

IN THE CRIMINAL COURT FOR ROANE COUNTY, TENNESSEE

STATE OF TENNESSEE)	
)	
v.)	No. 2013-CR-197
)	
ROY COOK)	

**RESPONSE TO "EX-PARTE" MOTION TO DISMISS
INDICTMENT FOR PROSECUTORIAL MISCONDUCT**

Comes the State of Tennessee and in response to the "Ex-Parte" Motion to Dismiss Indictment For Prosecutorial Misconduct would say unto this Honorable Court as follows:

1. In paragraph 1 of the allegations of misconduct filed by the defendant the defendant complains that the State has concealed evidence of a forensic analysis of digital electronic devices. Reference is made by the defendant to an "exhibit 19" but the copy of the motion delivered to the State has no such exhibit attached to the motion. The reference may have been intended to be to exhibit 9 and that exhibit shows a call of the duration mentioned by the defendant but the conclusion of the defendant that this represents a conversation with Shane Harold is not clearly supported. All the material mentioned by the defendant indicates that either no analysis was done or if done nothing of interest was found. The State is not aware of any analysis and has been advised there was either no analysis or the analysis was unproductive. Admittedly the details related by Detective Schneider and Detective Harold about the analysis or lack of analysis are less than fully satisfying but there is no evidence that any information is being concealed from the defendant. In any event the digital electronic devices involved have all been returned to the defendant as they contained nothing of evidentiary value to

the prosecution or exculpatory evidence that was apparent to the State. The defendant is now free to make his own forensic analysis. There was certainly no prosecutorial misconduct involved in any of the matters mentioned by the defendant and the State demands a hearing on this issue.

2. The next allegation of misconduct appears to assert that the State mishandled subpoena power in some way or that information gained by subpoena was improperly withheld. The State did not issue any subpoena seeking results of any forensic analysis of digital electronic devices. It is believed that the defense issued such a subpoena. The had asked questions of the officers involved and the State did receive a simple one paragraph response from Investigator Dan Schneider of the Harriman Police Department that he had received from Investigator Shane Harold. That response is attached to the defendant's motion as exhibit 6. Obviously this was forwarded to defense counsel since the defense has attached it. There was no unnecessary delay. Prosecutorial misconduct is denied and a hearing demanded.
3. Paragraph three complains that email has been withheld. All email received by the State from investigators and witness Andrew Cook has been provided to the defense even though it does not necessarily meet the description of any discoverable material as defined in Tennessee Rule of Criminal Procedure 16 or possess exculpatory value that would otherwise require disclosure. The order of Judge Eblen regarding the production of any unredacted email has been followed to the best ability of the undersigned. The court ordered that it be produced if it existed. The State is obligated to furnish Rule 16 and exculpatory material and is bound to do so for any such material in the possession or constructive possession of the State. The undersigned has corresponded with witness Andrew Cook about the email in question and provided all responses received to the defendant or his counsel in an effort to be as forthcoming as possible with the

defense but this has been done to no avail. Andrew Cook insists that there is no unredacted email and that he cannot obtain additional copies. The State has no obligation to obtain all email between all witnesses with each other or the defendant as implied by the defendant. Such email is not in the possession or constructive possession of the State. The defense is free to pursue it through any source the defense may choose and apparently has attempted to do so through the efforts of former defense counsel Headrick. Prosecutorial misconduct is denied regarding email and a hearing demanded.

4. Paragraph four appears to be a continuation of the argument made in paragraph three. In response to this paragraph reference is made to the forgoing response to paragraph three. Prosecutorial misconduct is denied and a hearing demanded.
5. Paragraph five asserts that phone records have been withheld. The State would show that witness Andrew Cook forwarded phone records to Investigator Jeff Vittatoe by an email dated 1-30-13. Investigator Vittatoe apparently attempted to print this email attachment and turned over to the State what he printed as part of the case file. Witness Andrew Cook has reviewed the defendant's motion to dismiss and contacted the undersigned and explained that the attachment that was sent to Vittatoe was sent in Microsoft Excel format and that Vittatoe evidently opened the attachment and ordered it to print. This resulted in only the first page printing as it is necessary to open each page separately in Excel in order to get every page to print. Andrew Cook has forwarded the same attachment to the undersigned on March 13, 2017 and the entire attachment has been printed and is attached to this response. This additional information is now provided as further discovery. It is not believed to possess any exculpatory information. As it was not provided to the prosecution as part of the original case file and was received by the prosecution on 3-13-17 and is being provided to the defense upon the

filing of this response, there is no prosecutorial misconduct related to the production of this information and a hearing is demanded.

6. Paragraph six of the allegations of prosecutorial misconduct appears to be a rehash of the allegations of paragraph two. The email does not demonstrate misconduct on the part of anyone. The balance of the allegations in this paragraph reflect only the vivid imagination of the defendant. Prosecutorial misconduct is denied and a hearing demanded.
7. Paragraph seven alleges prosecutorial misconduct based in the defendant's opinion that signatures of Jeff Vittatoe appear different in two separate documents pertaining to evidence. In the mind of the defendant this is related to his belief that there has been a forensic analysis of digital electronic devices that has been concealed from him. Nothing further can be said on behalf of the State on this subject that would have additional meaning. Prosecutorial misconduct is denied and a hearing demanded.

RESPECTFULLY SUBMITTED:

Russell Johnson
District Attorney General

By: 

Robert C. Edwards
Senior Assistant District Attorney General

























CERTIFICATE OF SERVICE







I, Robert C. Edwards, do hereby certify that a true and exact copy of the foregoing motion has been forwarded to the office of the Honorable Stephen McGrath, advisory counsel for the defendant, by deposit of same in the United States Mail to his last known address with sufficient postage to warrant delivery thereof on this the 15th day of March, 2017 .


Robert C. Edwards

		From	To	
Jan 18, 2013	07:24 PM	19013470425	18653220984	0:18:00
Jan 18, 2013	07:55 AM	19013470425	18653220984	0:02:00
Jan 18, 2013	07:52 AM	19013470425	18653220984	0:03:00
Jan 18, 2013	07:50 AM	19013470425	18653220984	0:01:00
Jan 18, 2013	07:48 AM	19013470425	18653220984	0:03:00
Jan 17, 2013	09:17 PM	19013470425	18653220984	0:17:00
Jan 17, 2013	08:11 PM	19013470425	18653220984	0:02:00
Jan 17, 2013	08:09 PM	19013470425	18653220984	0:01:00
Jan 17, 2013	08:07 PM	19013470425	18653220984	0:02:00
Jan 17, 2013	07:58 PM	19013470425	18653220984	0:09:00
Jan 17, 2013	07:55 PM	19013470425	18653220984	0:03:00
Jan 17, 2013	07:54 PM	19013470425	18653220984	0:01:00
Jan 16, 2013	07:41 AM	19013470425	18653220984	0:04:00
Jan 16, 2013	07:37 AM	19013470425	18653220984	0:03:00

\$0.00	\$0.00	55726988888	roy11
\$0.00	\$0.00	55715373946	
\$0.00	\$0.00	55715347218	
\$0.00	\$0.00	55715328954	
\$0.00	\$0.00	55715312928	
\$0.00	\$0.00	55713540252	roy2
\$0.00	\$0.00	55712760230	roy10
\$0.00	\$0.00	55712724776	
\$0.00	\$0.00	55712712220	roy 9
\$0.00	\$0.00	55712688826	roy3
\$0.00	\$0.00	55712575884	roy5
\$0.00	\$0.00	55712541189	
\$0.00	\$0.00	55685661277	
\$0.00	\$0.00	55685635076	initial contact to ask roy to talk to Tom

Date	Time	From	To	Duration (hh:mm:ss)	Rate	Amount	Transaction ID
Jan 18, 2013	09:03 AM	  Anonymous	19013470425	0:01:00	\$0.00	\$0.00	55716231025
Jan 17, 2013	09:36 PM	  18653220984	19013470425	0:01:00	\$0.00	\$0.00	55713572818
Jan 17, 2013	07:46 PM	  Anonymous	19013470425	0:06:00	\$0.00	\$0.00	55712495504
Jan 17, 2013	06:17 PM	  Anonymous	19013470425	0:01:00	\$0.00	\$0.00	55711229038
Jan 17, 2013	04:21 PM	  18653220984	19013470425	0:01:00	\$0.00	\$0.00	55709313524
Jan 17, 2013	04:18 PM	  17029875017	19013470425	0:02:00	\$0.00	\$0.00	55709277582
Jan 17, 2013	04:13 PM	  17029875017	19013470425	0:01:00	\$0.00	\$0.00	55709161917
Jan 16, 2013	08:14 PM	  14076948886	19013470425	0:13:00	\$0.00	\$0.00	55698073042
Jan 16, 2013	05:05 PM	  Anonymous	19013470425	0:02:00	\$0.00	\$0.00	55695130587
Jan 16, 2013	02:28 PM	  Anonymous	19013470425	0:28:00	\$0.00	\$0.00	55692819590
Jan 16, 2013	11:45 AM	  Anonymous	19013470425	0:03:00	\$0.00	\$0.00	55689519204
		  Anonymous					

Jan 16, 2013	09:23 AM		19013470425	0:01:00	\$0.00	\$0.00	55686910764
							
							
Jan 15, 2013	07:41 PM		14072072536 19013470425	0:55:00	\$0.00	\$0.00	55683429591
							
							
Jan 14, 2013	10:39 AM		14072072536 19013470425	2:19:00	\$0.00	\$0.00	55661611393
							
							
Jan 14, 2013	10:12 AM		14072072536 19013470425	0:01:00	\$0.00	\$0.00	55657530509

first extortion attempt

initial threat to burn boards if I contact police

Date	Time	From	To	Duration (hh:mm:ss)	Rate	Amount	Transaction ID
Jan 18, 2013	10:55 AM	17029875017	18653762145	0:16:00	\$0.00	\$0.00	55720754379
Jan 18, 2013	10:44 AM	17029875017	18655497800	0:11:00	\$0.00	\$0.00	55720462060
Jan 18, 2013	10:38 AM	17029875017	18655497800	0:02:00	\$0.00	\$0.00	55720204759
Jan 18, 2013	10:36 AM	17029875017	18655497800	0:03:00	\$0.00	\$0.00	55720166344
Jan 17, 2013	03:13 PM	17029875017	18653220984	0:01:00	\$0.00	\$0.00	55710220282
Jan 17, 2013	03:12 PM	17029875017	18653220984	0:01:00	\$0.00	\$0.00	55710191347
Jan 17, 2013	02:47 PM	17029875017	18653220984	0:25:00	\$0.00	\$0.00	55710187871
Jan 17, 2013	02:35 PM	17029875017	18653220984	0:03:00	\$0.00	\$0.00	55709599617
Jan 17, 2013	02:33 PM	17029875017	18653220984	0:02:00	\$0.00	\$0.00	55709542261
Jan 17, 2013	02:18 PM	17029875017	19013470425	0:02:00	\$0.00	\$0.00	55709279299
Jan 17, 2013	02:13 PM	17029875017	19013470425	0:01:00	\$0.00	\$0.00	55709159587
Jan 15, 2013	12:30 PM	17029875017	14133871644	0:35:00	\$0.00	\$0.00	55678461283
Jan 14, 2013	03:56 PM	17029875017	18652234263	0:01:00	\$0.00	\$0.00	55666871995
Jan 14, 2013	03:50 PM	17029875017	18659330411	0:06:00	\$0.00	\$0.00	55666867198
Jan 14, 2013	02:14 PM	17029875017	14133871644	0:01:00	\$0.00	\$0.00	55665179345
Jan 14, 2013	02:13 PM	17029875017	14133871629	0:01:00	\$0.00	\$0.00	55665175793
Jan 14, 2013	12:14 PM	17029875017	12253813686	0:01:00	\$0.00	\$0.00	55663019826
















roy8

roy1

time is off

roy7

time is off

Date	Time	From	To	Duration (hh:mm:ss)	Rate	Amount	Transaction ID
Jan 18, 2013	07:04 AM	 Anonymous	17029875017	0:01:00	\$0.00	\$0.00	55716255217
Jan 17, 2013	02:23 PM	 Anonymous	17029875017	0:09:00	\$0.00	\$0.00	55709489694
Jan 17, 2013	01:49 PM	  6617480240	16502920887	0:01:00	\$0.00	\$0.00	55708738085
Jan 17, 2013	01:49 PM	 6617480240	16502920887	0:01:00	\$0.00	\$0.00	55708738065
Jan 17, 2013	01:44 PM	  Anonymous	16502920887	0:01:00	\$0.00	\$0.00	55708646995
Jan 17, 2013	01:44 PM	 Anonymous	16502920887	0:01:00	\$0.00	\$0.00	55708646988
Jan 17, 2013	01:41 PM	  6617480240	16502920887	0:01:00	\$0.00	\$0.00	55708593666
Jan 17, 2013	01:41 PM	 6617480240	16502920887	0:01:00	\$0.00	\$0.00	55708593642
Jan 17, 2013	09:52 AM	 13172424527	16502920887	0:01:00	\$0.00	\$0.00	55704445834
Jan 17, 2013	09:52 AM	 13172424527	18667007704	0:01:00	\$0.05	\$0.00	55704450178
Jan 17, 2013	09:51 AM	 13046252000	16502920887	0:01:00	\$0.00	\$0.00	55704417624
Jan 17, 2013	06:07 AM	 13172424527	18667007704	0:01:00	\$0.05	\$0.00	55700634878

Jan 17, 2013	06:07 AM	13172424527	16502920887	0:01:00	\$0.00	\$0.00	55700637359
		ID					
Jan 16, 2013	05:48 PM	12136340919	16502920887	0:01:00	\$0.00	\$0.00	55697627703
		ID					
Jan 16, 2013	07:31 AM	18176490845	16502920887	0:01:00	\$0.00	\$0.00	55687573906
		ID					
Jan 16, 2013	07:31 AM	18176490845	18667007704	0:01:00	\$0.05	\$0.00	55687043777
		ID					
		F					
Jan 15, 2013	11:57 AM	13172424527	16502920887	0:01:00	\$0.00	\$0.00	55677283498
		ID					
Jan 15, 2013	11:57 AM	13172424527	18667007704	0:01:00	\$0.05	\$0.00	55677285774
		ID					
Jan 15, 2013	11:57 AM	13172424527	16502920887	0:01:00	\$0.00	\$0.00	55677283475
		ID					
Jan 15, 2013	08:18 AM	13172424527	18667007704	0:01:00	\$0.05	\$0.00	55673319523

roy4
time is off