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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

STATE OF TENNESSEE,	)	
	)	
Appellee,	)	
	)	**No. M2019-01852-CCA-R3-CD**
v.	)	**DAVIDSON COUNTY**
	)	
WILLIE AUSTIN DAVIS,	)	
	)	
Appellant.	)	

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE DAVIDSON COUNTY CRIMINAL COURT

BRIEF OF THE STATE OF TENNESSEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the defendant is entitled to plain error review on his issue that the trial court, the Honorable Steve Dozier, should have recused itself prior to the defendant's trial, when the defendant cannot satisfy the required elements of plain error review.

STATEMENT OF THE CASE

The defendant appeals from his conviction for aggravated criminal trespassing. His stated Issue is that the trial court, the Honorable Steve Dozier, committed misconduct by not recusing itself at the beginning of his case.[1] However, he appears to suggest in his Facts section that Judge Blackburn, who took over the case from Judge Dozier, should have also recused herself.

The defendant filed voluminous pleadings in the trial court; the most concise is his "Declaration," which sets out his description of the chain of events which led Covenant Presbyterian Church ("Church") to have him arrested for aggravated criminal trespass. (II, 169-78.) As set out in the Declaration, the defendant was a deacon in the Church in Nashville in 2002. (II, 169.) He became concerned about the welfare of some of the children in the Church and tried to alert members of the Church. (II, 169-70.) Specifically, the defendant became upset that several children from the family of Greg Lurie had been placed in the home of John Perry, which was a Church "safe house;" Perry was later excommunicated for molesting REDACTED . (II, 171; Vol. II, Ex. 5, at 49-51.)[2] In sum, the defendant believed that members of the Church

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[1]The defendant recently sought to recuse "of all Tennessee Criminal Appellate Court Judges, and the Tennessee Supreme Court." (Order, Aug. 12, 2020.) This Court denied the motion with regards only to this Court, finding that the defendant's motion failed to comply with the requirements for seeking recusal. *Id.*

[2]The jury selection and trial transcripts are found in Exhibit 5. The jury selection is in the first volume of exhibits, and the trial is spread over the remaining three volumes of exhibits.

In an abundance of caution, protected information is REDACTED in submission to Attorney Larry Crain's limited injunction granted on 9/24/2018 to protect Victim 1's identity. Attorney Larry Crain is child-molester John Perry's attorney.

were aiding or abetting child molesters. He resigned from the Church in 2006. (II, 170.)

The record establishes that the members of the Church, having received multiple letters and email messages from the defendant, became alarmed with the defendant's correspondence. This resulted in a member of the board of trustees (known as the "Session") sending a letter to the defendant in 2008, forbidding him from coming onto Church property. (Vol. II, Ex. 5, at 24-27.) The defendant nevertheless entered the property on several occasions, before finally being arrested for trespassing on November 15, 2015. (Vol. II, Ex. 5, at 121.)

In 2016, the defendant was indicted by the Davidson County Grand Jury for the aggravated criminal trespass of the Church. (I, 4-5.) Counsel was appointed but later moved to withdraw from the case. (I, 7.) In January 2017, a superseding indictment was returned, charging the same crime but alleging that he trespassed upon a campus, property or facility of a public or private school, which increased the crime to a Class A misdemeanor. (I, 23.) The defendant chose to represent himself at trial. (I, 24, 28.)

Following a jury trial on September 12, 2017, with the Honorable Steve Dozier presiding, the defendant was convicted of the charged offense. (III, 309.) He was sentenced to 11 months and 29 days of probation. (III, 312.) Judgment was filed on September 28, 2017. (III, 312.)

Several weeks after the defendant was sentenced to probation, Judge Dozier became aware that the defendant had sent out mass e-mails to various people, in violation of his probation. (III, 314, 316-17.)

Judge Dozier, after reviewing some of the emails in question, issued an order recusing himself on October 23, 2017. (III, 317.) In reviewing the emails, the court noted the following in footnote one of the order:

> Part of the mass email contained information concerning the Court and photographs of the Court. The Court has not thoroughly reviewed the new emails but is aware that, apparently, the Defendant claims some conflict of interest based on the Court's uncle, at some point, being a member of CPC [the Church]. The defendant has not filed a motion to recuse, but the Court considers the Defendant's allegations as such. The Defendant's premise toward the Court is based upon inaccurate information. At or before trial, the Court had no information regarding the church membership of an uncle. If it analyzed the Defendant's current mailing, the Court may know dozens of former or current members of CPC. However, this information would have no bearing on this case or be determinative on whether the Defendant could or did receive a fair trial and/or sentence.

(III, 317.)[3] The court noted in footnote two the following:

> The Court is aware that the Defendant has been arrested on a probation violation signed by Judge Cheryl Blackburn on October 20, 2017, after the Court had left town and was unavailable. Since the Defendant is incarcerated, the Court has requested a transcript be prepared from the sentencing hearing to facilitate an expedient hearing by the new court. The newly assigned court can determine whether the Defendant still desires to represent himself.

(III, 317.)

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[3] A copy of what was presumably sent out in the mass email is in the record, (III, 349), and is also an appendix to this brief.

On October 23, 2017, Judge Blackburn was formally assigned to the defendant's case. (III, 318.) The defendant, after 18 days in jail, was reinstated to probation by Judge Blackburn. (III, 323.)

On October 27, 2017, the defendant filed a handwritten motion for mistrial and a new trial. (III, 319-322.) In the motion, the defendant argued that Judge Dozier should have recused himself, citing the court's order and footnote one. (III, 319.) The defendant asserted that footnote one established that Worrick Robinson, a member of the Church, was a friend of Judge Dozier. (III, 319.) The defendant also alleged that Robinson, who was counsel to the Church, was a financial donor to Judge Dozier's election campaign and had been present both at the first day of trial and at the sentencing hearing. (III, 319.) The defendant contended that he was unaware of the relationship between Robinson and the court prior to trial. (III, 319.)

In a parenthetical one-sentence aside, the defendant also asserted that, "Judge Blackburn should recuse if she is assigned as new judge." (III, 322.)

The defendant, also being sued in civil court by the abuse victim, filed a motion to recuse the judge in that case, alleging that the court had a child attending Montgomery Bell Academy, and that there was a connection as well to Brentwood Academy and St. Paul Christian Academy. (III, 330.)

On July 12, 2019, the defendant, now represented by counsel, filed an amended motion for new trial. (IV, 407-36.) The defendant challenged the makeup of the grand jury, the sufficiency of the evidence and also, in one paragraph, asserted that Judge Dozier erred by not

disclosing "certain relations" before trial that might have provided a basis for recusal. (IV, 411.) The defendant filed another "Declaration," (Ex. 6), with his amended motion for new trial, in which he stated that the court should have recused itself prior to trial based on the court's connections with Worrick Robinson; the Church's connection with the court's uncle, Don Dozier; the court's father, former police officer Tom Dozier; and the court's past membership in Woodmont Baptist Church with witness John Bryant. (IV, 429-30.) The defendant stated that he learned this information after trial but did not explain how he learned it, other than suggesting footnote one of Judge Dozier's order. (IV, 429-30.)

At the hearing on the motion for a new trial, the defendant, represented by counsel, acknowledged that no motion to recuse was filed prior to trial but explained that he did not become aware of the grounds for recusal until after trial. (XIV, 18.) The defendant relied on footnote one in the order. (XIV, 20.)

On September 17, 2019, Judge Blackburn issued a written order denying the motion for new trial. (IV, 445-56.) In denying the defendant's motion for new trial, the Judge Blackburn held as follows:

> 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 court 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.
>
> 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, 454-55.) Notice of appeal was filed on October 16, 2019. (IV, 457.)

STATEMENT OF THE FACTS

The defendant's defense at trial was that the Session lacked the authority to ban him and that they did so to perpetuate the molestation cover-up. On appeal, he does not appear to challenge the sufficiency of the evidence. Rather, as he states in his Issue Presented, he challenges only Judge Dozier's failure to recuse himself prior to trial which he contends resulted in an unfair trial. Nevertheless, because the facts relevant to sufficiency of the proof are intertwined with the defendant's recusal issue, a review of the lengthy trial is provided.

Scott Troxel was an elder with the Session of Covenant Presbyterian Church in 2008; the Session functioned in the same manner as a board of trustees. (Vol. II, Ex. 5, at 22-24.) The defendant, who was not a member of the church at the time, had previously sent a series of letters to the church. On June 25, 2008, Troxel received a letter, which was sent to many members of the church, that was deemed to be threatening. (Vol. II, Ex. 5, at 24-27.) As a result, the Session determined that the defendant would not be allowed on the property and that this ban would be legally enforced. (Vol. II, Ex. 5, at 29-30; Ex. 2.) Troxel wrote a letter to that effect, which was sent to the defendant. (Vol. II, Ex. 5, at 29-30; Ex. 2.)

Troxel testified that the defendant nevertheless came onto the property, which included a school, several weeks later. (Vol. II, Ex. 5, at 31-32.) He was escorted off the premises by security who had been hired for just such an event. (Vol. II, Ex. 5, at 31.)

On cross-examination, Troxel said that they followed the advice of attorney Worrick Robinson. (Vol. II, Ex. 5, at 37.) Troxel agreed that

his name was not on the property deed. (Vol. II, Ex. 5, at 44.) However, as an elder, he was authorized to write the trespass letter to the defendant after the Session voted in favor of it. (Vol. II, Ex. 5, at 45.) Troxel was familiar with the Book of Church Order, which the defendant asserted would require a vote by the entire congregation. (Vol. II, Ex. 5, at 46.) Troxel explained that matters involving real estate required a congregational vote, but that his interpretation of the Book was that the Session could prohibit someone from coming onto the property. (Vol. II, Ex. 5, at 45-46.) Troxel acknowledged that another member, John Perry, had admitted to molesting REDACTED . (Vol. II, Ex. 5, at 51.) He was removed from the church in 2010. (Vol. II, Ex. 5, at 58, 63.)

The defendant questioned Troxel about whether he or anyone else called police when they learned about Perry. (Vol. II, Ex. 5, at 53.) Troxel said the statute of limitations had expired and REDACTED , who had turned 18, chose not to press charges. (Vol. II, Ex. 5, at 53.) Troxel admitted that Worrick Robinson was involved in board meetings regarding the defendant in 2008. (Vol. II, Ex. 5, at 54.) There was no reference to the Perry situation. (Vol. II, Ex. 5, at 56.)

John Bryant is a retired attorney and former federal magistrate judge. (Vol. II, Ex. 5, at 84.) He was a member of the church, but never met the defendant. (Vol. II, Ex. 5, at 86.) Bryant became an elder in 2012 and testified that the Session had the power to ban persons from the property. (Vol. II, Ex. 5, at 92.)

Bryant learned of the defendant's constant emails and letter writing to government officers, the FBI, and the governor's office. (Vol.

II, Ex. 5, at 87.) Bryant knew that a trespass letter had been sent to the defendant, and that the defendant had violated it on several occasions. (Vol. II, Ex. 5, at 88.) Bryant testified that in 2013, the defendant increased his email campaign to the congregation and members of the school. (Vol. II, Ex. 5, at 89.) This was around the time of the Sandy Hook shooting, and the defendant's emails resulted in another meeting which was open to all interested parties. (Vol. II, Ex. 5, at 89.) Some members were concerned for the safety of their children. (Vol. II, Ex. 5, at 90.) Private security was hired to protect the church and school. (Vol. II, Ex. 5, at 90.)

Bryant mentioned that he had formerly been a member of Woodmont Baptist, and the court immediately informed all parties that, "just so everyone knows this. At some point our membership at Woodmont crossed." (Vol. II, Ex. 5, at 94.) The defendant voiced no request for recusal, but simply said, "I went to Woodmont Baptist as a boy and Donny Sherman played ball with me growing up. His dad was the pastor there." (Vol. II, Ex. 5, at 94.)

On cross-examination, Bryant read from chapter 12 of the Book of Church Order, which provided that the Session was charged with approving actions of "special import affecting church property." (Vol. II, Ex. 5, at 102.) He noted that the bylaws had the same provision; in other words, buy or selling property required the entire congregation's vote, but the Session managed other matters. (Vol. II, Ex. 5, at 103.) Bryant agreed that visitors were always welcome at the church. (Vol. II, Ex. 5, at 111-12.)

Metro Officer James Smith testified that on Sunday, October 25, 2015, he responded to a call at the church. (Vol. II, Ex. 5, at 121.) He was informed that the defendant had been warned to stay away, via a trespass letter, but was on the property. (Vol. II, Ex. 5, at 122.) The defendant admitted to Smith that he was aware of the letter. (Vol. II, Ex. 5, at 123.) The defendant was given verbal warnings by Smith and Barry Kneeland, a pastor, to stay off the property, but was not arrested. (Vol. II, Ex. 5, at 124.)

On cross-examination, Smith agreed that the defendant was sitting quietly in the church on that day. (Vol. II, Ex. 5, at 126.) He agreed that there was no trespass waiver on file with police. (Vol. II, Ex. 5, at 130.) Smith agreed that the defendant told him about a child abuse allegation and he had passed the information to a detective. (Vol. II, Ex. 5, at 132-33.)

Officer John Daugherty was the other officer on the scene that day. (Vol. II, Ex. 5, at 143.) His testimony was similar to Officer Smith's testimony. (Vol. II, Ex. 5, at 144-45.) Daugherty said the defendant acted "strangely," keeping his hands raised and saying he was afraid he would be shot. (Vol. II, Ex. 5, at 145.) The defendant said he was aware that church members were afraid of him, and he wanted to try to alleviate that fear. (Vol. II, Ex. 5, at 146.) The defendant was given a verbal warning not to return or he would be arrested. (Vol. II, Ex. 5, at 146.)

However, Daugherty testified that on November 15, 2015, the defendant returned to the church. (Vol. II, Ex. 5, at 146.) He was

arrested. (Vol. II, Ex. 5, at 147.) The defendant admitted that he knew that his presence scared church members. (Vol. II, Ex. 5, at 148.)

On cross-examination, Daugherty admitted that the defendant had explained to him about "Mike Huckabee and the child molester cover up that had gone on [at the church]." (Vol. III, Ex. 5, at 152.) Daugherty agreed that it was possible that "someone with a lot of power, federal judge, was able to get the police to go to dirty work for them." (Vol. III, Ex. 5, at 153.) Daugherty agreed that during his previous contact with the defendant, the defendant apologized and said, "this may be the only way that I have a chance of exposing what's going on." (Vol. III, Ex. 5, at 157.) Daugherty agreed that the defendant never resisted arrest and was peaceful. (Vol. III, Ex. 5, at 157.)

The defendant called his wife, Katherine Davis, to testify on his behalf. (Vol. III, Ex. 5, at 163.) Ms. Davis explained how she and the defendant met and were married at the church. (Vol. III, Ex. 5, at 165.) Ms. Davis detailed how she became alarmed in 2002 about the behavior of some children she saw in Sunday School, which she believed was a result of child abuse. (Vol. III, Ex. 5, at 167.) She never resigned from the church; after the defendant wrote his letter to the elders in 2008, she tried to reconcile with them. (Vol. III, Ex. 5, at 167-70.) She also brought others to the church to worship, including Pauline and Albert Gore. (Vol. III, Ex. 5, at 171-73.)

She never expected to get the letter from Scott Troxel in 2008 which banned the defendant from church grounds. (Vol. III, Ex. 5, at 175.) The next Sunday, when she, the defendant, and their children tried to attend, they were blocked by seven "really large men," armed

with weapons, one of whom was Worrick Robinson, who would not let them enter the church. (Vol. III, Ex. 5, at 175.) The men allowed her children inside but followed them. (Vol. III, Ex. 5, at 178.) The police did not come to the scene, however, but came to their home two days later and stayed for two hours, which terrified her. (Vol. III, Ex. 5, at 182.)

However, their 12-year-old daughter was later invited back to attend church. (Vol. III, Ex. 5, at 186.) Ms. Davis was bothered that her daughter could go to church but that neither she nor the defendant could. (Vol. III, Ex. 5, at 187.) She said she had seen the church take other children away from their parents and was afraid that might happen to her daughter. (Vol. III, Ex. 5, at 188.) She said her daughter was bullied as a result. (Vol. III, Ex. 5, at 190.) She heard rumors that someone said the defendant was a "shooter." (Vol. III, Ex. 5, at 189.)

Ms. Davis said she went back to the church for a period of time and kept expecting an apology for the way they treated the defendant. (Vol. III, Ex. 5, at 191.) The elders refused to do so. (Vol. III, Ex. 5, at 191.)

Ms. Davis said in 2010, she went back to church and on that same day, John Perry was excommunicated that day for his sins against REDACTED . (Vol. III, Ex. 5, at 192.) She was invited to a wedding at the church in 2012 and attended without incident. (Vol. III, Ex. 5, at 193.) In 2015, when she went to church with her children and the defendant, the defendant was arrested. (Vol. III, Ex. 5, at 193.) She said the defendant never owned a gun and never threatened anyone. (Vol. III, Ex. 5, at 195.)

Ms. Davis believed that Scott Troxel was hiding the fact that the church knew they had a child molester in their midst and did nothing about it. (Vol. III, Ex. 5, at 196.) She said that instead, they tried to keep the defendant from exposing the situation by keeping him away. (Vol. III, Ex. 5, at 197.)[4]

On cross-examination, Ms. Davis said her family did not change churches after the trespass letter because the defendant was a deacon and "he knew the rules of the church." (Vol. III, Ex. 5, at 4.) She denied that the defendant was scaring people at the church. (Vol. III, Ex. 5, at 5.) She said people at the church "created hysteria" about her husband. (Vol. III, Ex. 5, at 6.) She and the defendant never moved on because "we have not reconciled the lie that has been placed on our family." (Vol. III, Ex. 5, at 17.) She agreed that she would secretly record video and audio and post it on the internet "to have disclosure and to be honest and to be open, to be transparent." (Vol. III, Ex. 5, at 19-20.) She admitted that her email account was under the name of Val Glen. (Vol. III, Ex. 5, at 20.)

Ms. Davis agreed that the defendant went on the church property on November 15, 2015. (Vol. III, Ex. 5, at 27.) She acknowledged that the defendant got a letter from the church banning him from the property in 2008. (Vol. III, Ex. 5, at 28.) However, she said that Scott Troxel lacked the authority to write the letter. (Vol. III, Ex. 5, at 28.)

[4]At this point, trial ended for the day and resumed the next day. However, pagination for the next day of trial begins at page 2 of the same volume.

On redirect examination, Ms. Davis testified at length about John Perry, the Church's action in sending Perry to get treatment, the cover-up organized by the district attorney, and the lawsuits filed by the defendant against the Church. (Vol. III, Ex. 5, at 29-60.)

The defendant's daughter testified regarding actions the church had taken against her, contending that she had been bullied. (Vol. III, Ex. 5, at 65-90.)

The defendant testified on his own behalf. (Vol. III, Ex. 5, at 93.) The entirety of his testimony is as follows:

> The question is, did I knowingly, intentionally, recklessly enter or remain on the property of Covenant Presbyterian Church knowing that I did not have the effective consent of Covenant Presbyterian church to do so and did I intend to know or as reckless about whether his presence would cause for the safety of the children. And I want to ask myself, did I intentionally and knowing do these things?
>
> And my answer would be: No. Because I was trained as a deacon by the Presbyterian Church of America. I was in a nonprofit, tax exempt that allows the taxpayers—they gave that exemption to the churches so they can be—you know have properties and do good works. And inside the deacon's responsibility which I was charged with, it was to look at the congregation's property. It wasn't my property. It wasn't federal judge John Bryant's property or Scott Troxel's property, it belonged to the Covenant corporation, which is a large group of people who vote. And they don't just vote once a year and give them all mighty power to go every time things come up and that they go and have congregational meetings and they vote. And they have to get approval to do those things.
>
> So as a deacon, I knew that and inside those by laws, it says that no significant property decision can be made without

> the consent of the congregation and the approval of the session. That's my only question and answer for myself.

(Vol. III, Ex. 5, at 93-94.)

In his closing argument, the defendant argued that Troxel lacked the authority to issue the trespass letter and only did so to perpetuate the cover-up of adult molesters in the Church. (Vol. IV, Ex. 5, at 107-25.)

ARGUMENT

The Defendant is Not Entitled to Plain Error Review of His Recusal Issue.

The defendant's stated Issue is that Judge Dozier should have recused himself. However, because no motion to recuse was filed, the defendant can only seek relief via plain error relief. The record does not support such relief.

In his Facts section, the defendant appears to suggest that Judge Blackburn should have also recused herself, because she hand-picked a grand juror; excluded his sworn Declaration at the motion for new trial, and tried to silence him by banning him from communicating with Montgomery Bell Academy. However, the defendant never filed a motion for recusal with Judge Blackburn either, and this claim likewise does not merit plain error relief.

"The right to a fair trial before an impartial tribunal is a fundamental constitutional right." *State v. Austin*, 87 S.W.3d 447, 470 (Tenn. 2002). In particular, "[a] trial before a biased or prejudiced judge is a denial of due process." *State v. Rimmer*, 250 S.W.3d 12, 37 (Tenn. 2008). Tennessee Supreme Court Rule 10B section 1.01 "expressly provides that any party seeking disqualification or recusal of a trial judge 'shall do so by a timely filed written motion.'" *Cain-Swope v. Swope*, 523 S.W.3d 79, 88 (Tenn. Ct. App. 2016).

Regarding Judge Dozier, the defendant apparently became aware of some connection between the court and the court's uncle's membership in the Church, as evidenced by his email with the photograph of the two together, with the caption "Ex-Covenant Pres.

member- current Westminster cult member." (III, 349 (copy attached).) However, the defendant did not file a motion to recuse the court. It is well-established that "recusal motions must be filed promptly after the facts forming the basis for the motion become known, and the failure to assert them in a timely manner results in a waiver of a party's right to question a judge's impartiality." *Duke v. Duke*, 398 S.W.3d 665, 670 (Tenn. Ct. App. 2012) (internal quotation marks and citation omitted).

Accordingly, the defendant can only pursue his claim via plain error review. *See State v. Hester*, 324 S.W.3d 1, 72 (Tenn. 2010) (lack of recusal motion results in plain error review only); *State v. Vandenburg*, No. M2017-01882-CCA-R3-CD, 2019 WL 3720892, at *72 (Tenn. Crim. App. Aug. 8, 2019) (same), *perm. app. denied* (Tenn. Jan. 15, 2020).

The requirements for plain error relief have not been met in this case. There are five factors that must be established before an error may be recognized as plain:

> (a) the record clearly establishes what occurred in the trial court;
> (b) a clear and unequivocal rule of law was breached;
> (c) a substantial right of the accused was adversely affected;
> (d) the accused did not waive the right for tactical reasons; and
> (e) consideration of the error is "necessary to do substantial justice."

State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000) (quoting *State v. Adkisson*, 899 S.W.2d 626, 641-42 (Tenn. Crim. App. 1994)). The burden is on the defendant to establish all five factors, and "complete consideration of all the factors is not necessary when it is clear from the record that at least one of the factors cannot be established." *Id.*

Furthermore, the error must be of "such a great magnitude that it probably changed the outcome of the trial." *Id.* at 283.

Given the sparsity of the record on the issue of recusal, and the extensive proof presented on the defendant's molestation claims which—while arguably somewhat relevant to the defendant's defense, lacked legal relevance to the elements of the trespassing charge—the defendant cannot meet his burden of establishing plain error. [5]

Recusal should occur if the judge "has any doubt as to his ability to preside impartially in a criminal case or whenever his impartiality can reasonable be questioned." *State v. Thigpen*, No. M2019-00047-CCA-R3-CD, 2020 WL 2216205, at *6 (Tenn. Crim. App. May 7, 2020) (citing *Pannel v. State*, 71 S.W.3d 720, 725 (Tenn. Crim. App. 2001)) (no perm. app. filed). Similarly, recusal is appropriate "when a person of ordinary prudence in the judge's position would find a reasonable basis for questioning the judge's impartiality." *Id.* (citing *Alley v. State*, 882 S.W.2d 810, 820 (Tenn. Crim. App. 1994)).

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[5] Tenn. Code Ann. § 39-14-406 provides:
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;

. . . .

(c) Aggravated criminal trespass is a Class B misdemeanor unless it was committed in a habitation, in a building of any hospital, or on the campus, property, or facilities of any private or public school, in which event it is a Class A misdemeanor.

First, there is a lack of a complete record on the issue. The defendant filed a "Declaration" with his amended motion for new trial, in which he stated that the court should have recused itself based on the court's connections with Worrick Robinson; the Church's connection with the court's uncle, Don Dozier; the court's father, former police officer Tom Dozier; and the court's past membership in Woodmont Baptist Church, where witness John Bryant was a member at some point. (IV, 429-30.) The defendant stated that he learned this information after trial but did not explain how he learned it, other than the footnote one of Judge Dozier's order. (IV, 429-30.)

The only proof related to the defendant's Declaration is footnote one of the court's recusal order, issued after the defendant was arrested for sending out a mass email in violation of his probation:

> Part of the mass email contained information concerning the Court and photographs of the Court. The Court has not thoroughly reviewed the new emails but is aware that, apparently, the Defendant claims some conflict of interest based on the Court's uncle, at some point, being a member of CPC [the Church]. The defendant has not filed a motion to recuse, but the Court considers the Defendant's allegations as such. The Defendant's premise toward the Court is based upon inaccurate information. At or before trial, the Court had no information regarding the church membership of an uncle. If it analyzed the Defendant's current mailing, the Court may know dozens of former or current members of CPC. However, this information would have no bearing on this case or be determinative on whether the Defendant could or did receive a fair trial and/or sentence.

(III, 317.)

This was the only proof relied upon at the motion for new trial hearing. (XIV, 18-20.) This portion of the limited record thus establishes that Judge Dozier was unaware of a relative's membership in the Church. Only when the defendant insinuated in his email that there was some connection between the court, his uncle, and the Church, did the court recuse itself.

No proof was developed that Worrick Robinson was closely connected to the court. As the defendant notes in his brief, he questioned the jury venire regarding any connection to Worrick Robinson. (Def. Br. at 13.) Presumably, the defendant would have filed a motion to recuse at this time if he had knowledge of a connection between Worrick Robinson and the court. The defendant does not explain how he, after trial, arrived at the conclusion that Robinson was closely connected to the court.

The same analysis applies to the defendant's allegation regarding the court's father, who the defendant contends was the "longest serving police officer in the history of Nashville." (Def. Br. at 14.) There is nothing in the record on this issue other than the defendant's allegations. In any event, a judge's connection to law enforcement via past employment with the district attorneys' office does not automatically merit recusal, so the prior employment of the court's father should likewise not merit recusal on its face. *See Duff v. State*, No. E2017-01757-CCA-R3-PC, 2018 WL 5305052, at *8 (Tenn. Crim. App. Oct. 25, 2018) (citing *State v. Conway*, 77 S.W.3d 213, 225 (Tenn. Crim. App. May 8, 2001) (holding the trial judge was not required to recuse himself when he was a prosecutor in the defendant's prior

conviction and that conviction was used to enhance the defendant's current conviction)); *Moultrie v. State*, 584 S.W.2d 217, 219 (Tenn. Crim. App. Nov. 22, 1978) (where "the trial judge had at some point in the past been an assistant attorney general who had issued a subpoena in an unrelated trial of petitioner" recusal was not required)), *perm. app. denied* (Tenn. Feb. 20, 2019).

Finally, it is worth noting that when John Bryant was testifying, he mentioned that he had formerly been a member of Woodmont Baptist, and the court immediately informed all parties that, "just so everyone knows this. At some point our membership at Woodmont crossed." (Vol. II, Ex. 5, at 94.) The defendant voiced no request for recusal, but simply said, "I went to Woodmont Baptist as a boy and Donny Sherman played ball with me growing up. His dad was the pastor there." (Vol. II, Ex. 5, at 94.) This point in contention is thus clearly waived; the defendant appears to have made a tactical decision not to move for recusal.

Given the foregoing, there is nothing in the record that, at the time of trial, cast doubt on the court's ability to preside impartially or would cause a person of ordinary prudence in the judge's position to find a reasonable basis for questioning the judge's impartiality. *Thigpen*, 2020 WL 2216205, at *6. "[P]ublic officials in Tennessee are presumed to discharge their duties in good faith and in accordance with the law." *West v. Schofield*, 460 S.W.3d 113, 131 (Tenn. 2015). Only after trial and sentencing, when the defendant suggested some improper connection to between the court's uncle and the Church, of which the court was unaware, did the court recuse itself, without any motion to

recuse from the defendant. Accordingly, given the limited and incomplete record, the defendant cannot show that a clear and unequivocal rule was violated.

Nor can the defendant show that a substantial right was violated, and that consideration of the issue is necessary to do substantial justice. Though the defendant contends that the court exhibited bias by helping perpetuate the molestation coverup, the trial transcript shows otherwise.

During a pretrial hearing, the defendant sought to subpoena 160 witnesses regarding his molestation claim. (IX, 11-12.) The court held that a molestation claim that was several years old did not constitute a defense to aggravated criminal trespassing. (IX, 12.)

Nevertheless, a great deal of proof was admitted during cross-examination regarding the defendant's allegation. As noted in the defendant's brief:

> Judge Dozier did a great job of managing and leading Scott Troxel through his challenging sworn testimony but the "child sex abuse-safe house cover-up" door had been knocked open and Scott Troxel could not hide any more as he answered more questions in greater detail about child-molester John Perry and the July 14, 2008 Covenant Board Meeting.

(Def. Br. at 23.)

The record shows that the State raised an objection as to relevance of the molestation proof during Troxel's cross-examination, but the court overruled it, stating that the defendant "has a right . . . for the jury to try to understand, and I'm trying to facilitate this." (Vol. II, Ex. 5, at 52.) As set out in the defendant's brief, Troxel testified at

length on the molestation issue during cross-examination. (Def. Br. at 23-25.) Troxel acknowledged that John Perry had admitted molesting REDACTED . (Vol. II, Ex. 5, at 51.) Troxel admitted that Perry was removed from the church in 2010. (Vol. II, Ex. 5, at 58, 63.) The defendant's wife also testified at length about the issue. (Vol. III, Ex. 5, at 163-97.)

The court did deny the defendant's request to call the assistant district attorney to the stand to question him regarding "the letters." (Vol. III, Ex. 5, at 96.) However, the defendant offered no other argument on the issue, and it is unknown what relevant proof the defendant expected to get from the assistant district attorney. The defendant, therefore, cannot show that this ruling indicated bias on the part of the court. *See Alley v. State*, 882 S.W.2d 810, 821 (Tenn. Crim. App. 1994) (reiterating that adverse rulings by a trial court, even if erroneous, are not usually sufficient grounds to establish bias).

In sum, the defendant's defense was that the Session lacked the authority to ban him and that they did so to perpetuate the cover-up. The court did not hinder the defendant in presenting this defense; the jury heard extensive proof on this issue via the defendant's cross-examination of the State's witnesses, as well as the defendant's wife and daughter. Accordingly, the defendant cannot show that a substantial right was violated, and that consideration of the issue is necessary to do substantial justice.

Regarding the defendant's allegations against Judge Blackburn, the defendant appears to suggest in his Facts section that Judge Blackburn should have also recused herself because she hand-picked a

grand juror; excluded his sworn declaration, and tried to silence him by banning him from communicating with Montgomery Bell Academy.

However, the defendant, other than his parenthetical remark in his handwritten motion for new trial, never filed a Rule 10B motion for recusal with Judge Blackburn. Additionally, the defendant has not denominated this claim as an issue on appeal, and this Court should find it waived for review. *See Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012) (an issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4)). In any event, this claim likewise does not merit plain error relief.

As to the grand juror issue, the defendant contends that he was detained by Solomon Holley, a church security guard and deputy with the Davidson County Sheriff, on the day he was arrested, and that a Solomon Holley was also on the grand jury which returned the superseding indictment, which was supervised by Judge Blackburn. *See* grand jury report, (IV, 419); Facebook photo from Solomon Holley III, at (IV, 421, 423), video of defendant's arrest (IV, 424.)

Judge Blackburn held that there was no proof that the Holley that detained the defendant was the Holley that served on the grand jury; there was no proof that the Holley on the grand jury actually heard the defendant's case; and finally, that the law enforcement exception for serving on a grand jury, set out in *State v. Rippy*, 550 S.W.2d 636, 642 (Tenn. 1977), was not applicable because the Davidson County Sheriff had no law enforcement authority. (IV, 448-49.)

The court pointed out that the defendant had no dispute over the first grand jury that returned the original indictment. (IV, 449, n.3.) Finally, the court held that the defendant failed to challenge the indictment on this ground prior to trial as required by Tenn. R. Crim. P. 12, although he raised other challenges to the indictment pretrial. (IV, 450.)

The trial court's ruling does not constitute proof of bias; rather, it highlights the lack of proof presented on the issue, which precludes plain error relief from this Court. Additionally, there is no showing that Judge Blackburn "handpicked" Mr. Holley, given that grand jurors are largely picked at random. *See* Tenn. R. Crim. P. 6.[6]

Moreover, even if the two Holleys were the same, it does not automatically void the indictment. As *Rippy* noted, Tennessee courts "have never required grand jurors to be free from previous opinions as to the guilt or innocence of a defendant." *State v. Fitzpatrick*, No. E2014-01864-CCA-R3-CD, 2015 WL 5242915, at *10 (Tenn. Crim. App. Sept. 8, 2015) (citing *Rippy*), *perm. app. denied* (Tenn. Feb. 18, 2016).

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[6] Tenn. R. Crim. P. 6 provides:

Formation at a Regular Term. On the first day of each term of court at which a grand jury is required to be impaneled, the judge of the court authorized by law to charge the grand jury and to receive its report shall direct the names of all the qualified jurors in attendance for the criminal courts of the county to be written on separate slips of paper and placed in a box or other suitable receptacle and drawn out by the judge in open court. The foreperson and the twelve qualified jurors whose names are first drawn constitute the grand jury for the term and shall attend the court until dismissed by the judge or until the next term.

The grand jury does not determine the guilt or innocence of an accused; instead, it serves as an investigatory and accusatory body that determines whether there is sufficient evidence to justify bringing an accused to trial. *Id.* (citing *State v. Felts,* 418 S.W.2d 772, 774 (Tenn. 1967)). Therefore, "in the absence of a statutory prohibition, express malice, bribery or other equally reprehensible conduct, there is no legal objection to a person with bias or prejudice serving as a member of a grand jury." *Rippy,* 550 S.W.2d at 642.

The defendant has made no showing here that the two Solomon Holleys are the same person, and even if they are, no showing that Holley possessed "express malice, bribery or other equally reprehensible conduct" that would justify setting aside the superseding indictment. Accordingly, this record for this allegation is insufficient to support plain error.

The defendant next contends that Judge Blackburn exhibited bias by failing to consider his "Declaration" that he attached to his amended motion for new trial, at which he was represented by counsel. (IV, 429-32.) In his "Declaration," the defendant said he never learned about the connection between Judge Dozier and Worrick Robinson, and other members of the Church, until after trial, and that Judge Dozier should have recused himself.

At the motion for new trial hearing, the court was not sure what to make of the Declaration. (XIV, 11.) The court inquired of counsel if they had any other proof to support recusal of Judge Dozier other than the Declaration, as required by Rule 10B. (XIV, 16.) Counsel agreed

that the Declaration was not a substitute for a proper Rule 10B motion. (XIV, 17-18.)

The court held that it could not anticipate how Judge Dozier would respond to the allegations made in the Declaration, and that the Declaration, in and of itself, was insufficient to establish that Judge Dozier should have recused himself. (XIV, 18-19.) Defendant's counsel finally conceded that making the Declaration an exhibit "may not be necessary;" rather, he would rely on footnote one of Judge Dozier's recusal order. (XIV. 20-22.)

Judge Blackburn's holding on this issue does not indicate bias. The court was simply adhering to the requirements of Rule 10B. Moreover, counsel agreed that the Declaration was not required for consideration of the issue.

Finally, the defendant argues Judge Blackburn showed bias by preventing him from sending mass emails to parents at Montgomery Bell Academy. By way of context, at the defendant's revocation hearing in November of 2017, the court noted that the original judgment had the prohibition against the defendant contacting anybody at the Church. (XI, 5.) A revocation order was issued when the defendant violated this provision. (XI, 6.)

The defendant, represented by counsel, conceded the violation, but later testified that "I took every precaution not to send it to somebody like that that I could, but it's possible outside of that I hit somebody." (XI, 8, 12.) The defendant said he would not send any more emails "to anyone or any entity or establishment that . . . has to do with that order

or anyone at this point." (XI, 12.) The defendant agreed that he could "stop contacting these people." (XI, 29.)

However, about two months later, another very short hearing was held after the defendant sent out a mass emailing to parents at Montgomery Bell Academy. The court ordered that until a proper hearing could be held, that the defendant should stop all contact with MBA. (XII, 3-4.) At another hearing on the matter about three weeks later, the defendant argued that MBA was not included in his probation requirements. (XII, 6.) The court informed the State that if it wanted to modify the terms of probation, it should file a motion to do so. (XII, 7.) The court ordered that the defendant stop communicating with MBA until the next hearing. (XII, 10.) The defendant voiced no objection.

During the next hearing, Bradford Gioia, headmaster of MBA, testified that the defendant, who previously had a son in school there, was using his email list to send out mass emails to parents, which was causing alarm to some of the parents. (XIII, 4-6.) Some parents were asking for police protection. (XIII, 5.)

Mr. Gioia said that he believed that the defendant was sending the emails because "he was trying to gain sympathy, crowd sourcing, to come to his point of view about whatever frustrations he has with Covenant [the Church]," because some parents of students were also members at the Church. (XIII, 13.)

Mr. Gioia said that there was not a trespass order against the defendant, though he "would not be pleased if he were on campus until I had some understanding from him about what his own intentions ware

and why he has put the school in this position." (XIII, 8.) Mr. Gioia requested, however, that the defendant "desist from all contact with me and the entire school community." (XIII, 9.)

The defendant testified, contending that "I was trying to communicate to people about a child sex abuse cover-up and its connection to the rape of, an alleged rape, of a sixth-grade student." (XIII, 21.) The defendant denied trying to scare anyone. (XIII, 21.) The defendant insisted he had a right to report such crimes, especially since the district attorney and police would not investigate. (XIII, 24.)

The court noted that at the previous hearing on revocation, the defendant agreed to stop emailing. (XIII, 15.) The court did not take away all Internet privileges, as requested by the State, but simply asked the defendant to stop contacting people at MBA. The trial court pointed out that the defendant was only required by law to contact DCS regarding sexual abuse; the defendant said he had done that. (XIII, 24.) The court said that beyond that, the defendant had no further obligation. (XIII, 25.)

The defendant eventually agreed and said, "I don't care about talking to anybody at MBA. If they want to ban me from doing that, that's fine." (XIII, 26.) The defendant inquired if the ban encompassed his wife and children, and the court responded, "I have no jurisdiction over your wife and two children," though noting that "they cannot do it on your behalf." (XIII, 27.)

Nothing indicates a bias on the part of Judge Blackburn. The court had the authority to enforce the conditions of the defendant's probation, one of which was to stop sending emails and correspondence

to Church members. The court simply asked the defendant to comply with the terms of his probation. Accordingly, the defendant cannot show that consideration of his recusal claim is necessary to do substantial justice, and thus cannot show plain error on the part of Judge Blackburn.

Finally, the defendant asserts that Casey Moreland, who presided during his preliminary hearing, likewise should have recused himself, for many of the same reasons (e.g. relationship with Worrick Robinson, etc.) Again, no Rule 10B motion was filed, and the defendant fails to show that plain error relief is justified on this claim.

For the foregoing reasons, none of the defendant's recusal issues merit plain error relief.

CONCLUSION

For the reasons stated, the judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46, Rule 3.02, the total number of words in this brief, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, and this Certificate of Compliance, is 8,022. This word count is based upon the word processing system used to prepare this brief.

/s/ David H. Findley
DAVID H. FINDLEY
Senior Assistant Attorney General

APRIL 20, 2017 - JUDGE STEVE DOZIER: "THERE ARE NO SECRETS IN HERE."

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION I

2017 AUG 15 PM 2: 22
CRIMINAL COURT CLERK

STATE OF TENNESSEE)
VS.) CASE NO: 2017-A-62
WILLIE AUSTIN DAVIS)

MOTION IN LIMINE 5

The Office of the District Attorney General, prosecuting on behalf of the State of Tennessee, respectfully requests this Court to order the defendant from referencing counsel for the State of Tennessee as anything other than "Mister," "Miss," or "General." In previous court dates on this matter, the defendant referred to counsel for the State several times as "Bull Connor"[1] The State submits such references are inappropriate, and would serve to distract the jury from its role as the trier of fact in this matter.

Donald Dozier

September 15, 2013

This was reportedly seen in Washington at the march for **Martin Lucifer**.The major news networks seem to have missed this from the anniversary parade of the Martin Luther King Jr. speech in Washington.

Respectfully submitted,

S. Chandler Harris
Tenn. Sup. Ct. Reg. #32147
Assistant District Attorney General
Washington Sq...
222 Second Av...
Nashville, TN
(615) 862-550...

David O. Jones – Westminster Cult Member

[1] This was an apparent reference to 1960s-era Birmingham Police Commissioner Theophilus Eugene Connor.

Ex 4

FIXED – RIGGED

FEB 7, 2018 – 9AM
JUDGE CHERYL BLACKBURN
NEW TRIAL / MISTRIAL HEARING

INDICTED EX-JUDGE CASEY MORELAND – BOUND DEFENDANT OVER TO GRAND JURY

IN THE CRIMINAL COURT
FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,)
Plaintiff,)
vs.) 2017-A-62
WILLIE A. DAVIS,)
Defendant.)

Transcript of Sentencing Hearing
Before the Honorable Steve Dozier
September 28, 2017

Appearances:

For the State:

Chandler Harris
Jenny Charles
Assistant District Attorney General
Nashville, Tennessee

For the Defendant:
Pro Se

STAN FOSSICK – GRAND JURY FOREMAN FOR BOTH INDICTMENTS OF THE DEFENDANT. PER THE TENNESSEAN, HAS BEEN A GRAND JURY FOREMAN 42 TIMES.

Judge Steve Dozier Don Dozier
EX-COVENANT PRES MEMBER – CURRENT WESTMINSTER CULT MEMBER

Shane Crawford, CCR
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Division I
Nashville, Tennessee
(931) 494-1191 * (615) 862-4200

LEAGUE OF THE SOUTH

David O. Jones – Westminster Cult Member
EX-COVENANT PRES MEMBER
CURRENT WESTMINSTER CULT MEMBER

WORRICK ROBINSON
BA GRADUATE – DEFENDANT IN CHILD-MOLESTER COVER-UP CASE – VANDERBILT RAPE ATTORNEY – FOP GENERAL COUNSEL – LONG-TIME FRIEND & ATTORNEY FOR JUDGE CASEY MORELAND

Ex 1

...ourt of Criminal Appeals.