

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

RAYMOND RZEPLINSKI,
Defendant,

DIVISION II

No. 316374

STATE'S MOTION REGARDING ATTEMPTS AT JURY NULLIFICATION

Comes now, the State of Tennessee, by and through its district attorney general, to request that this Honorable Court allow the State to strike potential jurors for cause during voir dire if the potential juror listens to the radio show of David Tulis, has spoken to David Tulis about this case, or reads the blogs of David Tulis. The State additionally requests that David Tulis be barred from entry to the courtroom during the proceedings of this trial as he has demonstrated an attempt to unlawfully intervene or interfere with the proceedings, and he has attempted to inform jurors of the unlawful concept of jury nullification.

I. Background Information

It came to the attention of the State of Tennessee that independent reporter David Tulis, on his blogs titled "Tulis Report," "tntrafficticket.us," and "davidtulis.substack.com/p/jurors-duty-to-acquit-plumber-ray" posted articles titled "2 women Das, judge, lawyer lay trap for '2A Ray'" and "Jury's duty to acquit Plumber Ray in vicious prosecution." In these articles he speaks at length about the facts in the Defendant's case and his personal views regarding this case.¹ In addition to

¹ David Tulis, *2 women Das, judge, lawyer lay trap for '2A Ray'*, TULIS REPORT, July 23, 2024, <https://tntrafficticket.us/2024/07/2-women-das-judge-lawyer-lay-trap-for-2a-ray/>.

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his own views, Mr. Tulis discusses at length jury nullification and impresses upon potential jurors the duty to nullify. *Id. See States Exhibit 1 and 2.*

Mr. Tulis's obstructive and disruptive behavior is not limited to these articles. Mr. Tulis has also recently attempted to intervene and illegally practice law through the filing of motions and representation of a client in a General Sessions Court case before Judge Ables against Tamela Grace Massengale. Mr. Tulis was warned against the unlawful practice of law, and his motions were dismissed by Judge Ables and by this Court. *See States Exhibit 3.* Mr. Tulis has also had his own criminal cases in Hamilton County. While the charges were pending grand jury review, Mr. Tulis attempted numerous times to directly contact, get ahold of, or deceive his way into the grand jury room to speak with the foreperson of the grand jury directly. At one point he identified himself as a reporter curious about how the grand jury operated, not disclosing that he had a case pending the grand jury and attempted to gain direct access to them. He was unsuccessful in this attempt when court security intervened.

As is shown above, Mr. Tulis has a history of operating outside the lines of what is proper and lawful. He actively intervenes in cases in which he is interested, and he has directly attempted to tamper with and taint the potential jurors for the Defendant's case.

II. THE LAW REGARDING JURY NULLIFICATION

Tennessee Courts have routinely ruled that a Defendant does not have a right, whether it be constitutional or procedural, to jury nullification. *Hill v. State*, No. W2013-02557-CCA-R3-PC, 2015 Tenn. Crim. App. LEXIS 86, *25. Tennessee has also ruled that a defendant and his or her counsel is prohibited from encouraging jury nullification. *See State v. Shropshire*, 874 S.W.2d 634, 640 (Tenn. Crim. App. 1993). When such arguments arise, courts act properly when they stop such arguments from being made and prospectively prohibit such arguments from being made

through instruction to the defendant and his or her attorney. See *Craigmore v. State*, C.C.A. No. 03C01-9710-CR-00440, 1999 Tenn. Crim. App. LEXIS 727, *13. When jury nullification is raised to jurors, a trial court acts properly in issuing an instruction to jurors that they must make their judgment based on whether the elements of the crime were proved beyond a reasonable doubt and not based on their personal views of whether the law is valid. See *Craigmore*, 1999 Tenn. Crim. App. LEXIS 727, *48-49 (citing *Farina v. United States*, 622 A.2d 50, 61 (D.C. Ct. App. 1993)). Although a jury might make a decision based on nullification, they have no right to do so. *Wright v. State*, 394 S.W.2d 883, 885 (Tenn. 1965).

III. THE LAW REGARDING STRIKING OR CHALLENGING JURORS FOR CAUSE

During the questioning of jurors, the parties are permitted to ask questions to discover bases for challenges for cause. Tenn. R. Crim. P. 24(b)(1). Challenges for cause area not counted against the allotted peremptory challenges for the parties. A juror may be excused for cause if (1) there exists any ground for challenge for cause provided by law or (B) if the prospective juror has been exposed to potentially prejudicial information that makes them unacceptable as a juror. *Id.* at (c)(2)(A)-(B).

cause for
dismissal

IV. THE LAW REGARDING REMOVAL OF A PERSON FROM COURT PROCEEDINGS

Mr. Tulis works as an independent reporter and blogger and falls under the definition of "media" for the purpose of the media guidelines articulated by Tennessee Supreme Court Rule 30. "Media" is defined in this rule as "legitimate news gathering and reporting agencies and their representative whose function is to inform the public, or persons engaged in the preparation of educational films or recordings." *Id.* Media coverage of judicial proceedings is generally to be allowed so long as the coverage is subject to the authority of the presiding judge to: (1) control the conduct of the proceedings before the court; (2) maintain decorum and prevent distractions; (3)

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guarantee the safety of any party, witness, or juror, and (4) ensure the fair and impartial administration of justice in the pending case. *Id.*

The presiding judge is authorized to refuse, limit, terminate, or temporarily suspend media coverage of an entire case or portions thereof in order to maintain the above-listed principles. *Id.* at (D)(1). While these rules are typically applied to televised coverage, they are instructive for disruptive members of the public or journalists or reporters attending without a camera for the purpose of taking notes.

V. STATE'S ARGUMENTS AND REQUESTS

A. *State's Request to Allow Challenges for Cause if a Prospective Juror is a Reader of Mr. Tulis's Blogs, has spoken to David Tulis about this case, or is a Listener to His Radio Show*

The State requests that this Court allow the State during voir dire to inquire as to whether prospective jurors are readers of Mr. Tulis's blog, if they have talked with him about this case, or if they are listeners of his radio show. If there are such persons, the State requests that this Court allow the State to challenge their service on the jury for cause and not through a peremptory challenge. A juror that has been exposed to Mr. Tulis's opinions regarding jury nullification is a juror that has been tainted by exposure to an unlawful doctrine, and unfairly prejudices them and makes them unacceptable as a juror. This is also not something that can be remedied solely through an instruction. The State is entitled to a fair trial of the proof and the law. If jurors have been exposed to this unlawful concept it is a bell that cannot be unring, and the State may only have one chance at trying its case.

B. *State's Request that Mr. Tulis be Barred from the Courtroom or Courthouse*

The State recognizes that trials are open to the public for viewing, and that reporters may have additional rights to be present. However, the law also allows the Court to remove people from

NO! If it's outside,
court, it's outside
preview

allegation

a courtroom who have become disruptive or obstruct the process, including the Defendant. See Rule 43(b)(2) Tennessee Rules of Criminal Procedure. Should media become disruptive towards the proceedings or worse, attempt to interfere with the proceedings, they should be removed pursuant to Tennessee Supreme Court Rule 30. Mr. Tulis has already attempted to influence potential jurors through his articles. He has shown through a pattern of behavior that he is obstructive and will not follow the law. Pursuant to this rule, the State is requesting that this Court bar Mr. Tulis from the courthouse until the trial has concluded and the jury is released from service. While this may seem drastic, the State believes it necessary to preserve a fair trial for both parties.

C. State's Request for a Prepared Instruction Against Jury Nullification

If it becomes apparent during trial that the jury has been exposed to the idea of jury nullification, from any source, the State requests this Court issue an instruction to the jury in accordance with *Craigmore*. See *Craigmore*, 1999 Tenn. Crim. App. LEXIS 727, *48-49. This instruction should instruct the jury that they are to make their determination on whether the elements of the charges have been proved beyond a reasonable doubt and not on their personal beliefs regarding the validity of the law.

VI. CONCLUSION

For the foregoing reasons, the State requests that this Honorable Court allow the State to strike potential jurors for cause during voir dire if the potential juror listens to the radio show of David Tulis, has spoken to David Tulis about this case, or reads the blogs of David Tulis. Further, the State requests that should this jury be exposed to the idea of jury nullification, this Court issue an instruction to prevent consideration of this improper and unlawful means of considering guilt or innocence. Lastly, the State requests that Mr. Tulis interfere be barred from the courthouse until the jury is released from service.

This the 25th day of July, 2024.

Respectfully submitted,

COTY WAMP
DISTRICT ATTORNEY GENERAL



By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing State's Motion Regarding Attempts at Jury Nullification, has been provided to, attorney for the defendant, Ben McGowan, by electronic mail on 25th day of July, 2024 and a copy put in the U.S. Mail.



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