

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE)	
)	
Plaintiff,)	SECOND DIVISION
)	
vs.)	NO. 305677
)	
MONTEZ MURPHY,)	
)	
Defendant.)	

DEFENDANT MONTEZ MURPHY’S MOTION NO. 6 TO DECLARE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT UNCONSTITUTIONAL

Pursuant to Tenn. R. Crim. P., Rule 12(b)(2)(A) and (B), the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 9 of the Tennessee Constitution, Defendant, Montez Murphy, moves to declare the Racketeer Influenced and Corrupt Organization Act, T.C.A. §39-12-201 et seq., unconstitutional as applied and to be dismissed from this criminal action with prejudice.

INTRODUCTION

Course of Proceedings and Allegations against Defendant Murphy

On or about March 27, 2018, an original thirteen (13) count Presentment was filed against Defendant Murphy and fifty-one co-defendants. On August 14, 2018, the State filed a second and superseding twenty-five (25) count Presentment naming the defendant and *fifty-two* co-defendants. Defendant Murphy is named in Counts One and Two only.

Count One alleges Murphy and the other fifty-one defendants “were unlawfully employed by, or were associated with, [the Athens Parks Bloods] [and did] knowingly conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity, in

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violation of Tennessee Code Annotated 39-12-204(c), against the peace and dignity of the State.” (Presentment, p. 6). In Section II of Count One, the Presentment identifies the following as the “predicate crimes committed in the furtherance of the criminal gang pursuant to T.C.A. 40-35-121(a)(3)(B).”

Predicate Crimes Committed in the Furtherance of the Criminal Gang Pursuant to T.C.A. §40-35-121(a)(3)(B)

...

41. On or about February 27, 2017 Montez Murphy, a/k/a “Tezzo” was charged with Especially Aggravated Kidnapping, Aggravated Robbery, and Felon in Possession of a Firearm in Hamilton County, Tennessee. The case is pending in Hamilton County Criminal Court in docket number 301911. The defendant has a pending Federal charge in the United State District Court, Eastern District of Tennessee in docket number 1:18 CR-0007 for distribution of a Schedule II Controlled Substance of more than 500 grams (Cocaine) between October of 2016 and December of 2016, all of these offenses would either support and/or qualify the defendant as having committed criminal gang offenses as defined under T.C.A. §40-35-121(a)(3)(B).

Presentment, p.p. 8, 16.

Count Two charges Murphy and the other fifty-one defendants with a racketeering conspiracy alleging defendants “unlawfully conspired or endeavored to violate any of the provisions of Tennessee Code Annotated §39-12-204 subsections (a), (b) or (c) in violation of Tennessee Code Annotated §39-12-204(d)...” and incorporates previously alleged gang offenses from Count One. (Presentment, p. 19). The State also generally alleges as to all defendants, “[m]embers of the enterprise and their associates shared in the proceeds of the enterprise’s illegal activities, including, but not limited to, robberies and the sale of controlled substances.” (Presentment, p. 20.) However, no other specific allegations in Count Two identify or name Defendant Murphy or identify any other predicate acts other than the two alleged gang offenses described in Count One.

Related Pending Motions:

Defendant Murphy has previously filed “Defendant Montez Murphy’s Motion No. 3 to Dismiss Presentment” with a hearing date of November 26, 2018. “Defendant Montez Murphy’s Motion No. 4 to Dismiss Presentment or in the Alternative for a Bill of Particulars” was filed on or about October 5, 2018 and has a hearing date of January 7, 2019. “Defendant Murphy’s Motion No. 5 for Severance of Defendants and Offenses” was filed on October 24, 2018 but no hearing date has been scheduled.

ARGUMENT

In Counts One and Two (the only counts in which Defendant Murphy is charged), the Presentment charges Murphy with violating, or conspiring to violate, T.C.A. §39-12-204(c) which provides:

It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity or the collection of any unlawful debt.

The elements of the substantive offense are: (1) employment or association with an “enterprise”; and (2) knowing conduct or participation in the enterprise through a “pattern of racketeering activity” or collection of unlawful debt.¹ The elements of a conspiracy to violate T.C.A. §39-12-204 include: “(1) that the defendant intentionally, knowingly or recklessly conspired with another or others to receive proceeds derived directly or indirectly [from a pattern of racketeering activity][through the collection of an unlawful debt]; and(2) that [any part of such proceeds][the proceeds derived from the use or investments of such proceeds] were to be [used][invested] in the [acquisition of any (title to) (right in) (interest in) (equity in) (real) (personal) property]

¹ T.P.I. 5.01, Part C states the following elements: (1) that the defendant was [employed by][associated with] an enterprise; and (2) that the defendant knowingly [conducted][participated in], directly or indirectly, the enterprise [through a pattern of racketeering activity][through the collection of an unlawful debt].]

[establishment or operation of any enterprise]; and (3) that the defendant acted with criminal intent; and (4) that there was a meeting of minds among all coconspirators; and (5) that one (1) or more of the coconspirators committed an overt act in furtherance of the conspiracy.]” T.P.I.

5.01, Part D-1. The terms “enterprise,” “racketeering activity,” and “pattern of racketeering activity” are defined as:

“Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental, as well as other entities, including criminal gangs, as defined in § 40-35-121(a); ...

T.C.A. §39-12-309(3).

“Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit an act for financial gain that is a criminal offense involving controlled substances, and the amount of controlled substances involved in the offense is included under § 39-17-417(i) and (j) and its subdivisions or involving aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor under §§ 39-17-1004(b)(1)(A) and 39-17-1005(a)(1) or to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit a criminal gang offense, as defined in § 40-35-121(a);

T.C.A. §39-12-309(9).

“Pattern of racketeering activity” means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided, that at least one (1) of such incidents occurred after July 1, 1986, and that the last of the incidents occurred within two (2) years after a prior incident of racketeering conduct;

T.C.A. §39-12-309(6).

At issue in this pleading is the central allegation that Murphy participated or conspired to participate in a “pattern of racketeering activity” as that phrase is defined by T.C.A. §39-12-309(6). By definition, a violation of the statute requires that there be two or more predicate offenses which “have the same or similar intents, results, accomplices, victims, or methods of

commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents.” The state has alleged two predicate offenses in paragraph 41 of the Presentment. In the first alleged predicate offense, Murphy is charged in state court in a single-defendant True Bill with especially aggravated kidnapping, aggravated robbery, and felon in possession of a firearm. In the second alleged predicate offense, he is charged with two other co-defendants Arnold and Armstrong (also named in the Presentment) with conspiracy to violate federal drug laws in the Eastern District of Tennessee. It is clear that these two alleged predicate offenses do not, in the ordinary meaning of the words², “have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents.” See Exhibits 1 and 2. In fact, the two alleged set of offenses share none of the same statutory characteristics *unless* T.C.A. §39-12-309(9) has a meaning indiscernible from the statutory language.

Therefore, it is literally impossible for Murphy to know what conduct allegedly constitutes the pattern of racketeering activity for which he is presently being charged. “A statute is void for vagueness if it is so vague, indefinite, and uncertain that persons must speculate as to its meaning, and if it fails to give a person of ordinary intelligence fair notice that his or her conduct is forbidden by the statute.” *State v. Whaley*, 982 S.W.2d 346, 348 (Tenn.Crim.App.1997); see also *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *United States v. Harriss*, 347 U.S. 612, 617 (1954). A statute can be *facially* constitutional but unconstitutional *as applied* to a particular defendant. *Phillips v. State Bd. of Regents of State University and Community College System of State of Tenn.*, 863 S.W.2d 45, 49 (Tenn. 1993)

² Courts are to determine legislative intent “from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning.” *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn.2000).

citing *Maynard v. Cartwright*, 486 U.S. 356, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988); *United States v. Mazurie*, 419 U.S. 544, 550, 95 S.Ct. 710, 714, 42 L.Ed.2d 706 (1975). In this instance, the statute, as applied, is unconstitutionally vague by its failure to provide fair notice of what constitutes “pattern of racketeering activity.”

CONCLUSION

For the reasons stated herein, Defendant Murphy moves for an order holding the Racketeer Influenced and Corrupt Organization Act, T.C.A. §39-12-201 et seq., unconstitutional as applied and to be dismissed from this criminal action with prejudice.

Respectfully submitted,

SPEARS, MOORE, REBMAN & WILLIAMS, PC

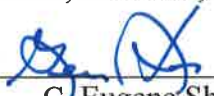
By: 
O. Eugene Shiles, Jr., BPR# 11678
Attorneys for Defendant Montez Murphy
601 Market Street, Suite 400 (37402)
P. O. Box 1749
Chattanooga, TN 37401-1749
423/756-7000
ces@smrw.com

CERTIFICATE OF SERVICE

Service to all parties involved in this action shall be facilitated by the Court Clerk’s Office in accordance with the Court’s Case Management Order of September 26, 2018.

This 26 day of October, 2018.

SPEARS, MOORE, REBMAN & WILLIAMS, PC

BY: 
C. Eugene Shiles, Jr.

No. 301911

GJ No. 290,145
290,143

A TRUE BILL

AGGRAVATED ROBBERY - COUNT 1 OF 3
TENNESSEE CODE ANNOTATED 39-13-402 (CLASS B FELONY)

ESPECIALLY AGGRAVATED KIDNAPPING - COUNT 2 OF 3
TENNESSEE CODE ANNOTATED 39-13-305 (CLASS A FELONY)

STATE OF TENNESSEE

VS.

MONTEZ MURPHY

District Attorney General

Jimmy Carlson
Grand Jury Foreman or
Grand Jury Forewoman

Clerk's Summons for the State

Prosecutor:

JON WATKINS, 1952, CHATTANOOGA POLICE DEPT.
ERIC ELLIS, 126 MITCHELL DRIVE, LOOKOUT MOUNTAIN, TN 37350

FILED IN OFFICE

2017 MAY 10 AM 9:45

CLERK OF COURT

Filed



301911

STATE OF TENNESSEE, HAMILTON COUNTY
Criminal Court

THE GRAND JURORS for the State aforesaid, being duly summoned, elected, impaneled, sworn and charged to inquire for the body of the County aforesaid, upon their oaths present:

That Montez Murphy heretofore on February 27, 2017, in the County aforesaid, did unlawfully and intentionally or knowingly take property from the person of Eric Ellis, by violence or putting the victim in fear, and (a) the defendant accomplished the offense with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon, or (b) the victim suffered serious bodily injury, in violation of Tennessee Code Annotated 39-13-402, against the peace and dignity of the State.

Count 2:

THE GRAND JURORS for the State aforesaid, being duly summoned, elected, impaneled, sworn and charged to inquire for the body of the County aforesaid, upon their oaths present:

That Montez Murphy heretofore on February 27, 2017, in the County aforesaid, did unlawfully and knowingly remove or confine Eric Ellis, so as to interfere substantially with the victim's liberty, and did accomplish this with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon, in violation of Tennessee Code Annotated 39-13-305, against the peace and dignity of the State.

No.

301911

GJ No. 290,144

A TRUE BILL

POSSESSION OF FIREARM WITH VIOLENT FELONY CONVICTION - COUNT 3 OF 3
TENNESSEE CODE ANNOTATED 39-17-1307 (CLASS C FELONY)

STATE OF TENNESSEE

VS.

MONTEZ MURPHY

District Attorney General


Grand Jury Foreman or
Grand Jury Forewoman

Clerk's Summons for the State

Prosecutor:

JON WATKINS, #952, CHATTANOOGA POLICE DEPT.
ERIC ELLIS, 126 MITCHELL DRIVE, LOOKOUT MOUNTAIN, TN 37350

FILED IN OFFICE

2017 MAY 10 AM 9:45

CLERK DEAN, CLERK

Filed

301911

Count 3:

THE GRAND JURORS for the State aforesaid, being duly summoned, elected, impaneled, sworn and charged to inquire for the body of the County aforesaid, upon their oaths present:

That Montez Murphy heretofore on February 27, 2017, in the County aforesaid, did unlawfully and knowingly possess a firearm, after he, the defendant, had been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon, to-wit: Aggravated Robbery, docket number 275892 in the First Division of Criminal Court for Hamilton County, Tennessee, on December 21, 2010, in violation of Tennessee Code Annotated 39-17-1307, against the peace and dignity of the State.



DISTRICT ATTORNEY GENERAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

FILED

JAN 23 2018

Clerk, U. S. District Court
Eastern District of Tennessee
At Chattanooga

UNITED STATES OF AMERICA)

v.)

MARTREL ARNOLD,
also known as "TRIKKY TREL,"
DARRELL ARMSTRONG,
also known as "DIESEL,"
MONTEZ MURPHY,
also known as "TEZZO")

1:18-cr-7

Judge McDonough/lee

INDICTMENT

COUNT ONE

The Grand Jury charges that from in or about October of 2016, to in or about December of 2016, in the Eastern District of Tennessee, the defendants, MARTREL ARNOLD, also known as "TRIKKY TREL," DARRELL ARMSTRONG, also known as "DIESEL," and MONTEZ MURPHY, also known as "TEZZO," and others known and unknown to the Grand Jury, did combine, conspire, confederate and agree to knowingly, intentionally, and without authority distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(B).

J. DOUGLAS OVERBEY
United States Attorney

By: CDP
Christopher D. Poole
Assistant United States Attorney

A TRUE BILL


FOREPERSON OF THE GRAND JURY

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