

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE, \* NO. 305683  
\*  
vs. \*  
\* SECOND DIVISION  
CORTEZ SIMS, \*  
Defendant. \*

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STATE'S RESPONSE TO DEFENDANT CORTEZ SIMS' MOTION NUMBER 9:  
MOTION TO DISMISS DEFECTIVE PRESENTMENT

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COMES NOW the State of Tennessee, by and through counsel, the District Attorney General of Hamilton County, Tennessee, Neal Pinkston, for the 11<sup>th</sup> Judicial District, and submits this response to the defendant's motion and memorandum of law to dismiss the RICO Presentment Count One and Count Two.

The State of Tennessee would submit the following reasons as to why the defense fails to meet the burden:

**A. The State is not required to prove a "financial gain" element.**

On page three of Defendant's brief he contends that Racketeering Activity, as it pertains to this matter, means to commit a gang offense for financial gain.

The State does not agree with Defendants interpretation of T.C.A. § 39-1-203 (9), the definition of "racketeering activity." The State would argue that TN Pattern Jury instructions, specifically T.P.I. 5.01 (c), are not consistent with the Defendant's interpretation.

T.P.I. 5.01 (a) specifically references "proceeds derived." T.P.I. 5.01 (b) speaks in terms of "real or personal property." T.P.I. 5.01 (c), to which the State relies upon, makes no reference to either "proceeds derived" nor "real or personal property."

The State is pursuing a theory consistent with T.P.I. 5.01 (c);

(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.~~]

To require the State to prove additional elements would not be consistent with the law nor TN Pattern Jury Instructions. To not allow the State to rely upon T.P.I. 5.01 (c), specifically the language of “through a pattern of racketeering activity” would deny the State a right to a fair trial.

UPON CONSIDERATION OF THESE OBJECTIONS AND SUPPORTING LEGAL ARGUMENT, the State of Tennessee, respectfully prays that this court deny Defendants motion to dismiss.

Respectfully submitted,

NEAL PINKSTON  
District Attorney General

By:



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COLIN CAMPBELL,  
BPR# 019672  
Assistant District Attorney  
600 Market Street, Suite 300  
Chattanooga, TN 37402

**CERTIFICATE OF SERVICE**

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

**Mr. Joshua Weiss**  
Attorney for the defendant, CORTEZ SIMS  
3001 Broad Street, Ste. 101  
Chattanooga, Tennessee 37408

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. **Joshua Weiss** on this 3/5 day of OCT, 2018.



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