

**IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE
DIVISION II**

STATE OF TENNESSEE)	
)	
v.)	
)	
DEXTER MAYES,)	Docket No. ³⁰⁴⁵⁰⁷ 304478
)	Div. II
Defendant.)	Hon. Tom Greenholtz

**DEFENDANT DEXTER MAYES' MOTION NO. 11:
MOTION TO DISMISS PRESENTMENT**

COMES NOW Dexter Mayes, by and through counsel, and moves this Honorable Court pursuant to Rule 12(b)(2)(B) of the Tennessee Rules of Criminal Procedure for an order dismissing this presentment. In support of this motion, Mr. Mayes would show that though the presentment purports to charge him in Counts I and II of this Presentment with violations of the Tennessee RICO statute, neither count alleges the element of financial gain. For this reason, Counts I and II should be dismissed. In support of this motion, Mr. Mayes would show this Honorable Court as follows:

The Tennessee RICO Act, relative to this case, makes it an offense to commit a statutorily defined gang offense for financial gain. Most of the enumerated gang offenses do not contain a financial gain element. The requirement that the State allege and prove that financial gain was the object of the gang offense constitutes the difference between a gang offense and a RICO offense based on the same conduct; the financial gain requirement is therefore an essential element in this case. A Presentment, like this one, that does not set forth both the allegation of financial gain and a recitation of facts the State relies upon to support that the allegation is constitutionally defective and should be dismissed.

A. THE REQUIREMENTS OF THE RICO STATUTE

Mr. Mayes is the subject of a 13 Count Presentment. In Count 1 he is charged with being either employed or associated with an Enterprise and with conducting or participating in the Enterprise through a pattern of racketeering activity in violation of Tenn. Code Ann. § 39-12-202 (RICO). That act makes it a crime to (1) receive proceeds (2) knowingly (3) from a pattern of racketeering activity (or collection of an unlawful debt) (4) and using any part of the proceeds (5) in the acquisition of real or personal property or in the establishment or operation of the enterprise. The Legislature specifically states, "It is not the intent of the general assembly that isolated incidents of felony conduct be prosecuted under this part, but only an interrelated pattern of criminal activity, the motive or effect of which is to derive pecuniary gain." Tenn. Code Ann. § 39-12-202 (2018). Further, Racketeering Activity, as it pertains to this matter, means to commit a gang offense "for financial gain." Tenn. Code Ann. § 39-12-203(2)(9). The offenses that constitute gang offenses are the following:

- (i) First degree murder, as defined in§ 39-13-202;
- (ii) Second degree murder, as defined in§ 39-13-210;
- (iii) Voluntary manslaughter, as defined in§ 39-13-211;
- (iv) Assault, as defined in§ 39-13-101;
- (v) Aggravated assault, as defined in§ 39-13-102;
- (vi) Kidnapping, as defined in§ 39-13-303;
- (vii) Aggravated kidnapping, as defined in§ 39-13-304;
- (viii) Especially aggravated kidnapping, as defined in§ 39-13-305;
- (ix) Robbery, as defined in§ 39-13-401;
- (x) Aggravated robbery, as defined in§ 39-13-402;
- (xi) Especially aggravated robbery, as defined in§ 39-13-403;
- (xii) Carjacking, as defined in § 39-13-404;
- (xiii) Rape, as defined in§ 39-13-503;
- (xiv) Aggravated rape, as defined in§ 39-13-502;
- (xv) Rape of a child, as defined in § 39-13-522;
- (xvi) Aggravated burglary, as defined in§ 39-14-403;
- (xvii) Especially aggravated burglary, as defined in§ 39-14-404;
- (xviii) Aggravated criminal trespass, as defined in§ 39-14-406;
- (xix) Coercion of witness, as defined in§ 39-16-507;
- (xx) Retaliation for past action, as defined in§ 39-16-510;

- (xxi) Riot, as defined in§ 39-17-302;
- (xxii) Aggravated riot, as defined in§ 39-17-303;
- (xxiii) Inciting to riot, as defined in§ 39-17-304;
- (xxiv) The illegal sale, delivery or manufacture of a controlled substance or controlled substance analogue, as defined in§§ 39-17-417 and 39-17-454;
- (xxv) Possession of a controlled substance or controlled substance analogue with intent to sell, deliver, or manufacture, as defined in§ 39-17-417(a)(4) and§ 39-17-454;
- (xxvi) Unlawful carrying or possession of a weapon, as defined in§ 39-17-1307;
- (xxvii) Trafficking for commercial sex acts, as defined in§ 39-13-309.

For some of these offenses, such as selling controlled substances, the financial gain component is obvious, at least by implication. But for most, such as murder, assault, rape and rioting, the intent to make a financial gain by committing the crime is not an element of the offense, explicitly or by implicitly.

An element of an offense is a fact or set of facts that the state must prove beyond a reasonable doubt in order to obtain a conviction. 8 Tenn. Juris. *CRIMINAL PROCEDURE* § 34 (2018). With respect to statutory offenses, like this one, the elements are found in the act of the Legislature. In order to obtain a conviction in this instant matter, the State has the burden to prove that two of the enumerated gang offenses were not only committed but were committed specifically *for financial gain*. Financial gain is therefore an essential element of the offense.

B. THE PRESENTMENT.

Count 1 of the Presentment (pages 5-6) describes the Racketeering Enterprise. None of the information concerns financial gain. Count 1 also contains an explanation of the Purposes of the Enterprise. It discusses “enriching” the leaders, members and associates and preserving and protecting the “proceeds” of the enterprise but no other or more specific allegation of financial gain is mentioned.

Mr. Mayes is charged in Count 2 of the Presentment with Racketeering Conspiracy. Paragraph “o” (page 9) sets forth substantive acts relating to specific defendants that are alleged

to have been committed “in the conduct of the affairs of the enterprise.” The acts set forth are crimes listed as gang offenses in the statute Tenn. Code Ann. § 40-35-121(a). Mr. Mayes is the subject of three sub-paragraphs-ii) the murder of Deontray Southers, iv) the murder of Talitha Bowman, and v) the attempted murder of Marcell Christopher, Bianca Horton and Zoe Duncan. No other description of the offenses is included except for the date the crime occurred.

The elements of First Degree Murder are:

- (1) that the defendant unlawfully killed the alleged victim;

And

- (2) that the defendant acted intentionally. A person acts intentionally when it is the person’s conscious objective or desire to cause the death of the alleged victim; [A defendant’s conscious objective need not be to kill a specific victim. If you find beyond a reasonable doubt that the defendant intended to cause the result, the death of a person, and that [he] [she] did so with premeditation, then the killing of another, even if not the intended victim, would be first degree murder;]

And

- (3) that the killing was premeditated.

1-7 Tennessee Law of Evidence § 7.01. Financial gain is not an element of murder or attempted murder.

Mr. Mayes will take the position that “for financial gain” is unconstitutionally vague at a later date. For the purposes of this Motion, however, he takes the position that in a Tennessee RICO prosecution, the Presentment or Indictment must contain the element of “for financial gain” with respect to each crime constituting Racketeering Activity. In *State v. Duncan*, the Tennessee Supreme Court held the constitutional requirements for an indictment as follows:

Under both the United States Constitution and the Tennessee Constitution, an accused has the right to be informed of the nature and cause of the accusation against him. The Sixth Amendment to the United States Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right ... to be informed of

the nature and cause of the accusation.” U.S. Const. amend. VI. Similarly, the Tennessee Constitution provides: “That in all criminal prosecutions, the accused hath the right . . . to demand the nature and cause of the accusation against him “ Tenn. Const. art. I, § 9. Since 1858, the form of the indictment has been governed by the statute now codified at Tennessee Code Annotated section 40-13-202, which states: “The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in a manner so as to enable a person of common understanding to know what is intended and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment.” Tenn. Code Ann. § 40-13-202 (2014); *see also Wyatt v. State*, 24 S.W.3d 319,324 (Tenn. 2000) *State v. Duncan*, 505 S.W.3d 480,484 (Tenn. 2016).

Murders and attempted murders are committed for an almost infinite variety of reasons but only rarely for financial gain. The Presentment, devoid of any language at all that informs Mr. Mayes of the factual allegation(s) of financial gain, is constitutionally defective, therefore should be dismissed

Respectfully submitted this the 9th day of July, 2018,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing has been sent to the District Attorney General for the Eleventh Judicial District by electronic service followed by placing same in the US Mail with sufficient postage to reach his office at the following address on the date the foregoing was filed with the clerk:

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