

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE)	
)	SECOND DIVISION
)	
v.)	No: 305669
)	
RODNEY LOMNICK, JR.)	

STATE OF TENNESSEE’S RESPONSE TO DEFENDANT RODNEY ARNEZ LOMINICK JR’S MOTION NO. 1: MOTION TO DISMISS DEFECTIVE PRESENTMENT PURSUANT TO RULES 12(b)(2)(A) & 12(b)(2)(B) of the TENNESSEE RULES OF CIRMINAL PROCEDURE

Comes now the State of Tennessee, by and through the District Attorney General’s Office, and submit this response to the defendant’s Motion to Dismiss Defective Presentment. The State of Tennessee would submit the following reasons as to why defense fails to meet the burden.

TEMPORAL REQUIREMENT OF TENN. CODE ANN. § 39-12-203(6)

Defense counsel claims the State of Tennessee fails to comply with the temporal requirement of Tenn. Code Ann. § 39-12-203 (6). The pattern of racketeering activity in the Superseding Indictment alleges many acts constituting the pattern and thus more than two years can span from the first and last racketeering act as long last racketeering act is within two years of the prior racketeering act. *United States v. Pungitore*, 910 F. 2d 1084, 1129 n 63 (3rd Cir. 1990).

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EX POST FACTO CHALLENGE

Defense counsel claims that the State of Tennessee's reliance on convictions prior to July 1, 2012 violates the Ex Post Facto Clauses of Article I, Section 10 of the United States Constitution and Article I, Section of the Tennessee Constitution. As noted in *United States v. Brown*, 555 F.2d 407, 416-417 1977 U.S. App. Lexis 12575,

"The Supreme Court has defined an ex post facto law "as one that makes an action done before the passing of the law, and which was innocent when when done, criminal; and punishes such action, or 'that aggravates a crime, or makes it greater than it was, when committed.' "

"It was obviously in an effort to avoid the ex post facto problem that Congress in defining 'pattern of racketeering activity,' required that at least one illegal act occur after the effective date of the Act."

Defendant Lomnick has engaged in a pattern of racketeering activity after the July 1, 2012 as alleged in Paragraph 34 of Count One Section Two of the Supersecding Presenment.

Respectfully submitted,

NEAL PINKSTON
District Attorney General

By:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading was provided to:

Mr. PHILLIP WELLS
Attorney for the defendant, RODNEY LOMNICK
Republic Centre, Suite 700
633 Chestnut Street
Chattanooga, Tennessee 37450

Either by hand-delivery or by placing the same in the United States Postal system, with sufficient postage affixed and paid to allow the document to be sent to Mr. **Phillip Wells** on this 31st day of Oct, 2018.



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