

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,	*	NO. 305677
	*	
vs.	*	
	*	SECOND DIVISION
MONTEZ MURPHY,	*	
<i>Defendant.</i>	*	

STATES RESPONSE TO DEFENDANT MONTEZ MURPHY'S MOTION NO. 3
TO DISMISS PRESENTMENT

COMES NOW the State of Tennessee, by and through counsel, the District Attorney General of Hamilton County, Tennessee, Neal Pinkston, for the 11th Judicial District, and submits this response to the Defendant's motion to dismiss.

The State would submit the following reasons as to why the defense fails to meet its burden.

T.C.A 39-13-204(e) states:

(e) Multiple and alternative violations of *this section* shall be alleged in multiple separate counts, with the factual basis for the alleged predicate acts set forth in each count. A person may only be convicted either of one (1) criminal violation of *this section*, including a conviction for conspiring to violate *this section*, or for one (1) or more of the predicate acts, but not both. The state shall not be required to elect submission to the jury of the several counts. (Emphasis added.)

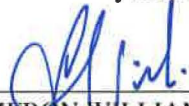
The only offenses the Defendant is indicted for under "this section" are violations of T.C.A. 39-12-204(c) and T.C.A. 39-12-204(d). The State elected not to include the other cases pending in State and Federal Court that would constitute "predicate acts" under T.C.A 39-12-204 as part of the indictment under this section. Thus, contrary to what the Defendant contends one jury will hear all the cases indicted under this section.

The fact that the United States has a pending indictment against the Defendant involving a “predicate act” has no effect on the State’s ability to pursue that offense in the indictment. The State of Tennessee and the United States are “dual sovereigns” and therefore prosecution in the United States District Court does not bar prosecution by the State of Tennessee. *Lavon v. State*, 586 S.W.2d 112 (Tenn. 1979).

UPON CONSIDERATION OF THESE OBJECTIONS AND SUPPORTING LEGAL ARGUMENT, the State of Tennessee, respectfully prays that this court not enter an order dismissing the indictment.

Respectfully submitted,

NEAL PINKSTON
District Attorney General

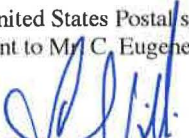
BY: 
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CERTIFICATE OF SERVICE

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

Mr. C. Eugene Shiles, Jr.
Attorney for the Defendant, MONTEZ MURPHY
601 Market Street, Suite 400 (37402)
P.O. Box 1749
Chattanooga, TN 37401-1749

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. C. Eugene Shiles, Jr. on this 31st day of October, 2018


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FILED IN OFFICE
2018 OCT 31 AM 9:36
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