M2019-01852-CCA-R3-CD Vol 14

IN DIVISION III CRIMINAL COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

STATE OF TENNESSEE	)	
	)	
vs.	)	**Case No. 2017-A-62**
	)	
	)	
WILLIE AUSTIN DAVIS	)	

TRANSCRIPT OF THE PROCEEDINGS
Motion
July 12, 2019

THE HONORABLE CHERYL BLACKBURN, PRESIDING JUDGE

APPEARANCES:

FOR THE STATE:

MR. CHANDLER HARRIS
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FOR THE DEFENDANT:

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Court Reporter
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Exhibits

THE COURT: Willie Davis, that's going to be for a short hearing, I think.

MR. HARRIS: Your Honor, there's also -- he's hired co-counsel for this morning.

MR. HARVEY: Good morning, Your Honor.

THE COURT: Okay. This is a Motion for New Trial, so that's what we're here about; correct?

MR. HARRIS: Yes, Your Honor.

THE COURT: Now, I haven't -- I still haven't seen the transcript, but I think we can go ahead and have the motion and just hear -- this is just argument; right?

MR. HARVEY: And, Your Honor, I did just arrive from Memphis. I did want a chance just to speak with co-counsel here, and --

THE COURT: Well, I assume you don't have any proof since this is just Motion for New Trial.

MR. HARVEY: I think, briefly, we will need proof, just to the good cause issue under Rule 12, which would just be my client.

THE COURT: Okay. Well, I'm not prepared to have a hearing today, anything other than argument on this issue. Remember, I didn't handle the trial. I'm going to have to read the transcript. I was prepared to listen to the arguments about the Motion for New Trial. But, I wasn't prepared to hear witnesses today. I don't know

what --

MR. HARRIS: I have none.

THE COURT: I know. He said he has one, for some reason, in a Motion for New Trial.

MR. HARVEY: Your Honor, one of the issues --

THE COURT: Why don't you get to the microphone, please, sir.

MR. HARVEY: One of the basis for the Motion for a New Trial is that the Indictment should have been dismissed. Under Rule 12, obviously, that motion should have been raised before trial. Because it was not raised before trial we need to show good cause. I can put on the record what the proof would be toward that good cause, but it would just be a matter of --

THE COURT: Well, are you alleging ineffective assistance of counsel? Is that what you're alleging as part of your Motion for New Trial?

MR. HARVEY: No, Your Honor. The basis for the Motion to Dismiss the Indictment was not discovered until after trial.

MR. HARRIS: I would say the issue is waived.

THE COURT: I was going to say, have you responded -- I mean, did you know that was an issue, General? So, have you had a chance to respond in writing?

MR. HARRIS: Mr. Davis, is, I guess, wanting to

charitably call it, taking a shotgun approach to a number of issues as it relates to this prosecution, one of which was the Indictment. But the issue he is alleging in his Motion for a New Trial wasn't an issue that he alleged, regarding the Indictment, until after the trial had concluded.

So, he had alleged a conspiracy from, I think Sarah Sanders, Huckabee-Sanders, all the way down to my office, saying that this Indictment was invalid. And so, Mr. Davis went ahead with the trial. And now he has raised another issue with the Indictment that he would -- he could have, and should have, raised pre-trial.

THE COURT: Okay. Did you all have motion -- keep in mind that I did not try this case. It was transferred to me after the fact. So, did you have motions at the time of trial or prior to trial about that issue?

MR. HARRIS: Written motions?

THE COURT: Written motions. But, was there any --

MR. HARRIS: Not to my recollection. I don't believe we did.

THE COURT: Is there anything that I would need a transcript for that? Because I would have to review that.

MR. HARRIS: I think -- and there were a number of dates on this case. On those court dates, Mr. Davis had

alleged a number of things just, sort of, in the microphone. Did he ever file the issue? Did we litigate it? No. Could he have mentioned something to that effect, dealing with the Indictment? It's possible. But, for the Court's concern, I have no recollection of the issue he has raised post-trial, that he ever raised that issue pre-trial.

THE COURT: Okay.

MR. HARRIS: He had raised other issues with the indictment.

THE COURT: Okay. I am just trying to find out if there is anything in the record that would, either by microphone, or otherwise, that I would need to capture as part of the transcript, and for me to assess it.

MR. HARRIS: Regarding the issue he has alleged in the Motion for New Trial, no. I do not believe -- in good faith, I do not believe there is.

THE COURT: Okay.

MR. HARRIS: And there was, certainly, never anything filed.

THE COURT: Okay. Well, it would be the defense's responsibility to provide a transcript if that issue was raised.

MR. HARVEY: And, Your Honor, the issue was not discovered until after the trial. The issue was one of

the --

THE COURT: You can't -- the problem -- you are alleging something in the Indictment and you can't discover it until after the fact.

MR. HARVEY: It is not in the Indictment, Your Honor. It has to do with the grand jurors who were sitting on the Grand Jury when the Indictment was brought down. One of the Grand Jurors was an active duty law enforcement officer; who was, also, at the time of the incident, an off duty security guard at the church. He confronted the defendant. He was there for, not only an active duty law enforcement officer at the time, he sat on the Grand Jury, which the Tennessee Supreme Court has stated is improper; but, was, also, a fact witness in the case. That was not discovered until after the trial.

THE COURT: Okay. Never mind. We are not going to deal with this right now. I am trying to finish calling the docket. Okay? So, I am not sure what we are going to be able to do today. Okay?

MR. HARVEY: And, if I may, I apologize for the interruption, Your Honor. Just to add, I did serve the motion on the attorney general, but --

THE COURT: Did you serve it on the Court?

MR. HARVEY: I planned to file it this morning. I did share it with your clerk by e-mail.

THE COURT: That's not very helpful if you don't serve it on the Court. You understand that; don't you?

MR. HARVEY: I understand, Your Honor. I did check with your clerk in advance, and explained I was coming up from Memphis and asked if I could file it this morning.

THE COURT: All right. One thing you need to know about Division III is, if you file something with the D.A.'s Office you, also, have to file it, a courtesy copy, with the Court. It is one of my rules, that way I am noticed, also. Okay?

MR. HARVEY: I did share a courtesy copy with your clerk. Yes, Your Honor.

MR. HARRIS: And, Judge, I will say, in Mr. Harvey's defense, he had asked me, and I said -- "What would be the most helpful?"

And I said, "Well, I would send a copy to Ms. Wetzel beforehand."

And I was on the e-mail where she was sent it, because I was sent the same copy. So, I know a copy had been sent to chambers the same time that I got it. It would have been Wednesday afternoon.

THE COURT: Wednesday afternoon?

MR. HARRIS: Yes, ma'am.

THE COURT: All right. Just mark it ready.

MR. HARVEY: Thank you, Your Honor.

(Other matters came before the Court, unrelated to this cause, after which the proceedings were continued as follows:)

THE COURT: We have been continuing this Motion for a New Trial for some time, in order to get a transcript of the actual trial testimony. I still don't have that. Nobody has ever provided me with that. You haven't provided that.

MR. HARVEY: The Court doesn't have the trial transcript?

THE COURT: I do not. I do not have a copy of the trial transcript.

MR. HARVEY: Your Honor, we have -- I was --

THE COURT: I mean, one of the reasons we have been continuing it is so I can get a copy of it. I know it has been done.

MR. HARVEY: We do have the trial transcript. We do not have the jury selection. I was not --

THE COURT: Right. And I got an e-mail today from the court reporter that is doing that and said she would have it prepared by Monday. So, with regard to any of your issues, which I will quickly -- and the Motion for

New Trial was, actually, filed today.

MR. HARVEY: Yes, Your Honor.

THE COURT: Okay. So --

MR. HARVEY: I wanted to seek direction from the Court as to whether or not you wanted to hear anything today or whether we needed a new date?

THE COURT: Well, let's go over what the issues are here. You have something about Indictment being quashed. That is one of your big issues. And, then, deals with the Grand Jury. And I have some questions about that, in terms of what your proof is.

MR. HARVEY: Yes, Your Honor.

THE COURT: And, then -- that's one ground. And, then, we have the Defendant's Motion for New Trial. So, the question is: You represent him; correct?

MR. HARVEY: Yes, Your Honor.

THE COURT: So, why do I have something called the Defendant's Motion for New Trial?

MR. HARVEY: I believe that was his pro se motion.

THE COURT: Okay. That's just the pro se.

MR. HARVEY: Yes, Your Honor, before he had counsel.

THE COURT: Okay. But, attached to that he's got the Grand Jury final report. I'm not sure what that has to do with anything. But, attached to that, also, is

another Motion for New -- about a FaceBook photo of Solomon Holley. And, then, we have, attached to that, is a copy of the Indictment. We have a Motion for New Trial. Exhibit 4 is some kind UTube I can go look at. And, then, we have attached photos of the -- I guess, the Indictment. I am not sure -- that's not in your Motion for New Trial. This isn't in your motion.

And, then, we have Mr. Davis's declaration. And I am not sure what I am supposed to do with that. And, then, there is a recusal order that Judge Dozier did, after the trial, about a probation violation, which is when it got sent to me. And there are highlights and comments made on this order, which, I think, would be, kind of, highly inappropriate, if you're using that as a copy of what the order is. That is something that somebody has written on it. It's not Judge Dozier's handwriting, either.

MR. HARVEY: Your Honor, if I may take up all the Court's concerns?

THE COURT: Yes.

MR. HARVEY: Mr. Davis represented himself at trial. And he filed the initial Motion for New Trial pro se. Sometime after that Mr. King represented Mr. Davis in a violation of probation. Subsequent to that Mr. Davis retained a Memphis attorney, Bobby Leatherman, who passed

away this spring; and my boss, Parke Morris, took this case from Bobby Leatherman's docket, if you will. And, on Monday I was asked to see about this hearing today on Friday. I immediately reached out to Mr. Harris, just to see what the posture was. I was not sure if we needed to have a hearing today or not. I wanted to be as prepared as I could be to meet any of the Court's concerns. I had a trial transcript. I was not made aware that the Court did not, yet, have a transcript. And I knew we were waiting for a jury selection transcript.

THE COURT: Okay. I didn't know. Because, so far, I haven't seen any grounds that are stating anything about jury selection.

MR. HARVEY: Based on my conversation with Mr. Davis I don't anticipate that we would find any issues in the jury selection. And, I think, the exhibits that you've commented on were the first thing I had, at hand, to try and make a record as to why -- I feel like I needed to make a record on two issues: One, is the basis for any motion to dismiss an Indictment; and, then, two, is good cause as to why this issue was not raised before trial, because under Rule 12 any motion --

THE COURT: So, what is the issue?

MR. HARVEY: The issue is that one of the grand jurors who sat on the Grand Jury that brought down Mr.

Davis's second Indictment, which is the basis of his conviction, was an active duty Davidson County Sheriff's Officer; and, was, also, a private security guard on duty, on the day that Mr. Davis was confronted and arrested.

THE COURT: All right. But the research that you attached is that he is law enforcement. Are you familiar with the fact that in Davidson County the Sheriff's Department has no law enforcement powers. Did you know that?

MR. HARVEY: No, Your Honor.

THE COURT: Okay. That is a crucial issue. Law enforcement in Davidson County is strictly handled by the police department. It is not handled by the Sheriff's Department. The Sheriff's Office is only considered a custodian of prisoners. They do not have law enforcement powers.

So, I thought you might want to know that --

MR. HARVEY: Thank you, Judge.

THE COURT: -- in terms of, if that is going to be your grounds, and --

MR. HARVEY: And, I think, I would still like to --

THE COURT: So, what kind of proof are you going to put in, is what I'm a little unclear on.

MR. HARVEY: The proof would be -- we have the

exhibits just to make the connection between --

THE COURT: Well, all you have is -- he signed the -- actually, it was one of my Grand Juries --

MR. HARVEY: Grand juror.

THE COURT: -- January through March, and it was a report. Now, that doesn't necessarily mean that he was there present on the day they reviewed this, or participated in it.

MR. HARVEY: Correct.

THE COURT: So, it is going to be your responsibility to prove that.

MR. HARVEY: And, Your Honor, I believe, the appropriate -- so, I -- and this is the dilemma I was trying to address within the last four days: And that is, obviously, Motion for New Trial is not the proper timing for a Motion to Dismiss an Indictment.

THE COURT: Correct.

MR. HARVEY: And, in the event that I had to go forward today I wanted to bring forward as much proof as possible to make the record. But, I, also, needed to bring forward some proof as to go toward a good cause exception under Rule 12. For that purpose I would be calling Mr. Davis, if we go forward here today, just to discuss the timing as to when he discovered that Solomon Holley was a member of the Grand Jury during this period

of time.

If this is -- and, so, I think, this can go one of two ways -- and, perhaps, more than that -- but, if we have the hearing today; and, then, the jury selection transcript comes out and I find no new issues, then, I think, we're done with the Motion for New Trial and it's right for the Court to rule. My record has then been made and the Appellate Court can decide whether or not the case needs to be reopened to actually litigate the Motion to Dismiss the Indictment. If the Court finds that this isn't colorable issue --

THE COURT: Okay. Well, I mean, but -- okay. This is the question, though, the exhibits that you have -- I'm not sure what these are. These disks.

MR. HARVEY: Those are the videos that were mentioned by the -- two videos.

THE COURT: Okay. They have the Grand Jury --= but, you have pictures; and, then, you have, again, his declaration, which I am not sure what I am supposed to do with that. And, then, we have this order, from which there is -- Judge Dozier recused himself after the trial. And there are these highlighted comments that are highly inappropriate to be in any exhibit.

MR. HARVEY: And I would be more than happy to withdraw that and substitute a clean copy of that order.

I did not have one at hand when I prepared this motion.

THE COURT: But, let's go back to -- if you want -- why would I allow an exhibit of a declaration of Mr. Davis? When I read through it, I mean, it's --

MR. HARVEY: Well, the exhibit -- Mr. Davis's declaration just goes to paragraph sixteen, which is a separate issue. I kept that in there, because, I believe, I have a duty to preserve any issue that may need to be preserved. Number sixteen is, specifically, the contention that Judge Dozier should have recused himself before trial.

Because of my lateness to the party I --

THE COURT: Okay. Well, do you have any order, and not only order, but anything in the record, any filing that was filed prior to the trial, which is required by the Rule, if you are wanting a Judge to be excused. I have forgotten the Rule -- the Supreme Court Rule.

MR. HARVEY: Rule 10-B, Your Honor.

THE COURT: 10-B, has to be in writing.

MR. HARVEY: Yes, Your Honor. And it was Judge Dozier's connection to -- having family members at Covenant Presbyterian Church.

THE COURT: I am not into the contents of it. I'm into the fact that you're trying to preserve the record, but the way to preserve the record would be to show that

he had actually filed -- because you said he didn't recuse himself -- but that he, actually, filed for a motion for Judge Dozier to recuse himself. Because the Rule requires a written request by the defense --

MR. HARVEY: Yes, Your Honor.

THE COURT: -- stating out all the reasons, and the Judge, then, has to respond to it. So, what I am wanting to know is, isn't that what you need to put in the record, if it exists?

MR. HARVEY: If it existed I would have -- I would use it.

THE COURT: Okay. So, then, why would you want me to consider this declaration, if it was about Judge Dozier recusing himself?

MR. HARVEY: Because it lays out the timing of Mr. Davis's discovery of Judge Dozier's --

THE COURT: We're into two different issues. You've got two different issues. You're talking about Judge Dozier recusing himself; and, then, you're talking about this person being on the Grand Jury, which is a different -- those are two separate issues --

MR. HARVEY: Yes, Your Honor.

THE COURT: -- not related to each other.

MR. HARVEY: Correct.

THE COURT: Okay. So, how is it that putting his

declaration in this record is going to satisfy the issue that you have to show that there was a written request for Judge Dozier to recuse himself, prior to trial?

MR. HARVEY: It would not satisfy that, Your Honor. It would be --

THE COURT: Okay. So, he never then asked him to be recused.

MR. HARVEY: Correct. And the declaration is in there to show that Mr. Davis did not -- was not aware of the basis that would have been the basis of his motion until after the trial.

The last exhibit is --

THE COURT: Well, but, that is not how you are going to solve this problem. Because his declaration still doesn't get to the very core of it; and, that is, he would have had to have filed all these things and, then, Judge Dozier, himself, sitting as the trial judge, would have to see whether or not that was sufficient grounds for him to recuse himself. And he would have had to have done a written order.

I can't do that. I mean, because I would not know what he would say. So, it seems to me as if the only way for you to even get beyond Rule 12 is to show what your ground was; and, then, to have Judge Dozier testify about what he would have said about it, I guess. I don't know.

But, you're declaration of Mr. Davis, I mean, that is just not grounds enough to do. Because you are going to have to show, whatever his grounds were, that the Judge looked at it and made a determination that either he would have recused himself, or he wouldn't have recused himself, and why. That is what you have to do to satisfy Rule 12; correct?

MR. HARVEY: I would --

THE COURT: And the Rule requires that if the Judge does not recuse himself you have to immediately appeal to the Court of Criminal Appeals and let them -- and all proceedings stop until that is resolved, so that we don't get into a mess. Is that not what the Rule says?

MR. HARVEY: Your Honor, I believe that is mostly correct. However, I would, also, just point out, that under Rule 10 the Court has a duty to disclose when there are certain familial connections.

And, I think, the argument that we're seeking to preserve here is, that the Judge's failure to disclose those familial connections out of an abundance of caution was --

THE COURT: You still have to get, for Rule 12, what did Mr. Davis do when you say he asked him to be recused. Didn't you say he asked him to recuse himself?

MR. HARVEY: What did Mr. Davis do?

THE COURT: Yes. I mean, in order to preserve any issue, to say it was done before trial there has to be a written request for him to recuse himself.

MR. HARVEY: But, it was not done before trial.

THE COURT: Well, I guess, that's what I'm -- so, then, why are you saying -- to use his obvious statement here, why should I use it, as showing that he has preserved the issue? I guess I don't understand why it is -- back to the question is, why should this be allowed as an exhibit, his, Declaration of Willie Austin Davis.

MR. HARVEY: Well, the -- it may not be necessary, Your Honor. Perhaps the only thing that would be necessary is Judge Dozier's footnote in the order, which was dated after the trial, which does point out the familial connection.

THE COURT: Well, what is highlighted is, said (as read): *"He's aware that the defendant has been arrested on the probation violation signed by Judge Blackburn on October 20th, 2017."*

MR. HARVEY: It is on the October 23rd order from 2017, page one, footnote one, going to the second page. It is about the third or fourth paragraph from that footnote. (As read): *"At or before the trial the Court had no information regarding the church membership of an uncle."*

THE COURT: Well, what the footnote says (as read): *"The Court has not thoroughly reviewed the new e-mails"* -- which would be the basis for the, I guess, the probation violation -- *"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 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 the trial the Court had no information regarding the church membership of an uncle. If it is analyzed, the defendant's current mailing, the Court may know dozens of former or current members, however, this information would have no bearing on this case or be determinative on whether the defendant could have received a fair trial and/or sentence."*

So, he did address it.

MR. HARVEY: After trial.

THE COURT: Well, but that is not because the defendant filed anything.

MR. HARVEY: Correct. And so, I -- which is why I am in partial agreement with the Court here today, which is that, perhaps, this footnote is enough for the Court of Appeals to look at this and decide whether or not this should have been addressed before trial. Because it was

not --

THE COURT: Okay. So, what you are saying is you are relying upon Judge Dozier's, this footnote, in the motion where he does recuse himself. So, that is what you -- so, you really don't need, then, this declaration, because I am not going to consider it as an exhibit, if that's what we were trying to get to.

MR. HARVEY: And, I think, that is probably fine, Judge, for the purpose of preserving the record and issues.

THE COURT: Okay. Because I am not going to consider this declaration. I am not even going to allow it to be coming in as an exhibit to this. I don't know about the other issues.

MR. HARVEY: So, exhibit --

THE COURT: I have -- this is it, as far as what I have as a Motion to New Trial. I haven't seen the transcript. Obviously, I haven't read it. I haven't seen the -- if any issues come up with -- what is it we have to do today, is what I am trying to find out.

MR. HARVEY: Well, Your Honor, if the Court would prefer to take a continuance I understand. If the Court would --

THE COURT: I just don't know what I'm continuing. I mean, the State hasn't had an opportunity to respond to

Motion for New Trial.

MR. HARVEY: What I was proposing, and what I had discussed with the State, would be for me to just put on the record that the grand juror security guard connection was not made until after trial. Because, as the Court is aware, under Rule 12 a Motion to Dismiss the indictment must be filed prior to trial. Exceptions under Rule 12 can be found for good cause. And the discovery of the grand juror'S connection to Covenant Presbyterian as a security guard, was not made until after trial.

And so, we would be arguing that that is good cause under Rule 12 for the Court to consider this Motion to Dismiss the Indictment issue along with the Motion for New Trial.

THE COURT: Well, but, just because -- back to my -- so, you want to rely on what you have provided, with regard to that person, is that -- the security guard, is what you have alleged?

MR. HARVEY: Your Honor, I believe what we have provided is sufficient for the Court to make a determination as to whether or not the Motion to Dismiss the Indictment needs to be heard. Because I don't think the Motion to Dismiss the Indictment can properly be heard unless the Motion for New Trial is granted.

And the -- similarly, I think, what we have put in

the record is sufficient for the Court of Appeals to decide if the case needs to be reopened in order for a Motion to Dismiss the Indictment to be heard. Because we, obviously, can't bring a Motion to Dismiss the Indictment today.

THE COURT: Okay. All right. I still don't know where we're at.

General, would you, please, respond to any of the issues?

MR. HARRIS: Judge, I think where we're at is, the only thing that needs to happen after today is for the Court to review the record of the trial, of the jury selection -- whatever the defense would like to provide -- to determine whether or not any of the allegations that exist in both Mr. Davis's motion and, also, Mr. Harvey's motion on behalf of Mr. Davis, meet the legal standard for the Court to reverse the conviction and order a new trial in this case.

As a matter of law -- and the Court articulated it better than I could -- I do not think this issue with the Indictment is something the Court should rule on, or can rule on, because of the distinction the Court made about the Davidson County Sheriff's Office's non-law-enforcement abilities in this jurisdiction.

I mean, the just plain reading, even -- I would

submit, it's not a -- the reading of the case that Mr. Davis, or that Mr. Harvey cites, is it is not a complete prescription. The Rigby case doesn't give a complete prescription. It is talking about law enforcement should not be on a Grand Jury, but it doesn't say shall not, number one. Number two, we can't, you know, confuse police and law enforcement in this case. The language in the Rigby case says police. As the Court knows Mr. Holley -- even if everything else is true -- is not police. The case law is voluminous about people that are witnesses can serve on Grand Juries; people that have a connection can serve on Grand Juries; defense attorneys can serve on Grand Juries; you know, and I don't know about District Attorneys, but that is not an issue here.

I mean, the way --- we live in a world where people sometimes are going to have connections to a case, heard about a case, seen it on the news; and, it doesn't provide any relief -- especially for Mr. Davis in this case -- to say that the superceding Indictment isn't valid. I think, as a matter of law, the Court can reject that on it's face.

And so, for today's purposes, I think, the only thing that needs to happen is for the Court to consider whether or not, based on the record of the trial, any of the other issues alleged in Mr. Harvey's motion should

compel the Court to order a new trial.

The State is not asking for anything other than a normal application of Rule 12 on issues that could have been raised, that were not raised. And, I think, the Court will find that Judge Dozier had a very liberal approach to allowing Mr. Davis to discuss a number of things. That will be presented in the trial transcript.

And so, all the State would be asking would be for the Court to rule on the Indictment issue today. I think it is very, very clear; and, just for the Court to review the trial record. I have got an argument on some of the exhibits that Mr. Harvey has provided. I will be happy to provide that, if the Court would like to hear it. But, I think the only thing that needs to happen today is for the Court to read the trial transcript and issue an order. The only other --

THE COURT: Well, are you going to file a response?

MR. HARRIS: Would the Court like for me to?

THE COURT: Yes.

MR. HARRIS: Yes, ma'am. I will be happy to do that.

THE COURT: Okay. So, I am just trying to find out what now needs to, also, be put in the record before I can start issuing an order -- start reading the

transcript.

What else do you want in this record?

MR. HARVEY: Your Honor, I would just like Mr. Davis's testimony that he did not discover the Grand Jury connection until after the trial.

THE COURT: You are limited to that one issue.

MR. HARVEY: Yes, Your Honor.

THE COURT: Okay. And that's all you want to do is put him on to say, I didn't discover it.

MR. HARVEY: Yes. Just an offer of proof, if you will, even if the Court decides not to consider it.

THE COURT: Okay.

MR. HARRIS: This would be fine, Judge. I've got some questions to ask about that, too.

THE COURT: All right. Well, let's do that. Okay. And that's all. Okay? Make sure that Mr. Davis abides by that.

So, I will introduce these things as exhibits, for whatever they're worth. But, again, I am not considering his declaration.

MR. HARVEY: Thank you, Judge.

THE COURT: All right. And you need to go to the other microphone.

MR. HARVEY: Thank you, Judge.

(Exhibit No. 1, collective, was marked and entered.)

WILLIE A. DAVIS.

was called and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARVEY:

Q. Please, state your name.

A. Willie Austin Davis, Jr.

Q. Were you the defendant in this case?

A. Yes.

Q. Were you, also, the trial attorney in this case?

A. I'm sorry. I don't hear good.

Q. Were you, also, the trial attorney in this case?

A. Correct. I was pro se.

Q. When were you arrested?

A. November 15, 2015.

Q. When was your first Indictment brought down? Approximately is fine.

A. On or about August 1, 2016.

Q. And when was your second Indictment brought down?

A. On or about January the 24th of 2017.

Q. When was your trial?

A. September 11th and 12th, 2017.

Q. And after your trial and conviction, did you begin investigating what had happened with your Grand Jury?

A. Yes.

Q. At some point, did you discover that Solomon Holley was a signature of the final report of the Grand Jury, during the time period that your indictment was brought down?

A. Yes.

Q. And then, at some point, did you make the connection that Solomon Holley was, also, the security guard that detained you at Covenant Presbyterian Church on the day of your arrest?

A. Yes.

Q. Approximately when did you make that connection?

A. On or about April the 30th, 2019.

Q. About how long after trial was that?

A. Well, it would have been, at least a year and a half, I think, is the math on that.

MR. HARVEY: No further questions.

THE COURT: Any questions, General?

MR. HARRIS: Just a few.

CROSS-EXAMINATION

BY MR. HARRIS:

Q. If I could approach Mr. Davis. And I am going to show him what is attached to his filing, as, I believe, Exhibit No. 1, and ask Mr. Davis to look at that, please.

A. (Viewing document).

Q. What are we looking at Mr. Davis?

A. I'm sorry?

Q. What are we looking at?

A. It says: "Grand Jury final report, the Honorable Judge Cheryl Blackburn, Criminal Court Division III, Davidson County, January through March 2017, Stan Fossick foreperson."

Q. That is a copy of the Grand Jury report that you provided Judge Blackburn, as it relates to this motion; is that correct?

A. Correct.

Q. If you could flip to the final page of that exhibit.

A. Okay.

Q. And is there a term of months, that is indicated on the final page, of the period that that Grand Jury served?

A. Yeah. It says January through March 2017 term.

Q. Okay. And you previously testified that your trial date was around September the 11th, 2017; is that correct?

A. Correct.

Q. And so, from the end of that Grand Jury term you would have had, approximately, four to five months of time to determine the makeup of the Grand Jury; to take a look at the Grand Jury report, to see who was on it; address some issues as it relates to the Grand Jury; is that correct?

A. Well, I thought Grand Juries were secret, so I wouldn't have been looking at anything.

Q. No, sir. I am just asking about the period of time.

A. That there was a period of time between March and September?

Q. Correct.

A. Yeah.

Q. When that Grand Jury report would have become public record --

A. Correct.

Q. -- is that right? Okay. You would agree with me that Sergeant Holley, Solomon Holley's signature, this individual known as Solomon Holley, was in the public sphere for, approximately, five months before your trial?

A. Correct. And in pre-trial --

Q. Thank you. And I would like to approach you, again, with a copy of the handwritten motion you filed for

a New Trial on October the 27th, 2017. Specifically, I'll point your attention to the bottom page, paragraph nine. I'm just going to mark it with a blue "X."

A. (Viewing document).

Q. Do you see that Mr. Davis?

A. Yeah. This is what I wrote from jail.

Q. Okay. And paragraph nine says what?

A. (As read): *"The defendant informed Judge Steve Dozier on multiple occasions about his concerns about the indictment process"* --

Q. Okay.

A. -- *"which included the presiding Judge Casey Moreland, long time friend of Covenant member, Attorney Worrick Robinson, who is now arrested by the FBI, indicted by a Federal Grand Jury, himself. But Judge Dozier saw no harm to impartial justice and the conflict of interest and did not disclose his own relationship with Worrick Robinson, and did not chose to voluntarily recuse himself from the defendant's case which involved Covenant Presbyterian Church, Worrick Robinson, and Jim Bobman, who were named in Sergeant Tawana Chicks police report on July 2nd, 2008."*

Q. So, to be clear, even after your trial, you had alleged issues with the Indictment unrelated to Sergeant Holley; is that correct?

A. Well, I was in jail when this was written. I did not know about the Grand Jury, or any information about it.

Q. Would you agree with me that the Indictment issue is one of a number of issues that you're alleging, you know, would be the basis for Judge Blackburn to reverse your, conviction or her order a new trial; is that correct?

A. Yeah. I'm going all the way back to July 2nd, 2008.

Q. Okay.

A. I think that was a false report to police.

Q. Okay.

A. The Grand Jury with -- the Casey Moreland Indictment; the first Grand Jury with Scottie Coombs on it; and, the second Grand Jury with Solomon Holley on it.

Q. Okay. And so, you're alleging that both of your Grand Juries have been tainted as it relates to both of the Indictments?

A. I am alleging that I am supposed to get a fair trial, and I am supposed to get judges who voluntarily recuse if they have got conflicts of interests; and, that it is supposed to be a fair process. And I have got a -- the original judge is sitting in Federal prison.

Q. I am just asking about the makeup of the Grand

Jury --

A. Yeah. Because I think there is a problem with the whole chain. But, right now we're dealing with the Solomon Holley. That's what I was testifying on.

Q. And you would agree with me that you only brought this issue up in April of this year?

A. Yeah. When I found it.

MR. HARRIS: Judge, I believe those are my questions for Mr. Davis.

THE COURT: This is the original? It says Motion for New Trial, or -- okay. October the 27th of 2017?

MR. HARRIS: Yes, Your Honor.

THE COURT: Okay. I have the original in the file.

EXAMINATION

BY THE COURT:

Q. Mr. Davis.

A. Yes, ma'am.

Q. You said that you only discovered this recently, this Grand Jury report. How did you, actually, find this Grand Jury report? Where did you get it?

A. I listened to the Tim Rohan, Sports Illustrated podcast on the murder of Steve McNaire.

Q. No. My question is a simple one. How did you obtain it and how did you become aware of it? Did you go online and print it out?

A. Yes. I became concerned about the whole thing --

Q. Did you go --

A. I went online.

Q. So you went online to a computer; and there, listed in the Criminal Court Clerk's file is the Grand Jury reports? Is that where you got it?

A. Correct. I wanted to look at the -- well, I didn't know there was anything like that. But I keyed in "Davidson County Grand Jury," just to read about the Grand Juries; and, then, I saw something that came up that had them listed all the way back to 1993.

Q. Okay. Listed in there, and online, is all the Grand Jury reports since 1993.

A. Correct.

Q. Okay. So, they're not secret, then; correct? I mean, it's on the -- you found it on the computer.

A. Yeah. But I didn't -- I wasn't -- I didn't know who the grand jurors were until I found it. And nothing has been disclosed. You were the judge over that jury and nobody is disclosing to me anything about Solomon Holley. And, Judge Dozier is not disclosing anything to me about it and he was on the first Grand Jury that indicted me, so

--

Q. Mr. Davis, you are not arguing your case. I am just trying to find out where you -- you said it was secret information. But, what you have now told me is that you, actually, went online and it was listed; and, all the Grand Jury reports are, back to 1993. Is that a correct summary of what you just said?

A. Well, it feels secret to me because the process is, apparently, secret.

Q. You did get it online?

A. Correct. When I realized -- when I went looking I found something online that revealed some information that I didn't know existed.

THE COURT: Okay. Thank you, sir. You can have a seat next to your attorney.

Anything else you want to put in the record?

MR. HARVEY: Your Honor, I think with those exhibits and that testimony that that makes our record.

THE COURT: Okay. So, unless you find something new in the -- even though it was never raised before -- about the jury selection, I guess, then, we're ready for me to just gather all the information and do a ruling; correct?

MR. HARVEY: Yes, Your Honor.

THE COURT: Now, when you're -- I guess one of the things, it seems to me, if you want to allege that there was something wrong with the jury selection process you need to provide to me the number of challenges. This was a misdemeanor. So there were only three challenges per side -- or is it four?

MR. HARRIS: Four.

THE COURT: Depending on whether there was an alternate, I guess. As to whether or not your client exhausted his challenges.

MR. HARVEY: I would have to look at that.

THE COURT: Yes. You would have to look at that.

MR. HARVEY: Yes.

THE COURT: Because if you didn't exhaust your challenges you don't have the grounds.

MR. HARVEY: Yes. And, as I stated, I don't expect to find anything in the jury selection. However, being late to the case, my client has asked to review it, so I figured I will.

THE COURT: All right. Well, unless I hear from you -- oh, I tell you what, if you have got something, I need to hear from you by July the 26th, otherwise I will start --

MR. HARVEY: So, I can just put that on my calendar? Is that a court date, or is that --

THE COURT: No. I just give you that time. You don't have to come back.

MR. HARVEY: Thank you, Judge.

MR. HARRIS: Judge, just so I am aware -- I am absolutely -- I am happy to file a response. Does the Court -- would the Court like me to brief the issue as it relates to the Grand Jury or --

THE COURT: Recusal.

MR. HARRIS: All of it?

THE COURT: It seems like those are the basis.

MR. HARRIS: Now, the basis, or in addition to?

THE COURT: Looking for the Motion for New Trial, looks like the one that Mr. Morris has provided, Grand Jury; and, then, the exhibit seems to be talking about the recusal of the Judge.

MR. HARRIS: I understand. A number of the issues are relating more to the issues relating to facts and how the jury interpreted those and not to the law.

THE COURT: Right. Yeah. That's not subject for Motion for New Trial. All right.

MR. HARRIS: That's why I'm asking is, because those seem to be -- outside of the recusal issue there's --

THE COURT: Since Mr. Davis is represented by counsel, I am going to rely on the motion, counsel's

Motion for New Trial issues.

MR. HARRIS: Yes, Your Honor.

MR. HARVEY: Yes. And there are two paragraphs in there on the sufficiency. I would just stand on the brief on those. I think the main issue is the Grand Jury.

THE COURT: I am relying strictly on that.

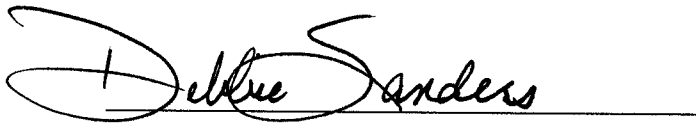
MR. HARRIS: Very good. Thank you, Your Honor.

END OF TRANSCRIPT OF THE PROCEEDINGS

CERTIFICATE

I, the undersigned, Debbie Sanders, Licensed Court Reporter for the State of Tennessee, do hereby certify that the foregoing transcript, is a true, accurate and complete transcript, to the best of my knowledge and ability, of all the proceedings had and evidence introduced in the captioned cause.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Debbie Sanders
LCR No. 607
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