictment when Grand Juror Solomon Holley was one of the twelve grand jurors to Mr. Davis's indictment not only while also being employed as a law enforcement officers of Davidson County, but also while being the private security guard involved in the arrest of Mr. Davis that gave rise to the allegations, and therefore also a fact witness in this case even though not called at trial.

(Defendant's Motion for New Trial, filed July 12, 2019, at 1). In support of his argument, the

Defendant introduced the Grand Jury Final Report for the January to March 2017 term (Ex. 1), which includes the signature of Solomon Holley, and the recording of the Defendant's detention and arrest at the church, which shows a uniformed guard wearing a name tag stating "S. Holley" (Ex. 4).

No proof has been presented that the individual in the video is the same person who served on the Grand Jury. Even assuming arguendo Davidson County Sherriff's Office (DCSO) Deputy Holley served on the Grand Jury, there is no proof before the Court that Deputy Holley served on the date that the Defendant's superseding indictment presented to the Grand Jury.³

Additionally, as the Court pointed out at the hearing, the issue presented in the Tennessee Supreme Court case cited by the Defendant, Rippy, is not relevant here. Rippy v. State, 550 S.W.2d 636, 642 (Tenn. 1977) (providing the example that "active or career police officers tend to have an inherent prejudice that should preclude their [grand jury] service"). In the Metropolitan Nashville / Davidson County consolidated government structure, DCSO maintains custody of inmates and possess no police power, or law enforcement authority. METROPOLITAN NASHVILLE, TENN. CHARTER § 16.05.⁴ The recording

³ It is undisputed that Deputy Holley was *not* a grand juror when the Defendant was originally indicted in August 2016 for aggravated criminal trespass. Deputy Holley appears to be one of the thirteen grand jurors who signed the final report for the 2017 January - March term; however, there is no evidence Solomon Holley participated in the review of the Defendant's case in 2017, which elevated the aggravated criminal trespass charge from a Class B Misdemeanor to a Class A Misdemeanor because the offense occurring on property of a private school.

⁴ Section 16 of the Metro Charter provides as follows:

The sheriff, elected as provided by the Constitution of Tennessee, is hereby recognized as an officer of the metropolitan government. He or she shall have such duties as are prescribed by Tennessee Code Annotated, section 8-8-201, or by other provisions of general law; 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 and assigned to the metropolitan chief of police, provided for by article 8, chapter 2 of this Charter. The sheriff shall have custody and control of the metropolitan jail and of the metropolitan workhouse. The council may by ordinance authorize the sheriff

introduced into evidence by the Defendant shows Deputy Holley did not particulate in the arrest of the Defendant. (Ex. 4). Rather, Deputy Holley, serving in the capacity of a private security guard, advises the Defendant that police had been called and were on their way to make an arrest because the Defendant was causing disturbance. Id.

For all these reasons, the Defendant has failed to establish that even if DCSO Deputy Holley served on the Grand Jury that returned the true bill resulting in superseding indictment, there was any conflict of interest as contemplated by the Tennessee Rules of Criminal Procedure.⁵

Furthermore, any challenge to an indictment has been waived pursuant to Rules 12(b)(2) and 12(f) of the Tennessee Rules of Criminal Procedure. Motions alleging a defect in the indictment must be made prior to trial. TENN. R. CRIM. P. 12(b)(2). The record shows that the Defendant raised multiple other challenges about the grand jury, and the Defendant testified to the same at the hearing on the motion for new trial. The Defendant,

to provide security within buildings of the metropolitan government and, pursuant to a written agreement between the metropolitan government and a metropolitan agency or authority or judges of the Davidson County Circuit, Chancery, Criminal or General Sessions courts, within any building or at any official meeting of such agency or authority or within any courtroom while such court is in session. The council may by ordinance, upon recommendation of the metropolitan chief of police and sheriff, authorize the sheriff to perform duties as may be unassigned by the charter, or currently assigned to the metropolitan chief of police, relating to the intake, processing, identification and questioning of arrestees, detainees, prisoners and other persons in official custody.

METROPOLITAN NASHVILLE, TENN. CHARTER § 16.05.

⁵ Rule 6(c) addresses the disqualification of a grand juror for interest and provides:

- (1) *Disqualification.* 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. P. 6(c).

however, did not raise this issue until the conclusion of his trial.

B. Judgment of Acquittal

The Defendant submits a new trial is warranted because the evidence is insufficient to support his aggravated trespass conviction. Specifically, the Defendant contends:

[1] The Court erred in not rendering a judgment of acquittal when the evidence was insufficient to show that Mr. Davis had notice from an authorized agent of the church that he was barred from returning to the premises.

[2] The Court erred in not rendering a judgment of acquittal when the evidence was insufficient to show that Mr. Davis intended, knew, or was reckless about whether his presence would cause fear for the safety of another.

(Defendant's Motion for New Trial, filed. July 12, 2019, at 5).

When reviewing sufficiency of the evidence, the relevant question is "whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979) (emphasis in original); see also TENN. R. APP. P. 13(e). The State is entitled to the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom. State v. Harris, 839 S.W.2d 54, 75 (Tenn.1992). The weight and credibility of the witnesses' testimony are matters entrusted exclusively to the jury as triers of fact. State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App.1994). Because a jury conviction removes the presumption of innocence with which a defendant is initially cloaked at, a convicted defendant has the burden of demonstrating the evidence was insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn.1982).

Aggravated criminal trespass is defined by statute as follows:

- (a) A person commits aggravated criminal trespass who enters or remains on property when:
 - (1) The person knows the person does not have the property owner's effective consent to do so; and
 - (2) The person intends, knows, or is reckless about whether such person's presence will cause fear for the safety of another....

TENN. CODE ANN. § 39-14-406. In this case, the Defendant was charged with trespassing on property that was a campus, property, or facilities of a private school, which elevated the charge to a Class A misdemeanor. TENN. CODE ANN. § 39-14-406(c). That element, however, was not disputed and proof was presented at trial showing Covenant School is located on the church property. See Trial Tr., vol. II, at 99 (upon questioning by the Court, the Defendant acknowledged Covenant Presbyterian had a school and advised he was not challenging that issue).

Having received and reviewed the transcript, this Court finds sufficient evidence supports the Defendant's conviction of aggravated criminal trespass. Specifically, the State presented the testimony of Scott Troxell who had served as a church elder since 2005. Mr. Troxell testified about a letter the Defendant mailed to the church in June 2008 (admitted as Exhibit 1), which related to the conduct of then church officer John Perry. Mr. Troxell testified about how he and others in the church found the Defendant's 2008 letter to be threatening in nature and "an escalation" from previous letters sent by the Defendant to the church. As a result, Mr. Troxell wrote a response letter (admitted as Exhibit 2) to the Defendant on behalf of the Session, or elders, notifying the Defendant, who was not a church member at the time (having resigned from the church in 2006), that he was not

permitted on the property and his presence would “be considered trespassing.” Mr. Troxell testified that shortly thereafter the Defendant again appeared at the church and was escorted off by plain-clothes officers; the Defendant was not arrested or charged at that time. The Defendant did not deny receipt of the church’s letter and acknowledged he had gone to the church and was escorted off the property.

The State also presented the testimony of John Bryant, a church member who became an elder in August 2012. Mr. Bryant testified about the Defendant’s “campaign of writing hundreds, if not thousands, of emails about [the] church” that had been sent to the church congregation and staff of The Covenant School. He further testified that the Defendant had received a letter prior to Mr. Bryant becoming an elder, which advised the Defendant he was not permitted on the property; however, the Defendant still entered the property on a “few occasions” where there were “confrontations.” Mr. Bryant testified that the Defendant had filed several lawsuits against the church

Mr. Bryant further testified about the “fear of” the Defendant by congregation members, particularly in light of an email the Defendant sent in early 2013, shortly after the school shooting at Sandy Hook Elementary in Connecticut. Mr. Bryant explained that as a result of the Defendant’s communication, the church conducted a security survey and hired a private security guard, dressed in uniform with a marked patrol car, to be at church on Sunday mornings, effective February 2013.

Lastly, the State called Metropolitan Police Officers James Smith and John Daugherty who testified about responding to the church on October 25, 2015, where the Defendant was again shown the 2008 letter signed by Mr. Troxell that advised him to stay away from the property, and the Defendant acknowledged to the officers that he had

received said letter. Officer Smith testified that he could have arrested the Defendant on October 25, 2015, but instead he gave the Defendant a warning not to return to the church. Officer Daugherty testified that the Defendant admitted to him that he knew he was feared by church members.

Although the Defendant disputed the authority of the elders to deny anyone entry to the church, particularly without a vote from the congregation, the jury found otherwise. The Defendant also testified presented the testimony of Katherine Davis and Daisy Davis to support his defense that he was lawfully on church property in October 2015. Mrs. Davis, however, confirmed that the Defendant had received the letter from the church advising him to stay away from the property.

Accordingly, taken in the light most favorable to the State, the evidence shows that the Defendant entered the church property without consent and that he intended, knew or was reckless about his presence causing fear for safety. Sitting in the role of thirteenth juror, the Court finds the evidence at trial legally sufficient to support the jury's conviction of aggravated criminal trespass.

C. Recusal

The Defendant submits a new trial is warranted because the trial judge should have been recused from presiding over the trial. The motion provides:

Lastly, Mr. Davis would submit by the attached declaration (Exhibit 6 [to the motion]) that the trial [c]ourt also erred in not disclosing before trial certain relations that may have provided a basis for a motion under Rule 10B for the disqualification of Judge Dozier. Some factual basis for this is suggested in Footnote 1 of the Court's order recusing itself (Exhibit 7 [to the motion]), after trial, on October 23, 2017.

(Defendant's Motion for New Trial, filed. July 12, 2019, at 5). Since the above-referenced

declaration was not made under oath, this Court advised the Defendant the declaration would not be considered. The Defendant's claim is based on an order issued post-trial on October 23, 2017. In that order, attached to the Defendant's motion, the Court states in the first footnote that the Defendant's allegations are based on inaccurate information. Regardless, the Defendant's claim is untimely. The Defendant did not preserve this issue by filing a motion to recuse prior to trial.

IV. Conclusion

For the reasons set forth above, the Court finds the Defendant has raised no claim of merit to substantiate a new trial. Sitting in its role as thirteenth juror, the Court is in agreement with the jury as to the weight of the evidence. The "Defendant's Motion for New Trial" is hereby DENIED.

IT IS SO ORDERED.

ENTERED this the 17 day of September, 2019.


Cheryl Blackburn,
Judge

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