

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE)	
)	
)	DOCKET NO. 305651
)	
v.)	
)	HON. JUDGE GREENHOLTZ
COUNTESS CLEMONS)	DIVISION II

DEFENDANT COUNTESS CLEMON'S MOTION #16:
MOTION TO DISMISS PRESENTMENT AGAINST COUNTESS CLEMONS

The Defendant, Countess Clemons, was charged in Counts One and Two of the Presentment (Racketeering and Racketeering Conspiracy). The Defendant moves to dismiss this indictment against her.

Ms. Clemons was charged on the new presentment as follows:

16. Countess Clemons, alias "Count", plead guilty on October 10, 2010 in Hamilton County Criminal Court in docket 278741 for Assault, which qualifies as a criminal gang offense as defined under T.C.A. 40-35-121 (a)(3)(B);

The State is prosecuting Ms. Clemons twice for the same act. The RICO statute requires the state to show a "pattern" of acts.¹ The Tennessee Supreme Court has established:

As Tennessee courts have held, in order to satisfy the constitutional requirement, an indictment or presentment must provide a defendant with notice of the offense charged, provide the court with an adequate ground upon which a proper judgment may be entered, and provide the defendant with protection against double jeopardy. See, e.g., *State v. Pearce*, 7 Tenn. (Peck) 66, 67 (1823); *State v. Haynes*, 720 S.W.2d 76, 82 (Tenn. Crim. App. 1986).²

There is no second act alleged. Therefore, the indictment is unconstitutional.

Further, the Statute is clear that: "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

¹ T.C.A. 39-12-204 (c); T.C.A., 39-12-203(9).

² *State v. Byrd*, 820 S.W. 2d 739, 741 (Tenn. 1991); T.C.A. 39-12-204(e).

for one (1) or more of the predicate acts, but not both.”³ Thus, only one prosecution is allowed, and has already occurred.

The State alleges no facts that show the basis for conspiracy under count two. Liability for racketeering conspiracy only occurs if there are at least two acts of racketeering (by someone) that the defendant “knew about and agreed to facilitate.” *State v. Salinas*, 522 U.S. 52, 66 (1997). Therefore, the presentment violates Ms. Clemon’s right to be informed of the factual basis of the charges against her.⁴

Further, the RICO statute is void for vagueness as applied to Ms. Clemons. “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.”⁵ Ms. Clemons was not given fair notice of which of her acts would constitute a pattern of racketeering activity or conspiracy to do so. No “person of ordinary intelligence” would be on notice that a single simple assault would constitute racketeering or conspiracy to racketeer.⁶

Specifically, Ms. Clemons requests to be dismissed from this action. Ms. Clemons requests that this Court find that the Presentment is defective statutorily and constitutionally, and that proper jurisdiction does not exist.

Related Motion: Please see: **DEFENDANT COUNTESS CLEMON’S MOTION #15: MOTION TO JOIN DEFENDANT DANIELLE DEAN’S “MOTION No. 2: MOTION TO DISMISS PRESENTMENT;” AND MOTION TO DISMISS PRESENTMENT AGAINST COUNTESS CLEMONS SPECIFICALLY**

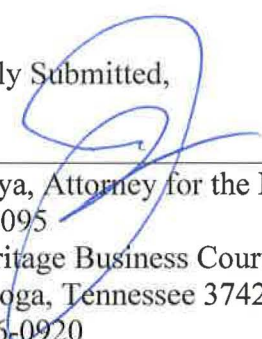
³ T.C.A. 39-12-204(e).

⁴ *Russell v. United States*, 369 U.S. 749, 761 (1962).

⁵ *State v. Whaley*, 982 S.W.2d 346; 348; *Phillips v. State Bd. of Regents of State University and Community College Systems of State Of Tenn.*, 863 S.W. 2d 45, 49 (Tenn. 1993).

⁶ *Id.*

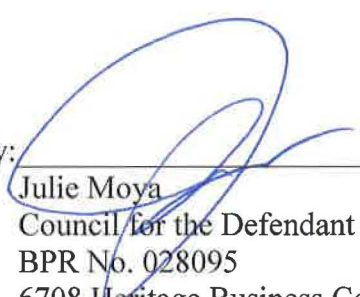
Respectfully Submitted,

By: 
Julie Moya, Attorney for the Defendant
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6708 Heritage Business Court
Chattanooga, Tennessee 37421
(423) 316-0920

CERTIFICATE OF SERVICE

Service to all parties shall be facilitated by the Court Clerk per the Case Management Order.

Respectfully Submitted,

By: 
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BY _____
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