

**CRIMINAL COURT FOR THE STATE OF TENNESSEE
IN THE COUNTY OF MCMINN**

STATE OF TENNESSEE

CASE NO: 14CR69

v.

WALTER FRANCIS FITZPATRICK, III

Defendant

DEFENDANT’S MOTION TO ARREST JUDGMENT

Pursuant to Tennessee Rule of Criminal Procedure 34, the defendant hereby moves this Court to arrest judgment.

Grounds for this motion are that this Court was without jurisdiction of the charged offenses.

The record reflects that members of the Grand Jury that voted to indict the defendant were allegedly victims of the alleged crimes for which they voted to indict. Pursuant to Tennessee Rule of Criminal Procedure 6(c)(1)(C) “No member of the grand jury shall be present during—or take part in—the consideration of a charge or the deliberation of the other grand jurors” when “the offense was committed against the member’s person or property.” Therefore, several members of the Grand Jury that voted to indict were disqualified to do so. Appropriate disqualifications left fewer than the number of Grand Jury members required to indict.

Additionally, the indictment alleges that Jeff Cunningham was one of the victims of the charged offenses. The record reflects that Jeff Cunningham, acting as Grand Jury Foreman, was present and took part in the Grand Jury’s consideration of and deliberation of the charged offenses.

For these reasons, the indictment is void and this Court has lacked jurisdiction over the offenses charged at all times relevant to the instant prosecution.

Respectfully submitted this the 15th of Av (a.k.a. 12th Day of August), 2014,



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CERTIFICATE OF SERVICE

It is hereby certified that on 15th of Av (a.k.a. 12th Day of August), 2014, a copy of the preceding document was delivered to the State's attorney at his office in Athens, TN.



Van R. Irion
Attorney for the Defendant