

**IN THE CIRCUIT COURT FOR SEVIER COUNTY
THE FOURTH JUDICIAL DISTRICT
STATE OF TENNESSEE**

**THE GATLINBURG FREE PRESS; and
ERIK COOPER, in his individual capacity,**

Plaintiffs/Petitioners,

v.

**JAMES BRUCE DUNN, in his official
capacity as DISTRICT ATTORNEY
GENERAL FOR THE FOURTH
JUDICIAL CIRCUIT; and
SEVIER COUNTY DISTRICT
ATTORNEY GENERAL'S OFFICE,**

Defendants/Respondents.

No.:

23-CV-563 III

STATE OF TENNESSEE, COUNTY OF SEVIER

Karen Atchley, Circuit Court Clerk

Certify this to be an exact copy of:

Complaint And Petition
For Access To Public Records

And To Obtain Judicial Review of

as appears of record in my office. Attest this

12 day of September 2023

Dana O'Leary, D.C.
Karen Atchley, Circuit Clerk or Deputy Clerk

2023 SEP 12 PM 3:50
SEVIER COUNTY, TN
CIRCUIT COURT
FILED

**COMPLAINT AND PETITION FOR ACCESS TO PUBLIC RECORDS
AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 and 10-7-505, *et. seq.* ("TPRA"), Plaintiffs/Petitioners *The Gatlinburg Free Press* and Erik Cooper hereby file their Complaint and Petition before this Honorable Court for access to specific public records within the custody, possession, or control of Defendant/Respondent James Bruce Dunn, in his official capacity as District Attorney General for the Fourth Judicial District of the State of Tennessee, and Defendant/Respondent Sevier County District Attorney General's Office, for judicial review of Defendants' denial of access to the specified public records, and for attorneys' fees and costs. A Memorandum of Law ("MOL") in support of this Complaint and Petition ("Complaint") is being filed contemporaneously with this Complaint and Petition. As grounds for this Complaint, Plaintiffs/Petitioners respectfully show the Court as follows:

PARTIES

1. Plaintiff/Petitioner *The Gatlinburg Free Press* (“*TGFP*”) is a news organization based in Gatlinburg, Tennessee. *TGFP* is a content aggregator gathering and distributing news and information content to local, regional, and national news outlets and related organizations. *TGFP* conducts comprehensive investigations involving various subject matters and events.

2. Plaintiff/Petitioner Erik Cooper (“Mr. Cooper”) is an investigative journalist, a resident of Sevier County, Tennessee, and a citizen of the State of Tennessee. Mr. Cooper is also employed as a risk management and litigation consultant with Acuity Consulting Services. Mr. Cooper is the creator, sole proprietor, and publisher of *TGFP*, and a published writer for *Adoption Today*, *Fostering Families Today*, *The Local Malibu*, and *90210 Magazine*, among others publications, media, and news outlets. Mr. Cooper’s recent investigative journalism examines alleged violations of state and federal laws by Mr. Dunn and various employees of the DAGO during Sevier County Grand Jury proceedings, and Defendants’ violation of public access to government records maintained by and under the exclusive control of the Defendants.

3. Defendant/Respondent James Bruce Dunn (“Mr. Dunn”) is the publicly-elected District Attorney General for the Fourth Judicial Circuit of the State of Tennessee. Mr. Dunn is required to comply with the TPRA, Tenn. Code Ann. §§ 10-7-503, *et. seq.* Service of process upon Mr. Dunn will be made by delivering a copy of the Summons, this Complaint and Petition, and the MOL upon the Attorney General for the State of Tennessee in accordance with Tenn. R. Civ. P. 4.04(6).

4. Defendant/Respondent Sevier County District Attorney General’s Office (“DAGO”) is governed by Mr. Dunn in his official capacity as District Attorney General for the Fourth Judicial District of the State of Tennessee. The DAGO is required to comply with

the TPRA, Tenn. Code Ann. §§ 10-7-503, *et. seq.* Service of process upon the DAGO will be made by delivering a copy of the Summons, this Complaint and Petition, and the MOL upon the Attorney General for the State of Tennessee in accordance with Tenn. R. Civ. P. 4.04(6).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this Complaint and Petition. Venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b). This Court also has subject matter jurisdiction over this Complaint and Petition pursuant to Tenn. Code Ann. § 1-3-121.

FACTUAL ALLEGATIONS

6. Public oversight of government and its employees, including the District Attorney General and his staff, is necessary in a democracy. Facilitating such oversight is the fundamental purpose of the TPRA. Here, Plaintiffs seek public records that would shine a light on how the Defendants comply with Tennessee laws including, without limitation, Tenn. Code Ann. § 40-12-104, *et. seq.*, when facilitating, directing, managing, participating in, or otherwise involving themselves in Grand Jury proceedings.

7. On March 27, 2023, the Defendants denied Mr. Cooper the right to offer his testimony and evidence to the Sevier County Grand Jury Panel in accordance with Tenn. Code Ann. § 40-12-104, *et. seq.* On that date, Ronald Crockett Newcomb (“Mr. Newcomb”), employed as an assistant district attorney general for the DAGO and a subordinate employee of Mr. Dunn, demanded Mr. Cooper execute a document Mr. Newcomb referred to as a “waiver of Constitutional rights” (“Waiver”) before Mr. Newcomb and the Defendants would permit Mr. Cooper to offer any testimony or evidence to the Sevier County Grand Jury Panel as afforded to Mr. Cooper under T.C.A. § 40-12-104, *et. seq.* A true and exact copy of the Waiver demanded by Mr. Newcomb and the Defendants for execution by Mr. Cooper on March 27, 2023

is attached herewith and labeled **Exhibit A**.

8. On April 24, 2023, in a civil action styled *In Re: Sevier County Grand Jury / Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury*, filed in Sevier County Circuit Court, assigned to the Honorable Judge Rex Henry Ogle, and issued file number 2023-PJ-04-03 (hereinafter referred to as, “Waiver Petition Action”), the court issued its ruling finding that Mr. Cooper was not required to sign a Waiver to appear before a Grand Jury Panel, and, that Mr. Cooper had the right under T.C.A. § 40-12-104, *et. seq.* to appear in front of the Grand Jury Panel without interference of any person whatsoever. The court codified its April 24, 2023 ruling in its order entered May 1, 2023. A true and exact copy of the court’s order entered May 1, 2023 for the Waiver Petition Action is attached herewith and labeled **Exhibit B**.

9. Prior to Mr. Cooper’s attempts to appear before a Sevier County Grand Jury Panel on March 27, 2023, on May 1, 2023, and since at least 2018, Defendants required Mr. Cooper and applicants like him to submit a written application to appear before a Grand Jury Panel as afforded under T.C.A. § 40-12-104, *et. seq.*, in Sevier County, Tennessee. The Defendants’ written application was titled “Summary Form Application to Testify Before the Grand Jury T.C.A. 40-12-104” (“Application”). A true and exact copy of Defendants’ Application is attached herewith and labeled **Exhibit C**.

10. In addition to the Defendants’ Application, the Defendants provided a scheduling notice to applicants who requested to appear before a Grand Jury Panel under T.C.A. § 40-12-104, *et. seq.* Defendants’ scheduling notice, in letter form, referenced and attached therewith a photocopy of Mr. Dunn’s law book, page 230, titled “40-12-103, Criminal Procedure, 230,” including an undated excerpt of “40-12-104” (“Code Citation”). A true and correct copy of Defendants’ scheduling notice and Code Citation are hereinafter collectively referred to as

“Scheduling Notice”, and are collectively attached herewith and labeled **Exhibit D**.

11. Defendants’ Application and Scheduling Notice were collectively distributed to persons who presented themselves to the Clerk of Circuit Court and requested to appear before a Sevier County Grand Jury Panel under T.C.A. § 40-12-104. As the Defendants instructed, the Clerk of Circuit Court, acting for and on behalf of Defendants, distributed Defendants’ Application and Scheduling Notice to individuals who requested to appear before a Grand Jury Panel under T.C.A. § 40-12-104. Neither Defendants’ Application nor Scheduling Notice were created or requested by either the Clerk of Circuit Court or by the Grand Jury Foreperson. In this capacity, the Defendants acted as an agent for and on behalf of the Grand Jury Foreperson, without any authority for such action to require a written Application from any applicant.

12. The deadline for return of Defendants’ Application to the Clerk of Circuit Court -- not to the Grand Jury Foreperson, as indicated in the Scheduling Notice -- was determined solely and exclusively by the Defendants. As the Defendants instructed, the Clerk of Court indicated the Defendants’ deadline in Defendants’ Scheduling Notice, and mandated the applicant return the Application to the Clerk of Court -- not the Grand Jury Foreperson -- by Defendants’ deadline or be denied access to the Grand Jury Panel as provided for under T.C.A. § 40-12-104. The Clerk of Circuit Court, under the direction of the Defendants, routinely issued a deadline for submission of the Application to the Clerk of Circuit Court, ostensibly for and on behalf of the Grand Jury Foreperson when, actually, an applicant’s Application was remitted by the Clerk of Circuit Court directly to the DAGO. In this capacity, the Defendants acted as an agent for and on behalf of the Grand Jury Foreperson, without any authority for such action to impose a deadline for submission of a written Application from any applicant.

13. The Defendants' deadline imposed upon any applicant for submission of Defendants' Application requesting to appear before a Grand Jury Panel as afforded under T.C.A. § 40-12-104 was typically not less than two weeks before the applicant's appearance as scheduled by the Defendants.

14. During the two week period beginning after an applicant submitted an Application to the Clerk of Circuit Court and before the applicant's scheduled appearance before the Grand Jury Panel, the Defendants conducted their own research and investigation of limited information contained in paragraph 5 of the Defendants' Application titled, "Summary statement of the actions that you believe were criminal acts.", and supplements, affidavits, or other documentation or evidence accompanying the Application. In this capacity, the Defendants acted as an agent for and on behalf of the Grand Jury Foreperson, without any authority for such action to conduct any research or investigation of limited information offered in any applicant's Application.

15. The Defendants' investigation included, without limitation, Defendants' or their agents' unsolicited contact with the applicant, Defendants' or their agents' contact with accused criminal suspects or individuals accused in the Application and/or under active investigation by law enforcement officials, Defendants' or their agents' contact with alleged witnesses, Defendants' or their agents' contact with law enforcement authorities, and other research and investigative activities.

16. The Defendants' investigation included accessing, reviewing, and investigating alleged evidence of indictable or triable offenses occurring in Sevier County and as alleged, or not as alleged, in the Application.

17. Based upon Defendants' research and investigation of limited information offered in the Defendants' Application, the Defendants made their own probable cause determinations.

18. The Defendants frequently appeared before the Grand Jury and Grand Jury Panel to provide legal guidance upon the Grand Jury's or Grand Jury Panel's purported request.

19. The Defendants disclosed to Grand Jurors the Defendants' own probable cause determinations, findings, suggestions, and opinions postured as "legal guidance" during official Grand Jury proceedings.

20. Mr. Cooper accused the Defendants of obstruction of justice during Grand Jury proceedings in Sevier County, Tennessee.

21. Prior to May 1, 2023, Mr. Cooper remitted numerous Applications to the Clerk of Circuit Court as required by the Defendants without any legal authority for such requirement.

22. As the Defendants required, Mr. Cooper submitted Applications to testify before a Grand Jury Panel on May 1, 2023 accusing Mr. Newcomb of triable or indictable offenses occurring March 27, 2023. A true and exact copy of Mr. Cooper's Applications are collectively attached herewith and labeled **Exhibit E**.

23. On May 1, 2023, prior to Mr. Cooper's appearance before a Grand Jury Panel as scheduled by Defendants, the Defendants presented a presentment to the same Grand Jurors accusing Mr. Cooper of various triable or indictable offenses. Mr. Cooper was indicted on May 1, 2023 by the Grand Jury. Mr. Dunn personally signed the indictment. A true and exact copy of Mr. Dunn's indictment of Mr. Cooper is attached herewith and labeled **Exhibit F**.

24. On July 25, 2023, in a civil action styled *In Re: Sevier County Grand Jury / Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury*, filed in Sevier County Circuit Court, assigned to the Honorable Judge Rex Henry Ogle, and issued file number 2023-

PJ-07-13 (hereinafter referred to as, “Application Petition Action”), the court issued its ruling finding that Mr. Cooper was not required to submit a written application to appear before a Grand Jury Panel, Mr. Cooper was not required to apply by a deadline to appear before a Grand Jury Panel, and Mr. Cooper was not required to schedule his appearance before a Grand Jury Panel as afforded under T.C.A. § 40-12-104, *et. seq.* The court codified its July 25, 2023 ruling in its order entered July 26, 2023. A true and exact copy of the court’s order entered July 26, 2023 for the Application Petition Action is attached herewith and labeled **Exhibit G**.

Defendants’ Refusal to Produce Public Records

25. On June 30, 2023, *TGFP*, through Mr. Cooper, submitted a public records request to the Defendants (“Request”). The Request was submitted under the TPRA and assigned number GFP-EC-SC-104 by *TGFP*. The Request sought all records in the possession of the Defendants either pertaining or relating in any manner to “any application to testify before the Sevier County Grand Jury in accordance with Tenn. Code Ann. section 40-12-104 including, without limitation, any record(s) titled or otherwise identified as ‘Summary Form Application to Testify Before the Grand Jury T.C.A. 40-12-104...for the period beginning on or about January 1, 2013 and ending on or about June 28, 2023.’” A true and exact copy of the Request is attached herewith and labeled **Exhibit H**.

26. The Request was remitted to the Defendants by *TGFP* by electronic mail on June 30, 2023 and addressed to Mr. Dunn (JBDunn@TNDAGC.ORG), Stephanie Woods (SNWoods@TNDAGC.org), William Brownlow Marsh (WBMarsh@TNDAGC.org), and Mr. Newcomb (RCNewcomb@TNDAGC.org). *See, Ex. G.* *TGFP*’s email submission of the Request was remitted from the *TGFP*’s email address, GatlinburgFreePress@Gmail.com.

27. Tenn. Code Ann. § 10-7-503(a)(2)(B) provides, in relevant part:

“The custodian of a public record or the custodian’s designee shall promptly made available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

- i. Make the information available to the requestor;
- ii. Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or
- iii. Furnish the requester in writing, or by completing a records request response form developed by the office of open records counsel, the time reasonably necessary to produce the record or information.”

28. The Defendants failed to comply with T.C.A. § 10-7-503(a)(2)(B)(i).

29. The Defendants failed to comply with T.C.A. § 10-7-503(a)(2)(B)(ii).

30. The Defendants failed to comply with T.C.A. § 10-7-503(a)(2)(B)(iii).

31. Tenn. Code Ann. § 10-7-503(a)(3) provides, in relevant part:

“Failure to respond to the request as described in subdivision (a)(2) shall constitute a denial and the person making the request shall have the right to bring an action as provided in § 10-7-505.”

32. Plaintiffs allege the Defendants’ failure to respond to the Request as described in T.C.A. § 10-7-503(a)(2) constituted Defendants’ denial of access to the requested public records.

33. Upon the filing of this instant Complaint and Petition, the Plaintiffs have received no response to the Request from the Defendants.

34. The Plaintiffs have brought the instant action in accordance with Tenn. Code Ann. § 10-7-505.

**History Preceding the TPRA Request: Mr. Cooper Challenges
Defendants' Application, Defendants' Deadline for Submission of the Application,
and Defendants' Scheduling of an Applicant's Appearance Before a Grand Jury Panel**

35. Mr. Cooper appeared before Sevier County Grand Juries on many occasions since at least 2018 to provide his knowledge and/or proof of public offenses triable or indictable in Sevier County as afforded under T.C.A. § 40-12-104, *et. seq.* During many of these appearances, Mr. Cooper personally witnessed interference and obstruction of justice of Grand Jury proceedings committed by former Grand Jury Foreman Lyle Overbay, Mr. Dunn, Mr. Newcomb, assistant district attorney Barry Arthur Williams ("Mr. Williams"), and employees of the DAGO.

36. Mr. Cooper submitted correspondence in complaint of witnessed misconduct during Sevier County Grand Jury proceedings to various Presiding Judges of the Fourth Judicial Circuit since at least 2018. Mr. Cooper's complaints were not resolved, and the aggrieved misconduct witnessed was repeated during Mr. Cooper's subsequent Grand Jury appearances.

37. Mr. Cooper's civil liberties protected by the Constitutions of the United States of America and the State of Tennessee were violated by Mr. Dunn, Mr. Newcomb, and the DAGO again on March 27, 2023 when Mr. Cooper was prohibited from offering testimony or evidence to the Grand Jury Panel under threat of prosecution by Mr. Newcomb and the DAGO.

38. Mr. Newcomb and DAGO -- *not the Grand Jury Foreman or Grand Jury Panel* -- denied Mr. Cooper's application to testify before the Grand Jury under T.C.A. § 40-12-104 on March 27, 2023.

39. Mr. Dunn adversely influenced and affected Grand Jurors on May 1, 2023 by presenting his presentment accusing Mr. Cooper of triable and indictable offenses occurring in Sevier County, Tennessee, hours before Mr. Cooper appeared before the same Grand Jurors as the Defendants had scheduled.

40. The court's order entered May 1, 2023 in the Waiver Petition Action affirmed the Defendants' requirement for applicants to execute a waiver to appear before a Grand Jury Panel under T.C.A. § 40-12-104 is not required under T.C.A. § 40-12-104. *See, Ex. B*, para. 2.

41. The court's order entered July 26, 2023 in the Application Petition Action affirmed the Defendants' requirement for applicants to submit a written application to appear before a Grand Jury Panel is not required under T.C.A. § 40-12-104. *See, Ex. G*, para. 1.

42. The court's order entered July 26, 2023 in the Application Petition Action affirmed the Defendants' requirement of applicants to submit a written application by a deadline to appear before a Grand Jury Panel is not required under T.C.A. § 40-12-104. *See, Ex. G*, para. 2.

43. The court's order entered July 26, 2023 in the Application Petition Action affirmed the Defendants' requirement for applicants to schedule their appearance before a Grand Jury Panel is not required under T.C.A. § 40-12-104. *See, Ex. G*, para. 3.

44. In issuing its order in the Waiver Petition Action, the court affirmed that Mr. Cooper's rights afforded under T.C.A. § 40-12-104 were violated by the Defendants and by Mr. Newcomb on March 27, 2023.

45. In issuing its order in the Application Petition Action, the court affirmed that Mr. Cooper's rights afforded under T.C.A. § 40-12-104 were violated by the Defendants, by Mr. Newcomb, and by Mr. Williams since at least 2018 when the Defendants' unlawful and unauthorized requirement imposed upon Mr. Cooper and other similarly situated individuals like him to execute a Waiver of Constitutional rights, to submit a written application, to submit a written application by a deadline, and to schedule their appearance before a Grand Jury Panel was not afforded under any Tennessee Code, under any case law, or under any other authority.

**Mr. Cooper Witnessed Criminal Violations of State and Federal Laws
During Grand Jury Proceedings by Mr. Dunn, Mr. Newcomb, Mr. Williams,
and Employees of the Sevier County District Attorney General's Office**

**Mr. Dunn's Control and Administration
of an Individual's Rights Afforded Under T.C.A. § 40-12-104**

46. The Defendants unilaterally controlled the process and appearance of individuals requesting to meet with the Grand Jury Foreperson as provided for under T.C.A. § 40-12-104.

Mr. Dunn, as the publicly elected official overseeing the DAGO:

- (a) required applicants submit Defendants' Application to request *permission* to appear before the Grand Jury Panel in violation of T.C.A. § 40-12-104;
- (b) required applicants submit Defendants' Application to the Clerk of Court before Defendants' deadline imposed in violation of T.C.A. § 40-12-104;
- (c) required applicants produce for copying and retention by the Defendants a valid government-issued photographic identification to appear before a Grand Jury Panel in violation of T.C.A. § 40-12-104;
- (d) scheduled an applicant's appearance before the Grand Jury Foreperson in violation of T.C.A. § 40-12-104;
- (e) received, controlled, and distributed an applicant's Application to the DAGO staff and Grand Jury Foreperson *before* the applicant's appearance the DAGO scheduled in violation of T.C.A. § 40-12-104;
- (f) conducted an investigation of the limited information offered within the Application including, without limitation, interviewing witnesses, obtaining and reviewing evidence, and drawing investigative conclusions of alleged criminal offenses *before* the individual's scheduled appearance before the Grand Jury Foreperson in violation of T.C.A. § 40-12-104;

- (g) determined probable cause based upon the Defendants' review of limited information contained in the Application;
- (h) poisoned the probable cause findings of Grand Juries by providing Grand Jurors with the Defendants' own probable cause determinations; and
- (i) retained and/or disposed of the Application and/or Scheduling Notice, at the sole discretion of the Defendants, without filing any copy of Defendants' unlawful Application or unlawful Scheduling Notice with the Clerk of Circuit Court, thereby shielding their actions from the court's and from the public's criticisms and affording the Defendants' conduct to repeat before Grand Juries for many, many years.

47. The Defendants unilaterally controlled the administration of an individual's rights afforded under T.C.A. § 40-12-104 while violating T.C.A. § 40-12-104 by directing the Clerk of Circuit Court to distribute and obtain Applications of any individual requesting to appear before the Grand Jury Panel. T.C.A. § 40-12-104 imposes no requirement upon any applicant for submission of a written application to appear before a Grand Jury Panel.

48. The Defendants unilaterally controlled the administration of an individual's rights afforded under T.C.A. § 40-12-104 while violating T.C.A. § 40-12-104 by directing the Clerk of Circuit Court to mandate a deadline for submission of a written Application imposed upon any individual requesting to appear before the Grand Jury Panel. T.C.A. § 40-12-104 imposes no requirement upon any applicant for submission of a written application by any deadline to appear before a Grand Jury Panel.

49. The Defendants unilaterally controlled the administration of an individual's rights afforded under T.C.A. § 40-12-104 while violating T.C.A. § 40-12-104 by directing the Clerk of Circuit Court to schedule the applicant's appearance before a Grand Jury Panel only after the applicant complied with the Defendants' unlawful demands for a written Application submitted by the Defendants' unlawful deadline. T.C.A. § 40-12-104 imposes no requirement upon any applicant to schedule the applicant's appearance before a Grand Jury Panel.

50. The Defendants, under the direction of Mr. Dunn, controls the retention of all Applications and has denied production of any Application in response to Plaintiffs' public records request.

Mr. Dunn's Selection and Control of the Grand Jury Foreperson

51. Mr. Dunn unilaterally selects an individual for appointment to serve a two-year term as Grand Jury Foreman. No public notice is given for the position of Grand Jury Foreman, and no application process exists for a Sevier County citizen to apply or to serve in the position.

52. Mr. Dunn's selected candidate is appointed by an order of the Court as required under Tenn. R. Crim. P. Rule 6(g)(1). The Court administers an oath to the Grand Jury Foreman. The Grand Jury Foreman is currently paid \$15.00 per day for each day of service provided.

53. In Sevier County, the Grand Jury Foreperson collaborates with the Defendants. The Grand Jury Foreperson does not perform his duties independently from the Defendants, but rather, conducts Grand Jury proceedings as an extension of the Defendants and as the Defendants' own agent to serve Mr. Dunn's and the DAGO's own agendas.

54. The Grand Jury Foreperson did not require an applicant submit an Application to appear before the Grand Jury Panel as provided under T.C.A. § 40-12-104. The Defendants did.

55. The Grand Jury Foreperson did not schedule an individual's appearance before the Grand Jury Panel as provided under T.C.A. § 40-12-104. The Defendants did.

56. The Grand Jury Foreperson does not retain a copy of Applications required before an individual is permitted to appear before the Grand Jury Panel. The Defendants do, and continue to retain those Applications today.

57. The Grand Jury Foreperson does not retain a copy of Scheduling Notices required before an individual is permitted to appear before the Grand Jury Panel. The Defendants do, and continue to retain those Scheduling Notices today.

Mr. Dunn's Collaboration with the Grand Jury Foreman during Grand Jury Proceedings

58. The duties of a District Attorney General participating in Grand Jury proceedings is defined under Tenn. R. Crim. P. Rule 6(h).

59. Rule 6(h)(1) provides:

*“(1) Attendance. When **required** [emphasis added] by the grand jury, the district attorney general **may** [emphasis added] appear before the grand jury **for the purpose of giving legal advice** [emphasis added], but shall not be present -- nor shall any other officer or person other than the grand jurors be present -- when the grand jurors vote on an indictment or presentment.”*

Clearly, the Tennessee legislature did not desire for Grand Jurors to be influenced by the district attorney general, or “any other officer or person”, “when the grand jurors vote on an indictment or presentment.” In Sevier County, however, Mr. Dunn's influence upon Grand Jurors permeates through other measures. By Rule 6(h)(1), Mr. Dunn or his assistants' appearances before a Grand Jury may only occur when “required” by the Grand Jury. However, examination of Grand Jury *requests* for the district attorney general's appearance during Grand Jury proceedings offers evidence of improprieties for many years.¹ Only one other Rule --

Rule 6(h)(2) -- provides for a district attorney general's involvement in Grand Jury proceedings, and limits that involvement to preparation of indictments.

60. T.C.A. § 40-12-104(c) supplements Rule 6(h)(1) with the following:

*“The [Grand Jury] panel **may** [emphasis added] consult the district attorney general **or the court** [emphasis added] for guidance in making its determination.”*

61. During Sevier County Grand Jury proceedings Mr. Cooper has witnessed, Mr. Dunn and employees of the DAGO have interfered with and obstructed justice of Grand Jury proceedings by, among other things:

- (a) directing Grand Jury proceedings by instructing the applicant where to sit;
- (b) swearing the applicant with an oath given under penalty of perjury;
- (c) threatening the applicant with prosecution for offering any testimony or evidence given to a Grand Jury Panel or Grand Jury;
- (d) questioning the applicant and witnesses appearing before the Grand Jury without the request of the Grand Jury or its Panel;
- (e) offering the Grand Jury the results of the DAGO's investigation conducted upon information contained in the Application;
- (f) interrupting testimony offered the Grand Jury by the applicant; and
- (g) denying the applicant's request to appear before the Grand Jury Foreman.

62. In this collaboration between Mr. Dunn, the DAGO, and the Grand Jury Foreman, Mr. Cooper has personally witnessed interference and corruption of Grand Jury proceedings

1 Examination of Grand Jury records maintained by the Sevier County Circuit Court Clerk revealed “Request” pleadings signed by the Grand Jury Foreman and filed with the Clerk of Court requesting the presence and assistance of the district attorney general or his assistant during Grand Jury proceedings were filed *before* the Grand Jury was empaneled to conduct proceedings. Such pleadings indicate the Grand Jury did *not* request the presence or assistance of the district attorney general during Grand Jury proceedings, rather, the Grand Jury Foreman alone, absent any authority for making such request and absent any vote among Grand Jurors requesting such participation, filed false “Request” pleadings.

by and through official misconduct², witness tampering³, and civil liberty violations⁴ committed by Mr. Dunn, Mr. Newcomb, Mr. Williams, and other employees of the DAGO.

63. In 2017, as a litigation consultant and journalist, Mr. Cooper discovered evidence of criminal violations committed by Sevier County and City of Gatlinburg officials⁵ in matters related to the November 28, 2016 catastrophic wildfire. Mr. Cooper reported his discoveries and provided evidence of these violations to the Defendants. Mr. Dunn, as chief criminal prosecutor for Sevier County, failed to act upon the information he received from Mr. Cooper.

64. In 2017, Mr. Cooper and a Tennessee resident appeared before the Grand Jury Panel to provide testimony and evidence of triable offenses committed in Sevier County and involving former Sevier County Commissioner Mary Dumas-Davis. Mr. Cooper witnessed Mr. Dunn and employees of the DAGO interfere and obstruct Grand Jury Panel proceedings.

65. In 2018, Mr. Cooper witnessed former Grand Jury Foreman Lyle Overbay (“Mr. Overbay”) assault and forcibly deprive an individual of her personal property while she visited the Sevier County Courthouse. Mr. Cooper was summoned by the victim to appear before and offer testimony to the Grand Jury Panel on her application seeking indictment of Mr. Overbay. Mr. Cooper witnessed Mr. Dunn and the DAGO again interfere with Grand Jury proceedings and obstruct justice^{2,3,4} by prohibiting the victim from calling upon Mr. Cooper

2 In violation of Tenn. Code Ann. § 39-16-402.

3 In violation of Tenn. Code Ann. § 39-16-507(a)(2).

4 In violation of Tenn. Code Ann. § 40-12-104 *et. seq.*

5 In 2017, Mr. Cooper obtained evidence of criminally negligent homicide (Tenn. Code Ann. § 39-13-212) committed by Gatlinburg city manager Cindy Cameron Ogle, Gatlinburg police chief Randy Brackins, Gatlinburg assistant police chief Gary Waldroup, former Gatlinburg fire chief Greg Miller, and former Sevier County emergency management director John Matthews for their individual failures to act, in their official capacities, when given timely notice of impending catastrophic danger affecting citizens and visitors of Sevier County before the devastating wildfire ravaged the community, resulting in the deaths of at least fourteen individuals.

to offer the Grand Jury his testimony. On that date, Mr. Dunn violated T.C.A. § 40-12-104 *et. seq.* to protect Mr. Overbay from criminal indictment and removal as Grand Jury Foreman.

66. In 2018, Mr. Cooper witnessed Mr. Dunn deny an applicant requesting to appear before the Grand Jury Foreman because, as Mr. Dunn falsely advised the victim, T.C.A. § 40-12-104 did not permit an applicant to appear twice before a Grand Jury upon the same Application. Mr. Dunn violated Tennessee statutes^{2,3,4} and prohibited the victim from appearing before the Grand Jury Foreman on that date.

67. In 2018, Mr. Dunn obstructed the testimony of Mr. Cooper's witness summoned to appear before and offer testimony to a Grand Jury Panel. Mr. Dunn, without any authority, required Mr. Cooper's witness submit an affidavit before permitting the witness' testimony.

68. Violations of Tennessee statutes by Mr. Dunn and employees of the DAGO^{2,3,4} affected the indictments of various individuals for various offenses triable or indictable within Sevier County, and caused the statute of limitations for such criminal offenses to toll.

69. Mr. Cooper reported concerns for interference of Grand Jury proceedings, obstruction of justice, and corruption committed by Mr. Dunn, Mr. Newcomb, Mr. Williams, and other employees of the DAGO to the U.S. Department of Justice, the United States Attorney General's Office, the Federal Bureau of Investigations, the Tennessee Bureau of Investigations, and Tennessee Board of Professional Responsibility, making Mr. Cooper a target of Mr. Dunn's and his colleagues' own vendettas.

Defendants' Application, Application Deadline, and Scheduling of an Applicant's Appearance
Before the Grand Jury Panel Violated T.C.A. § 40-12-104

70. The Defendants required individuals requesting to appear before the Grand Jury Panel, as afforded under T.C.A. § 40-12-104, to first submit Defendants' Application.

71. For good cause and reasonable belief, Plaintiffs believe Defendants prohibited other individuals, like Mr. Cooper, from appearing before the Grand Jury Panel as provided for under T.C.A. § 40-12-104 *et. seq.* until the applicant submitted Defendants' Application.

72. The Defendants required individuals requesting to appear before the Grand Jury Panel, as afforded under T.C.A. § 40-12-104, to comply with by Defendants' deadline for submission of Defendants' Application.

73. For good cause and reasonable belief, Plaintiffs believe Defendants prohibited other individuals, like Mr. Cooper, from appearing before the Grand Jury Panel as provided for under T.C.A. § 40-12-104 *et. seq.* until the applicant submitted Defendants' Application by Defendants' deadline.

74. The Defendants required individuals requesting to appear before the Grand Jury Panel, as afforded under T.C.A. § 40-12-104, to appear when the Defendants scheduled the applicant's appearance.

75. For good cause and reasonable belief, Plaintiffs believe Defendants prohibited other individuals, like Mr. Cooper, from appearing before the Grand Jury Panel as provided for under T.C.A. § 40-12-104 *et. seq.* unless the applicant appeared as Defendants had scheduled.

76. Mr. Cooper's appearance before Sevier County Grand Jury Panels was obstructed by Defendants' requirement for submission of an Application, requirement for submission of the Application by Defendants' deadline, and requirement to appear as scheduled by the Defendants.

**The State's Retaliation Against Mr. Cooper
for Demanding the Defendants' Public Records and Accountability**

77. Since at least 2018, the Defendants violated Mr. Cooper's rights afforded under T.C.A. § 40-12-104 *et. seq.* by Defendants' requirement for Mr. Cooper's submission of an Application before permitting Mr. Cooper's appearance before a Grand Jury Panel.

78. For good cause and reasonable belief, the Defendants violated individuals' rights afforded under T.C.A. § 40-12-104 *et. seq.* to appear before a Grand Jury Panel without submission of a written application.

79. Since at least 2018, the Defendants violated Mr. Cooper's rights afforded under T.C.A. § 40-12-104 *et. seq.* by Defendants' requirement for Mr. Cooper's submission of an Application by a deadline before permitting Mr. Cooper's appearance before a Grand Jury Panel.

80. For good cause and reasonable belief, the Defendants violated individuals' rights afforded under T.C.A. § 40-12-104 *et. seq.* to appear before a Grand Jury Panel without submission of a written application by Defendants' deadline.

81. Since at least 2018, the Defendants violated Mr. Cooper's rights afforded under T.C.A. § 40-12-104 *et. seq.* by Defendants' requirement to schedule Mr. Cooper's appearance before a Grand Jury Panel.

82. For good cause and reasonable belief, the Defendants violated individuals' rights afforded under T.C.A. § 40-12-104 *et. seq.* to appear before a Grand Jury Panel by obstructing their appearance unless scheduled by the Defendants.

83. On March 28, 2023, *TGFP*, through Mr. Cooper, submitted a public records request to Mr. Dunn, the DAGO, Sevier County, and the Tennessee Attorney General. The public records request was submitted under the TPRA and assigned number GFP-EC-SC-094 by *TGFP*. *TGFP*'s public records request sought all records in the possession of Mr. Dunn,

the DAGO, and Sevier County either pertaining or relating in any manner to any waiver of an individual's Constitutional or other legal rights to appear before a Grand Jury Panel as afforded under T.C.A. § 40-12-104. Mr. Dunn, the DAGO, and Sevier County failed to comply with the TPRA in responding to *TGFP's* public records request. Independent of the instant Complaint and Petition, Plaintiffs filed civil litigation against the Defendants and Sevier County in a matter styled *The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.* filed in the Sevier County Circuit Court, assigned case number 23-CV-415-III, and currently pending before the court at this time.

84. Mr. Newcomb and the DAGO violated T.C.A. § 39-16-402 on March 27, 2023 when Mr. Newcomb, in his official capacity as an employee of the DAGO, demanded that Mr. Cooper execute the Defendants' and Mr. Newcomb's Waiver under threat of criminal prosecution and duress.

85. Mr. Newcomb and the DAGO violated T.C.A. § 39-16-507(a)(2) on March 27, 2023 when Mr. Newcomb, in his official capacity as an employee of the DAGO, attempted to influence Mr. Cooper to withhold truthful testimony and information from the Grand Jury.

86. Mr. Dunn and the DAGO violated T.C.A. § 40-12-104 on May 1, 2023 when Mr. Dunn, in his official capacity as District Attorney General, interfered with and obstructed Grand Jury Panel proceedings and Mr. Cooper's rights afforded under T.C.A. § 40-12-104 *et. seq.* to offer testimony and evidence to the Grand Jury Panel of the commission of triable offenses committed by Mr. Newcomb on March 27, 2023 and indictable in Sevier County.

87. As the Defendants required, Mr. Cooper submitted Defendants' unlawful Application to the Clerk of Circuit Court on or about April 6, 2023, accusing Mr. Newcomb of committing official misconduct in violation of Tenn. Code Ann. § 39-16-402 on March 27,

2023. This was Mr. Cooper's first of three Applications ("First Application").

88. As the Defendants required, Mr. Cooper submitted his First Application to the Clerk of Circuit Court by the Defendants' unlawful deadline.

89. As the Defendants required, Mr. Cooper appeared before the Grand Jury Panel on his First Application on May 1, 2023 as the Defendants unlawfully scheduled.

90. As the Defendants required, Mr. Cooper submitted Defendants' unlawful Application to the Clerk of Circuit Court on or about April 6, 2023, accusing Mr. Newcomb of violating Tenn. Code Ann. § 40-12-104 on March 27, 2023. This was Mr. Cooper's second of three Applications ("Second Application").

91. As the Defendants required, Mr. Cooper submitted his Second Application to the Clerk of Circuit Court by the Defendants' unlawful deadline.

92. As the Defendants required, Mr. Cooper appeared before the Grand Jury Panel on his Second Application on May 1, 2023 as the Defendants unlawfully scheduled.

93. As the Defendants required, Mr. Cooper submitted Defendants' unlawful Application to the Clerk of Circuit Court on or about April 10, 2023 accusing Mr. Newcomb of witness tampering in violation of Tenn. Code Ann. § 40-12-507 (a)(2) on March 27, 2023. This was Mr. Cooper's third of three Applications ("Third Application").

94. As the Defendants required, Mr. Cooper submitted his Third Application to the Clerk of Circuit Court by the Defendants' unlawful deadline.

95. As the Defendants required, Mr. Cooper appeared before the Grand Jury Panel on his Third Application on May 1, 2023 as the Defendants unlawfully scheduled.

96. Mr. Cooper's three Applications submitted to the Clerk of Court on April 6, 2023 and April 10, 2023, respectively, were remitted by the Clerk of Circuit Court directly to the DAGO -- and not the Grand Jury Foreperson -- as Mr. Dunn directed.

97. Mr. Cooper's three Applications accusing Mr. Newcomb of criminal violations committed during Grand Jury proceedings on March 27, 2023 were shared with Mr. Newcomb by Mr. Dunn and the DAGO.

98. After the Court cleared Mr. Cooper's pathway to justice by entering its order on May 1, 2023 (Ex. B), Mr. Dunn personally sabotaged Mr. Cooper's testimony and evidence offered to the Grand Jury Panel by presenting to the Grand Jury criminal accusations accusing Mr. Cooper of criminal violations *before* Mr. Cooper appeared *before the same Grand Jurors*. In doing so, Mr. Dunn and the DAGO *poisoned the pond* of Grand Jurors on May 1, 2023.

99. Mr. Dunn pursued criminal indictments against Mr. Cooper on May 1, 2023 *before* Mr. Cooper could provide the same Grand Jurors any testimony or evidence of triable offenses committed on March 27, 2023 by Mr. Dunn's subordinate, Mr. Newcomb.

100. As he did in 2018 when protecting Mr. Overbay (*see*, para. 65), on May 1, 2023, Mr. Dunn again interfered with Grand Jury proceedings and obstructed justice^{2,3,4} to protect Mr. Newcomb from criminal indictment by a Sevier County Grand Jury.

101. Mr. Dunn arranged for Mr. Cooper's arrest *after* Mr. Cooper had been indicted hours earlier by the same Grand Jury Mr. Cooper intended to testify before on May 1, 2023.

102. Mr. Dunn and the DAGO, by and through their actions, *poisoned the pond* of Grand Jurors by seeking an indictment accusing Mr. Cooper of criminal violations just prior to Mr. Cooper's appearance -- as scheduled by Mr. Dunn -- to offer testimony and evidence of Mr. Newcomb's criminal violations on March 27, 2023 *to the same Grand Jurors*.

Records Requested for Production by the Defendants

103. Records requested for production by the Plaintiffs include all Applications and Scheduling Notices or similar records maintained in the possession of the Defendants for the period beginning January 1, 2013 and ending June 28, 2023.

104. The court ruled that no applicant requesting to appear before a Sevier County Grand Jury Panel under T.C.A. § 40-12-104 can be required by anyone to submit a written application. *See, Ex. G*, para. 1.

105. The court ruled that no applicant requesting to appear before a Sevier County Grand Jury Panel T.C.A. § 40-12-104 can be required by anyone to apply by a certain deadline. *See, Ex. G*, para. 2.

106. The court ruled that no applicant requesting to appear before a Sevier County Grand Jury Panel under T.C.A. § 40-12-104 is required by anyone to schedule the applicant's appearance. *See, Ex. G*, para. 3.

107. The Defendants failed to respond to the Request.

108. The Defendants' failure to respond to the Request as required under Tenn. Code Ann. § 10-7-503(a)(2)(B) is deemed the Defendants' denial of the Request as provided for under Tenn. Code Ann. § 10-7-503(a)(3).

109. Plaintiffs allege the Defendants have violated and continue to violate T.C.A. § 10-7-503, *et. seq.*

CLAIMS FOR RELIEF

110. Plaintiffs incorporate the allegations in paragraphs 1 through 109.

111. Pursuant to the TPRA, Plaintiffs request all Applications, Scheduling Notices, and similar records maintained by or otherwise in the possession of the Defendants be produced.

112. The Applications are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

113. The Scheduling Notices are “public records” within the meaning of Tenn. Code Ann. § 10-7-503(a)(1).

114. The Defendants denied Plaintiffs’ public records requests for the Applications, Scheduling Notices, and similar records.

115. No exemption applies to bar disclosure of the Applications by the Defendants.

116. No exemption applies to bar disclosure of the Scheduling Notices by the Defendants.

117. As set forth above, Plaintiffs’ attempts to obtain these public records without filing a petition with this Court have been unsuccessful. It is therefore necessary to bring this action for access and judicial review pursuant to Tenn. Code Ann. § 10-7-505.

118. The Defendants offered no written basis for denial of the public records request.

119. Plaintiffs are entitled access to public records requested under the TPRA.

120. Tenn. Code Ann. § 10-7-505(g) provides that this Honorable Court may award “all reasonable costs involved in obtaining the records, including reasonable attorneys’ fees” if the government “knew the record was public and willfully refused to disclose it.”

121. The Defendants knew that the Applications requested by the Plaintiffs were public records and willfully refused to disclose them.

122. The Defendants knew that the Scheduling Notices requested by the Plaintiffs were public records and willfully refused to disclose them.

123. Therefore, Plaintiffs are entitled to full access to these public records, as well as an award of all costs, including reasonable attorneys' fees.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court will:

(A) immediately issue an order, pursuant to Tenn. Code Ann. § 10-7-505(b), requiring the Defendants to appear before this Court and show cause why this Petition should not be granted and that Defendants be enjoined from refusing to promptly produce documents responsive to the Plaintiffs' Request;

(B) order the Defendants to provide copies of the public records sought in this Petition to the Court for an *in camera* review at least ten (10) business days in advance of the show cause hearing;

(C) set a date at least ten (10) business days prior to the date of the show cause hearing for the Defendants to file any brief;

(D) grant the Plaintiffs declaratory judgment that the Applications, Scheduling Notices, and similar records requested are public records under Tennessee Law for which no exemption applies and that the Defendants' failure to grant the Plaintiffs access to these public records constitutes a violation of the Tennessee Public Records Act;

(E) grant the Plaintiffs declaratory judgment that Defendants knew the Applications, Scheduling Notices, and similar records requested were public records for which no exemption applied and willfully refused to grant the Plaintiffs access to the Applications, Scheduling Notices, and similar records;

(F) grant the Plaintiffs declaratory judgment that denial of the Plaintiffs' TPRA request constitutes a violation of the Plaintiffs' rights under the First Amendment to the United States Constitution, Article I, and Sections 19 and 23 of the Tennessee Constitution to the right to free speech (including newsgathering and publication) and Plaintiffs' rights to petition government in violation of the Tennessee Public Participation Act ("TPPA");

(G) grant the Plaintiffs declaratory judgment that the Defendants are estopped and/or otherwise barred from asserting purported exceptions/exemptions to the TPRA other than those asserted in their initial denial(s) of the TPRA request;

(H) deny any and all motions to intervene;

(I) grant the Plaintiffs reservation of all claims, rights, and/or damages under the Tennessee Public Records Act and the Tennessee Public Participation Act;

(J) order the Defendants to immediately make available to the Plaintiffs copies of all Applications, Scheduling Notices, and similar records requested;

(K) grant the Plaintiffs an award of reasonable costs and attorneys' fees pursuant to Tenn. Code Ann. § 10-7-505(g);

(L) grant Plaintiffs discretionary costs under Tenn. R. Civ. P. 54; and

(M) grant Plaintiffs all such further relief to which they may be entitled.

Respectfully submitted on this 12th day of September, 2023, by



ERIK COOPER,
The Gatlinburg Free Press and Erik Cooper,
Plaintiffs/Petitioners

Prepared by:



ERIK COOPER

Plaintiff/Petitioner, *In Propria Persona*

The Gatlinburg Free Press

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The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT A

Waiver of Constitutional Rights Imposed Upon Applicants
by Mr. Dunn and the Sevier County District Attorney General's Office

("Waiver")

IN THE CIRCUIT COURT FOR Sevier COUNTY, TENNESSEE

IN RE: GRAND JURY - March 27, 20 2023

WAIVER

I, Erik Cooper, wish to testify before the Grand Jury relative to their investigation of alleged incident on August 5, 2022 concerning Sevier County Grand Jury Application submitted March 7, 2023 and any related matter in which I may be involved. I have been fully advised of my Constitutional Rights, including my Right to remain silent and not incriminate myself by personal testimony or any other means. I have been further advised and understand that I will receive no immunity for giving such testimony and that my testimony could possibly be used against me in a Court of Law. I have not been subpoenaed or in any way compelled to testify but do so voluntarily and of my own free will. I fully understand that the Grand Jury could return a True Bill against me for any violation of the criminal laws of the State of Tennessee, or other related crime(s), after its investigation is finished.

I hereby waive my Constitutional Right to remain silent and further waive any immunity I might otherwise receive by testifying before the Grand Jury.

This the 27 day of March, 20 23.

Witness: _____

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT B

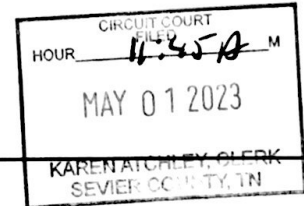
Order Entered May 1, 2023 by The Honorable Judge Rex Henry Ogle
In Re: Sevier County Grand Jury /
Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury
Sevier County Circuit Court for the Fourth Judicial District
File No. 2023-PJ-04-03

(Order on Waiver Petition Action)

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
FOURTH JUDICIAL DISTRICT

IN RE: SEVIER COUNTY GRAND JURY)
)
ERIK COOPER, PETITIONER)
TO APPEAR BEFORE THE)
SEVIER COUNTY GRAND JURY)

File No. 2023-PJ-04-03



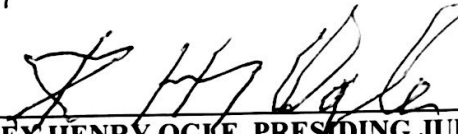
ORDER

This matter initially came before the Court upon a hearing of the Petition for Judicial Interpretation and Relief filed by Erik Cooper pertaining to his attempted appearance in front of the Sevier County Grand Jury on March 27, 2023. After hearing argument and proffered testimony in this matter, the Court hereby finds as follows:

1. That Mr. Cooper has the right under T.C.A. §40-12-104 *et seq.* to appear in front of the Grand Jury Foreman and two Grand Jurors of Mr. Cooper's choice without the interference of any person whatsoever.
2. That Mr. Cooper is not required to sign a Waiver of Immunity in order to appear before the Grand Jury Foreman and two Grand Jurors of Mr. Cooper's choice.
3. That Mr. Cooper advised the Court that he intends to appear before the Grand Jury Foreman and two Grand Jurors on May 1, 2023. Absent interference of Mr. Cooper's right to testify pursuant to T.C.A. §40-12-104 *et seq.*, the Court will not intervene further. A copy of the official transcript of the hearing conducted on April 24, 2023 as filed in Sevier County Circuit Court on April 28, 2023 at 3:42 p.m. is hereby attached and incorporated herein by reference.

4. As the Presiding Judge of the Fourth Judicial District, the Court herein advises all parties that it is available this date for any hearings that should be necessary and allowable by law.

ENTERED this the 1st day of May, 2023.



REX HENRY OGLE, PRESIDING JUDGE
4th JUDICIAL DISTRICT, PART III

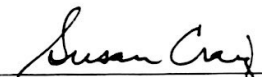
CERTIFICATE OF SERVICE

I, Susan Craig, Administrative Assistant to Honorable Rex Henry Ogle, Presiding Judge, do hereby certify that a true and exact copy of the foregoing Order has been forwarded to the Sevier County Sheriff's Office for Hand-Delivery to the following:

Mr. Erik Cooper

Mr. James B. "Jimmy" Dunn
District Attorney General
4th Judicial District

This 1st day of May, 2023.



Susan Craig, Admin. Asst. to
Honorable Rex Henry Ogle, Presiding Judge
4th Judicial District
P. O. Box 4245
Sevierville, TN 37864-4245

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

IN RE: Sevier County)
 Grand Jury)
)No. 2023-PJ-04-03
 ERIK COOPER,)
 Petition to Appear)

* * * * *

MOTION

April 24, 2023

Hon. Rex Henry Ogle, Presiding

=====

JEFF RUSK COURT REPORTING & VIDEO
Registered Professional Reporters
Certified Legal Video Specialists

Valerie Sulfridge, Digital Court Reporter
805 Eleanor Street, N.E.
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1 APPEARANCES :

2 FOR THE PETITIONER:

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8

9 FOR THE RESPONDENTS:

10 Ron C. Newcomb, Esq.
11 Assistant District Attorney General
12 125 Court Avenue
13 Suite 301 E
14 Sevierville, Tennessee 37862
15 RCNewcomb@tndagc.org

16 James B. Dunn, Esq.
17 District Attorney General
18 125 Court Avenue
19 Suite 301 E
20 Sevierville, Tennessee 37862

21

22

23

24

25

1 (Proceedings began at 9:13 AM)

2 THE COURT: Everything that has
3 been filed by Mr. Cooper, I've read it
4 fairly extensively, to be quite candid with
5 you.

6 And the Court, for the record, Mr.
7 Cooper had sent some matters to all four of
8 the circuit judges in this matter concerning
9 an appearance, a potential appearance before
10 the grand jury here on a previous occasion,
11 I believe it's on March 27th. Am I right,
12 Mr. Cooper?

13 MR. COOPER: Good morning, Your
14 Honor. Yes, you are correct.

15 THE COURT: Okay. And so the Court
16 has reviewed that record, and I wanted to
17 point out just a couple of things, and this
18 is not a big deal, but I want to say to you,
19 Mr. Cooper, you file things and say they're
20 confidential sometimes, and I'm not picking
21 at you, I'm not. But nothing filed with the
22 Court is confidential, because we cannot, in
23 contested matters, unless there's a statute
24 that says it is, which there's very few of
25 those, but anything filed with a judge is

1 not confidential, and we must disclose it
2 and put it in the court file. So, as I say,
3 I'm not fussing at you, I'm just saying that
4 for your benefit.

5 MR. COOPER: Thank you, Honor.
6 Just to be clear, I don't think anything was
7 filed as confidential.

8 THE COURT: Well, for some reason,
9 I thought it was, but I'm sorry.

10 MR. COOPER: Your Honor, I filed a
11 motion last week to file a pleading today
12 under seal.

13 THE COURT: Okay.

14 MR. COOPER: Which involves
15 confidential matters involving grand jury
16 proceedings, as well as the Court's personal
17 involvement in previous complaints involving
18 corruption of the grand jury process.

19 THE COURT: The Court's?

20 MR. COOPER: The Court's, Your
21 Honor's. So for that reason, I asked to
22 file under seal so that way the Court could
23 address the issue that you, Your Honor, may
24 have a conflict of interest and have to
25 recuse yourself from these proceedings.

1 THE COURT: Okay. You tell me why.
2 You tell me.

3 MR. COOPER: And I defer to your
4 judgment on that in my motion to file under
5 seal.

6 THE COURT: Well --

7 MR. COOPER: Your Honor, the
8 pattern of misconduct involving corruption
9 of the grand jury panel proceedings is not
10 new to this Court. These are issues that
11 this Court has addressed previously that
12 have only worsened because Your Honor, in
13 the capacity of a presiding judge, has never
14 intervened in the complaints brought to your
15 attention. As a result of that, the
16 complaints brought to your attention were
17 reported to the judicial board --

18 THE COURT: Right.

19 MR. COOPER: And taken up as an
20 issue.

21 THE COURT: And dismissed.

22 MR. COOPER: No, Your Honor. I
23 don't have an outcome of that investigation
24 at this time.

25 For that reason, in my opinion, a

1 potential conflict of interest may exist,
2 and I bring that to the Court's attention.

3 If you choose to recuse yourself
4 for the appearance of bias, prejudice or
5 partiality involving these proceedings, that
6 was the matter I wanted to bring to your
7 attention.

8 THE COURT: You're entitled to
9 bring that to the Court's attention.

10 MR. COOPER: Thank you.

11 In the event that you deem that it
12 is not an element of bias or prejudice or
13 compromises your judicial ethics to continue
14 these proceedings, then your decision today
15 may or may not be subject to appeal on a
16 decision to grant or deny that motion for
17 recusal.

18 THE COURT: All final decisions of
19 a court are subject to appeal --

20 MR. COOPER: Yes, Your Honor.

21 THE COURT: -- so that didn't
22 bother me at all.

23 MR. COOPER: I wanted to set the
24 tone from the beginning so that you're aware
25 of the potential conflict and defer to the

1 Court's --

2 THE COURT: Well, there have been
3 rulings by the Board of Judicial Conduct and
4 previously by the Court of the Judiciary
5 that the mere filing of a complaint against
6 a judge in most circumstances does not
7 constitute a reason to recuse.

8 And so the Court does not feel, Mr.
9 Cooper, the Court -- you filed a very
10 respectful petition. The Court does not
11 have any problem with anything that you
12 filed. I've reviewed it. I understand, I
13 think, where everybody is coming from. The
14 record is clear from what's been filed by
15 both sides, and the Court is perfectly
16 capable, I think, to fairly and impartially
17 rule.

18 I've always told jurors, when we do
19 orientation, Mr. Cooper, that the only thing
20 I can promise them, and it's the same thing
21 with a judge, is that somebody's going to
22 disagree with what you do. And that's life.
23 That's the roles we have. But I have
24 nothing against you at all. Have no reason
25 to. I mean, look, I'm a big boy. People

1 can file complaints and those sorts of
2 things, and that's fine. So we're good.
3 We're good.

4 MR. COOPER: Thank you, Your honor.

5 THE COURT: Yeah.

6 MR. COOPER: In order to proceed
7 with today's hearing --

8 THE COURT: Yes, sir.

9 MR. COOPER: -- I'd ask for the
10 Court's consideration to close the
11 courtroom.

12 THE COURT: I cannot do that.

13 MR. COOPER: The matters that I'm
14 about to address involve proceedings of the
15 grand jury.

16 THE COURT: Sir, we cannot close.
17 There's one exception, I believe, to the
18 closing of courtrooms, and that pertains to
19 juvenile proceedings.

20 MR. COOPER: I defer to the Court's
21 judgment. I brought the issue to your
22 attention.

23 THE COURT: Well, the Tennessee
24 Constitution says courts shall be open. And
25 so this issue -- I will say this to you, Mr.

1 Cooper. What you wanted to tell the grand
2 jury, for purposes of what this Court has to
3 decide, is not relevant.

4 MR. COOPER: Correct.

5 THE COURT: There's two issues that
6 I think -- two parts of this case that you
7 brought to the Court's attention. Number
8 one, do you or any other citizen have the
9 right to testify in front of the grand jury?
10 The answer to that is no.

11 But the other side of that is, do
12 you or any other citizen have the right to
13 request a meeting with the foreman of the
14 grand jury and two other persons of your
15 choosing?

16 And the third thing is, as I
17 understand it from what's been filed, do you
18 have to sign a waiver of immunity in order
19 to testify? Am I right on this?

20 MR. COOPER: You're partially
21 right, Your Honor.

22 THE COURT: Okay. Tell me the rest
23 of it.

24 MR. COOPER: There are six issues
25 that are in the petition that lay out the

1 request for judicial interpretation and
2 relief.

3 THE COURT: Okay. Now, what are
4 the issues you want me to address?

5 MR. COOPER: I'd like to get into
6 those with my argument --

7 THE COURT: Yes, sir.

8 MR. COOPER: -- if we're prepared
9 to move forward.

10 THE COURT: Yes, sir.

11 MR. COOPER: Thank you.

12 Your Honor, I'd also like to point
13 out for the record that there's two
14 attorneys in the courtroom that have no
15 other reason to be here unless they show
16 cause today. One is Matthew Joshua Evans,
17 and the other is Richard Alexander Johnson.
18 We'll need that on the record for later.

19 Your Honor, we're here this morning
20 on my petition for judicial interpretation
21 and relief. As you know, the Court received
22 a letter from me dated March 27th, 2023
23 addressing allegations of misconduct
24 committed by the Seiver County district
25 attorney general's office during grand jury

1 proceedings conducted on that date. This is
2 not the first instance of misconduct alleged
3 against the district attorney general's
4 office under the direction of James B.
5 Dunn, who is also with us today. Rather,
6 this is only the latest instance of
7 misconduct documented again and again in the
8 absence of a presiding judge over the grand
9 jury proceedings.

10 On March 27th, I appeared to
11 testify and present evidence before a grand
12 jury panel in accordance with Tennessee Code
13 Annotated Section 40-12-104. This code
14 provides for individuals wishing to be heard
15 by the grand jury who have knowledge of
16 indictable offenses occurring within our
17 county.

18 Assistant district attorney general
19 Ron Newcomb interfered with the panel's
20 proceedings and obstructed justice by
21 requiring me to execute a waiver, that Mr.
22 Newcomb referred to as a waiver of
23 constitutional rights. That waiver is
24 attached as an exhibit to the petition.

25 Mr. Newcomb threatened me that if

1 my testimony was deemed untruthful, I could
2 be prosecuted for perjury before the grand
3 jury panel. Mr. Newcomb demanded that I
4 sign the waiver or be prohibited from
5 testifying before the panel. Mr. Newcomb
6 demanded the panel conduct a vote to
7 determine whether or not the panel would
8 allow me to testify if I chose not to sign
9 the waiver.

10 I advised Mr. Newcomb and the panel
11 that no statute under the Tennessee code
12 permitted such a vote. No statute under the
13 Tennessee code required such a waiver to
14 appear and testify before the grand jury.
15 But Mr. Newcomb convinced the panel
16 otherwise, and a vote was conducted.

17 After the vote was concluded, I was
18 advised by the grand jury foreman, Jim
19 Medlin, that the panel had voted not to
20 allow me to testify or present evidence
21 because I refused to waive my constitutional
22 rights. Outrageous.

23 I refused to execute any waiver
24 without first having the document reviewed
25 by a lawyer, just as Your Honor might do.

1 Mr. Newcomb advised me that if I refused to
2 sign the waiver I would not be permitted to
3 testify or present evidence of an indictable
4 criminal offense until I did so.

5 I have testified on several
6 occasions before the grand jury over the
7 past five or more years, and I have never
8 been requested to waive my constitutional
9 rights or to sign any such document.

10 I was denied access to the grand
11 jury panel by the Seiver County district
12 attorney general's office on March 27th,
13 2023.

14 On the hearing date, Judge James
15 Gass was the presiding judge over grand jury
16 proceedings. After requesting Judge Gass's
17 intervention in the obstruction of justice
18 caused by the official misconduct committed
19 by Mr. Newcomb on March 27th, Judge Gass
20 refused my request for assistance and
21 instead asked me to put my concerns in
22 writing. My letter to Judge Gass, dated
23 March 27th and forwarded to you, Your Honor,
24 has been deemed a petition for judicial
25 interpretation and relief. That petition is

1 now ripe before this Court today.

2 THE COURT: Yes, sir.

3 MR. COOPER: On Page 7 of my
4 petition filed last week, I asked the Court
5 to provide for judicial interpretation of
6 six concerns. Those concerns are:

7 No. 1, determining the rights of
8 the petitioner as an applicant appearing
9 before the Seiver County grand jury to
10 testify of knowledge of the commission of a
11 public offense, triable or indictable, in
12 Seiver County in accordance with Tennessee
13 Code Annotated Section 40-12-104.

14 No. 2, determining the rights of
15 the petitioner to refuse waiver of
16 constitutionally-protected rights and
17 liberties when appearing to testify before
18 or offer evidence to a grand jury in
19 accordance with TCA 40-12-104.

20 No. 3, determining or limiting the
21 participation of the district attorney
22 general's office in grand jury proceedings
23 as provided for under TCA 40-12-104. For
24 example, the statute clearly says that the
25 district attorney general's office or the

1 Court may be consulted by the grand jury
2 panel for guidance in making its
3 determination.

4 No. 4, determining the grand jury
5 foreperson to be the governor or director of
6 grand jury proceedings and not members of
7 the office of the district attorney general.

8 No. 5, determining the rights of
9 the petitioner to receive assistance when
10 requested from the presiding judge during
11 grand jury proceedings.

12 And No. 6, determining the rights
13 of the grand jury panel to consult the court
14 or the district attorney general when a
15 conflict of interest arises during grand
16 jury panel proceedings. For example --

17 THE COURT: I'm sorry. Let me
18 interrupt you just a second.

19 MR. COOPER: Yes, Your Honor.

20 THE COURT: When you're talking
21 about a conflict of interest, tell me what
22 you're talking about.

23 MR. COOPER: I will get to that,
24 Your Honor. I will get to that.

25 For example, an applicant wishing

1 to testify before a grand jury about
2 knowledge of the commission of a public
3 offense, triable or indictable in Seiver
4 County, under 40-12-104 when it permits the
5 panel to consult the district attorney
6 general or the court.

7 I contend that Mr. Newcomb, by and
8 through his acts committed for and on behalf
9 of Mr. Dunn, violated Tennessee Code
10 Annotated Section 39-16-507, Subsection A
11 Subsection 2.

12 That section, Your Honor, clearly
13 states, and I quote for the Court, "A person
14 commits an offense who, by means of
15 coercion, influences or attempts to
16 influence a witness or a prospective witness
17 in an official proceeding with intent to
18 influence the witness to withhold any
19 truthful testimony, truthful information,
20 document or thing."

21 By threatening a witness with
22 perjury if testimony offered to a grand jury
23 is deemed untrue by the sole determination
24 of the district attorney general's office,
25 the DA is violating 39-16-507, and I intend

1 to pursue an indictment against Mr. Newcomb
2 for violation of that statute.

3 Additionally, I contend that Mr.
4 Newcomb's conduct on March 27th also
5 violated Tennessee Code Section 39-16-402,
6 which provides privileges as follows: "A
7 public servant commits an offense who with
8 the intent to obtain a benefit or to harm
9 another intentionally or knowingly, 1,
10 commits an act relating to the public
11 servant's office or employment that
12 constitutes an unauthorized exercise of
13 official power."

14 Mr. Newcomb demanded that I sign a
15 waiver of constitutional rights without the
16 benefit of review by legal counsel under
17 threat and duress to deny my application to
18 testify before the grand jury panel. And
19 then he denied my right afforded under
20 40-12-104. Neither Mr. Dunn nor Mr. Newcomb
21 had that authority or official power in
22 their employment as public servants.

23 Subsection 2, "An individual who
24 commits an act under color of office or
25 employment that exceeds the public servant's

1 official power."

2 Not only does Mr. Newcomb's demand
3 for my waiver of constitutional rights
4 exceed his official power as a public
5 servant, but so too does Mr. Newcomb's
6 demand for the panel to conduct a vote that
7 is not permitted under 40-12-104 or any
8 other statute. Mr. Newcomb's conduct on
9 March 27th amounts to an obstruction of
10 justice.

11 Lastly, Subsection 4, "violates a
12 law relating to the public servant's office
13 or employment."

14 Mr. Newcomb's threat of pursuing a
15 perjury charge against a witness appearing
16 before the grand jury amounts to a violation
17 of 39-16-507 for coercion and persuasion of
18 a witness.

19 Again, based upon Mr. Newcomb's
20 criminal misconduct witness on March 27th, I
21 have applied to appear before the grand jury
22 on May 1st, seeking indictments against Mr.
23 Newcomb for violation of these criminal
24 matters.

25 These events of March 27th are not

1 the first time the district attorney
2 general's office has interfered with the
3 proceedings of a grand jury panel under the
4 direction and governance of Mr. Dunn and his
5 staff, and in the absence of any judge
6 serving, as required, as the presiding judge
7 over those proceedings.

8 I have personally witnessed Mr.
9 Dunn and his staff offer their unsolicited
10 opinions to grand jurors during panel
11 proceedings when grand jurors did not
12 solicit any guidance; take control of the
13 grand jury proceedings and question the
14 affiant as if they were questioning a
15 witness called to testify; conduct their own
16 research before the grand jury panel was
17 ever impaneled and offer such research to
18 the panel to obstruct the panel's vote in
19 favor of indicting the accused; threatening
20 and intimidating witnesses who appear to be
21 summoned before the panel for testimony;
22 coerce and persuade the grand jury
23 foreperson outside of the boundaries and
24 duties of the foreperson; conduct panel
25 proceedings --

1 THE COURT: Say that one more time.

2 MR. COOPER: Absolutely.

3 Threatening and intimidating witnesses who
4 appear to be summoned before the panel for
5 testimony; coerce and persuade the grand
6 jury foreperson outside of the boundaries
7 and the duties of the foreperson; conduct
8 panel proceedings in a broom closet on a hot
9 August day right over there; conduct panel
10 proceedings with a confidential testimony
11 offered to the panel as overheard by
12 passersby outside of the unfit panel forum,
13 like broom closets; and other conduct I
14 reported to you, Your Honor, as the
15 presiding judge after such misconduct was
16 witnessed during grand jury proceedings
17 conducted before the March 27th, 2023
18 proceeding.

19 Equally of concern, however, is the
20 absence of any presiding judge over grand
21 jury proceedings when concerns become
22 evident. On some occasions, the presiding
23 judge is not even in the courthouse, but
24 rather on the bench in another county's
25 courthouse.

1 THE COURT: Well, let me address
2 that issue while you're talking about that,
3 please, sir.

4 Judges in Tennessee are not --
5 well, let me say it this way. The grand
6 jury is a totally separate and independent
7 body unless we are requested by the grand
8 jury to give them advice, as you've already
9 talked about. Absent something being filed
10 in court, Mr. Cooper, courts do not
11 intervene in that process.

12 As you well know, the grand jury is
13 the most important body, most powerful body
14 in our form of government, because they have
15 the right to accuse people -- or they have
16 the ability to accuse people of crimes and
17 make them face illegal proceedings. And
18 simply informing a judge -- you need to file
19 things. Judges just don't give advisory
20 opinions. You have to file pleadings.
21 That's the reason. And as far as no judge
22 being here when the grand jury makes its
23 report, sir, the grand jury can report --

24 MR. COOPER: That is not what I
25 said, Your Honor.

1 THE COURT: Well, but just --

2 MR. COOPER: I didn't say make you
3 report.

4 THE COURT: Don't argue with me,
5 Mr. Cooper. Don't argue.

6 MR. COOPER: Your Honor, you're
7 interrupting my argument.

8 And what I was saying was that the
9 judge is not in the courthouse, period. The
10 fact that a grand jury can call on a judge
11 or not does have a bearing on whether or not
12 the court is present. If the court's on the
13 bench in another county, a grand jury can't
14 access.

15 THE COURT: We cover in four
16 counties, Mr. Cooper, and I'm sorry for
17 that, but we do.

18 And the grand jury reports its
19 indictments and those sorts of things to the
20 clerk of the court. They record those
21 devices. Now -- or they record those
22 reports from the grand jury. They're
23 indictments, they're presentments, they're
24 no true bills. The judges do not have to be
25 there for that. And sometimes we are in

1 other counties, but we are accessible to
2 people.

3 But you need to file things. Now,
4 I know you don't like that.

5 MR. COOPER: I respectfully
6 disagree that the Court's available.

7 THE COURT: Well --

8 MR. COOPER: I've witnessed before
9 where the panel has sought out the presiding
10 judge and can't access the presiding judge
11 because he is not in the courthouse. I
12 appreciate that the judge may be available
13 by phone in another county. However, with
14 all due respect to the Court, if a grand
15 jury panel is conducting official
16 proceedings in this county, and the statute
17 provides for that panel to consult the
18 presiding judge --

19 THE COURT: Hunting down the judge.

20 MR. COOPER: Hunting down, not
21 informing the judge, consult is what the
22 statute says, 40-12-104.

23 THE COURT: Mr. Cooper, I told you
24 what my position is.

25 MR. COOPER: I wasn't asking for

1 argument. I was simply making a point.

2 THE COURT: Go on with the rest of
3 your statement.

4 MR. COOPER: My point is is that
5 the Court's not in the county, and I've
6 witnessed, as I was testifying --

7 THE COURT: You've already said
8 that. I've heard that.

9 MR. COOPER: As I have testified, I
10 have witnessed the grand jury being unable
11 to access the presiding judge over official
12 proceedings.

13 THE COURT: Okay.

14 MR. COOPER: This nonsense must
15 stop and must stop now.

16 The Court, as presiding judge, must
17 actively involve itself in grand jury
18 proceedings conducted in this county, not
19 passively remain on the sidelines if ever
20 called upon.

21 The Court cannot assume some
22 inherent trust in Mr. Dunn and his staff to
23 conduct grand jury proceedings in accordance
24 with 40-12-104. They have not and did not
25 maintain the Court's trust on March 27th.

1 I ask you, Your Honor, to consider
2 the relief requested in my petition and to
3 award that relief here today.

4 THE COURT: Okay, sir.

5 MR. COOPER: I am scheduled to
6 appear again before the grand jury panel on
7 May the 1st, 2023, and the statute of
8 limitations governing the crimes accused is
9 quickly about to toll.

10 THE COURT: Okay, sir.

11 MR. COOPER: Without your
12 intervention, these acts and misconduct that
13 I have witnessed time and time again, and
14 have a witness if we need to call upon her
15 to testify, for about five years now will
16 continue to occur again and again during --

17 THE COURT: Let me ask you this
18 question --

19 MR. COOPER: -- grand jury
20 proceeding.

21 THE COURT: -- about what you're
22 seeking from the Court.

23 So you are seeking to appear in
24 front of the grand jury foreman and two
25 grand jurors of your choice without

1 executing a waiver of immunity, as I
2 understand what you filed.

3 MR. COOPER: That is one of the six
4 things listed.

5 THE COURT: That's three of the
6 things that you listed, isn't it?

7 MR. COOPER: It's No. 2, Your
8 Honor. Determining the rights of the
9 petitioner to refuse waiver of
10 constitutionally-protected rights or
11 liberties under the statute.

12 THE COURT: Right. Without
13 interference from anybody else, that's
14 basically what you're asking the Court.

15 MR. COOPER: If the Court can find
16 a statute that says that an affiant or an
17 applicant who wishes to testify under
18 40-12-104 must first waive their
19 constitutionally-protected civil rights or
20 liberties --

21 THE COURT: Do you want me to tell
22 you what my answer is now?

23 MR. COOPER: Your answer to what,
24 Your Honor?

25 THE COURT: To that.

1 MR. COOPER: The statute?

2 THE COURT: Yes, sir.

3 MR. COOPER: Sure.

4 THE COURT: You do not have to sign
5 a waiver of your immunity in order for you
6 to testify, and in order for the grand jury
7 foreman and the other two grand jurors to
8 give you permission to appear before the
9 grand jury. You do not have to sign that.

10 MR. COOPER: So is the Court saying
11 that Mr. Newcomb's conduct on March 27th
12 requiring that waiver was improper?

13 THE COURT: I am saying that you do
14 not have to sign that.

15 MR. COOPER: Thank you.

16 THE COURT: The Court is not here
17 today -- this is not a proceeding for the
18 Court to make findings of fact about whether
19 or not the attorney general's office -- I
20 mean, if you're able to go to the grand jury
21 and get an indictment against anyone, then
22 the Court will have to deal with those
23 issues at that point.

24 But the Court is here, as I see my
25 role today, sir, is to determine what your

1 rights are to testify, to present your
2 issues to the grand jury foreman and two
3 other grand jurors of your choice. And you
4 have that absolute right. You do not have
5 to waive your immunity because you're not
6 immune from -- the only time an immunity
7 issue comes up is if a witness to a grand --
8 or if a person, a citizen, is subpoenaed or
9 ordered by a court to testify in front of
10 the grand jury.

11 Once that happens, if that happens,
12 then that witness -- there's what's called
13 transactional immunity. And so that witness
14 is immune from being prosecuted for anything
15 that they've testified about. That's the
16 law. So that's what I think.

17 MR. COOPER: Thank you, Your Honor.

18 Regarding the other issues in the
19 petition?

20 THE COURT: Yes, sir. Well, let me
21 hear from the attorney general's office on
22 that. Hear from both sides.

23 MR. COOPER: Thank you, Your Honor,
24 for the Court's time today.

25 THE COURT: Yes, sir.

1 MR. NEWCOMB: Good morning, Your
2 Honor.

3 THE COURT: And if we can give Mr.
4 Cooper a seat here somewhere in the area
5 down front here, please.

6 Yes, sir.

7 MR. NEWCOMB: Your Honor, it's the
8 State's position that the independent
9 constitutional body of the grand jury, as
10 well as the district attorney general's
11 office in this situation acted completely
12 within its then authority.

13 If I could approach the bench with
14 several authorities.

15 First of all, Your Honor, I will
16 say that the complete actions of the grand
17 jury foreman and the panel the state avers
18 was within their constitutional authority.
19 The actions of the district attorney
20 general's office, including the presentation
21 of the waiver, the state avers is within its
22 authority.

23 The secret vote not to hear Mr.
24 Cooper after we both excused is within that
25 three person panel's authority, and that Mr.

1 Cooper does not have a right to appear
2 before that three-person panel.

3 His only statutory --

4 THE COURT: I disagree with you on
5 that, General.

6 MR. NEWCOMB: Yes, sir. I
7 understand. If I could argue --

8 THE COURT: Yes, sir.

9 MR. NEWCOMB: All right. First of
10 all, Your Honor, if I could approach the
11 bench with several authorities. And I have
12 copies for Mr. Cooper.

13 The first, if I could approach,
14 Your Honor. State versus Culbreath.

15 THE COURT: I wish I'd had these
16 before today, General.

17 MR. NEWCOMB: I'm sorry, Your
18 Honor.

19 [simultaneous speaking]

20 MR. COOPER: Just like me, Your
21 Honor. Can I have a copy?

22 THE COURT: Yes, you can.

23 MR. NEWCOMB: I have it right here,
24 Your Honor.

25 The State was in a three-day jury

1 trial, Your Honor, and there are filings in
2 this matter by Mr. Cooper on Thursday, and I
3 compiled these over the weekend.

4 MR. COOPER: The petition has been
5 on the calendar since April 6th. It's April
6 24th.

7 MR. NEWCOMB: Anyway, Your Honor,
8 if I could proceed.

9 THE COURT: Yes.

10 MR. NEWCOMB: Thank you.

11 State versus Culbreath says at the
12 top on page ten of two, "Prosecutor's
13 discretion about whom to prosecute and to
14 what extent they should be prosecuted,
15 however, is vast and to a large degree, not
16 subject to meaningful review. Prosecutor
17 discretion in charging is very broad.
18 Moreover, as the United States Supreme Court
19 has recognized, the prosecutor's discretion
20 goes beyond initial charging decisions."

21 This is the operative language. "A
22 prosecutor exercises considerable discretion
23 in matters such as determination of which
24 person should be targets of investigation,
25 what methods of investigation should be

1 used, what information will be sought as
2 evidence, which person should be charged
3 with what offenses, what person should be
4 utilized as witnesses, whether to engage in
5 plea bargains and the terms with which they
6 will be established, and whether any
7 individuals should be granted immunity.
8 These decisions, critical to the conduct of
9 the prosecution, are made outside the
10 supervision of a court."

11 The State avers that the
12 presentation of an immunity -- waiver of
13 immunity falls within that --

14 THE COURT: I disagree with you.

15 MR. NEWCOMB: I understand.

16 THE COURT: Totally.

17 MR. NEWCOMB: Okay.

18 THE COURT: Because this statute,
19 the 40-12-104, is very specific about the
20 rights of a citizen to go in front of the
21 grand jury -- in front of the grand jury
22 foreman and two people, two other grand
23 jurors. And then if they determine by a
24 majority vote one way or another, they
25 determine whether or not the private citizen

1 has the right to go then in front of the
2 grand jury and testify.

3 Now, what that grand jury does, the
4 grand jury is not an arm necessarily of the
5 court or the attorney general's office. The
6 attorney general's office has great
7 discretion, you're exactly right, in who you
8 prosecute.

9 You know, we had an issue here on
10 another case involving Mr. Cooper where he
11 was able to obtain an indictment. The State
12 comes in in its discretion, absolute
13 discretion, and dismisses that indictment.
14 You know, that's the law.

15 MR. NEWCOMB: Your Honor, can I
16 proceed just for the record?

17 THE COURT: You can, yeah.

18 MR. COOPER: Thank you.

19 MR. NEWCOMB: The next case, Your
20 Honor, I would cite, this case of State
21 versus Penley. State versus Penley, Your
22 Honor, on page 7 of 9. May I approach?

23 THE COURT: Yes.

24 MR. NEWCOMB: Thank you.

25 Says -- talks about the

1 independent, as the court just observed, the
2 independent constitutional authority of the
3 district attorney general's office in
4 dealing with its matters in front of the
5 grand jury.

6 But Rule 6, and we'll get to that,
7 says, "It's the duty of the district
8 attorney general's office and the grand jury
9 foreman to ferret out crime." And that will
10 bring me down to the ultimate issue, if the
11 court will bear with me just a few minutes.

12 THE COURT: Sure.

13 MR. NEWCOMB: I'll get there.

14 The next case, of course, is State
15 versus Ramsey, on page 5 of 6.

16 State versus Spradlin and Harris
17 having to do with these matters.

18 State versus Johnson.

19 And State versus Aldaba-Arriaga.

20 In all those cases, Your Honor, and
21 I understand the court's view, but the issue
22 on page 1117 in State versus Aldaba-Arriaga,
23 says, "Our Supreme Court has recognized that
24 prior to indictment, the district attorney
25 general has virtually unbridled discretion

1 in determining whether to prosecute him for
2 what offense."

3 THE COURT: You are correct, sir.

4 MR. NEWCOMB: "So long as the
5 prosecutor has probable cause to believe
6 that the accused committed an offense, and
7 the decision whether or not to prosecute and
8 what charges to file or bring before a grand
9 jury generally rests entirely within his
10 discretion. The function of the grand jury
11 is to determine probable cause. The grand
12 jury may indict an accused for any
13 indictable or presentable offense found to
14 have been committed triable within the
15 county." And therein lies the central
16 issue in this case, Your Honor, wherein the
17 State avers that this petition for which Mr.
18 Cooper has presented to this court is not a
19 triable, indictable offense because it is
20 void of probable cause.

21 THE COURT: That'd be up to the
22 grand jury.

23 MR. NEWCOMB: Well, sir, except the
24 state avers that in Hawk versus -- excuse
25 me, Willis versus Johnson, which if I could

1 approach, as well as with copies of Rule 6
2 and 40-12-104, if I could, Your Honor.

3 THE COURT: No good.

4 MR. NEWCOMB: Yes, sir.

5 The issue before that, the state
6 avers, Your Honor, is pursuant to Tennessee
7 Rules of Ethics 303 and 308 regarding candor
8 toward the tribunal and regarding the lack
9 of probable cause that the state is aware
10 of.

11 And the state avers that at the
12 time that this alleged petition occurs, that
13 this matter is devoid of probable cause.

14 And so then it becomes an issue
15 that the state is predicting the candor and
16 the integrity of the tribunal, where an
17 individual brings a matter before the grand
18 jury, void a probable cause.

19 I have prepared today, Mr. Cooper
20 mentioned these witnesses. These witnesses
21 are here today to demonstrate that there's
22 absolutely no probable cause to support this
23 application. The state avers that an
24 application not supported by probable cause
25 is not an offense, triable or indictable,

1 within the State of Tennessee.

2 And so the grand jury is an
3 independent constitutional body. The
4 district attorney general's office is an
5 independently constitutionally elected
6 office. And the state avers that in
7 presenting Mr. Cooper with the waiver, that
8 it was exercising its authority under the
9 investigative authority as set forth.

10 THE COURT: Well, General, if that
11 is your position, that would completely do
12 away with TCA 40-12-104. It would.

13 MR. NEWCOMB: Could I address that,
14 Your Honor ?

15 THE COURT: Yeah.

16 MR. NEWCOMB: The state avers that
17 all that statute gives a right is to apply.
18 Just to it --

19 [simultaneous speaking]

20 THE COURT: But it does not say it.

21 MR. NEWCOMB: It does not give a
22 right to appear. He can file all the
23 applications he wishes.

24 THE COURT: He can.

25 MR. NEWCOMB: But the issue about

1 whether to appear is not a right. It's
2 discretionary within Willis versus Johnson.

3 THE COURT: With the grand jury
4 foreman and two --

5 MR. NEWCOMB: And that's exactly
6 what happened. They voted independently.

7 THE COURT: Now, as I understand
8 it, from what's been filed, they told him to
9 come -- he's filed another application --

10 MR. NEWCOMB: He has.

11 THE COURT: -- to go back in front
12 of the grand jury. Now, he can do that.

13 MR. NEWCOMB: He can do that.

14 But if he's a target of a potential
15 defendant for potential crimes, there's an
16 attorney general opinion that says you can't
17 keep a potential defendant out, but it
18 doesn't suspend the district attorney
19 general's authority to use investigative
20 techniques, including waiver of your
21 constitution --

22 THE COURT: That's not an
23 investigative tool.

24 MR. NEWCOMB: Well, that's the
25 state's position, Your Honor. I believe it

1 to be just like when you give somebody a
2 Miranda waiver. The state avers there's no
3 difference in that.

4 THE COURT: There is nothing in
5 40-12-104, there is no case that I'm aware
6 of that you've shown me. I mean, of course,
7 I just got them here this morning so the
8 court's obviously not had time to read them.
9 But, now, General Newcomb, there is nothing
10 that requires this man in this situation --
11 whether I agree with him or whether I don't
12 is immaterial. But he's got a right, as
13 every other citizen does, to ask the grand
14 jury foreman and two other grand jurors to
15 hear him and to hear what he's got to say.
16 And then they determine, not the attorney
17 general's office, not the court, nobody
18 else, whether the grand jury will hear him
19 or not. Then let it take its course.

20 MR. NEWCOMB: The state avers, Your
21 Honor, he does not have a right to present
22 testimony.

23 THE COURT: He doesn't have a right
24 to present testimony, but he has a right to
25 appear in front of the grand jury foreman.

1 Otherwise, this court and the attorney
2 general's office is saying that the statute
3 40-12-104 is meaningless. The legislature
4 passed it for some reason, sir.

5 MR. NEWCOMB: They passed it --

6 THE COURT: You're wrong, General
7 Newcomb. You're just flat out wrong. I
8 just don't agree with you on this.

9 MR. NEWCOMB: The state would ask
10 to call its witnesses.

11 THE COURT: No. We're not here --
12 this, it's up to the grand jury to
13 determine, it's up to those three people to
14 determine whether they think there's enough
15 evidence to go forward, that the grand jury
16 should consider it, and then determine
17 whether there's probable cause. And if they
18 indict, they indict. If they don't, they
19 don't. And then, if they do indict, then
20 the attorney general's office, in my
21 opinion, has the absolute authority and
22 discretion to come in as they did previously
23 and dismiss the case.

24 But the grand jury, the attorney
25 general's office, nor the court can keep

1 40-12-104 from coming into play. I don't
2 have any authority -- and Mr. Cooper wants
3 the court to go tromping through the grand
4 jury proceedings. The court is not prepared
5 to do that.

6 And the grand jury, if they want
7 to, they can ask the attorney general's
8 office questions. If they don't want to,
9 they don't have to.

10 MR. NEWCOMB: That's right, Your
11 Honor. The state also would aver that we
12 were before the grand jury per their written
13 request. It's part of the file.

14 With regard to giving advice to the
15 grand jury, the state avers that that has to
16 do -- advice is based on facts. You can't
17 give legal advice if you don't know facts.

18 If the state is aware that
19 something is devoid of probable cause, then
20 it's not indictable or triable.

21 THE COURT: I disagree with you.

22 MR. NEWCOMB: The ethics rules do
23 not -- they apply to the grand jury just
24 like they do any other entity, is the
25 state's position.

1 And I understand the court's
2 ruling, but for the record, the state has
3 here today the potential target, one of the
4 potential targets of Mr. Cooper's petitions,
5 Mr. Matt Evans.

6 THE COURT: Yes.

7 MR. NEWCOMB: We have a witness,
8 Mr. Alex Johnson. Both those individuals
9 say that he did not touch Mr. Cooper.
10 There's video evidence of that and a report
11 by two police officers.

12 THE COURT: We try cases every day,
13 general, where there's a difference of
14 opinion. But in the grand jury, you don't
15 hear from everybody. We know that.

16 MR. NEWCOMB: Unless, of course,
17 Your Honor, that there's an issue that is
18 being tried to be put before the grand jury
19 that's not supported by probable cause.

20 THE COURT: But again, the grand
21 jurors, they determine probable cause, not
22 the attorney general's office and not the
23 court before indictment.

24 MR. NEWCOMB: But if it doesn't
25 have probable cause, it doesn't even get

1 there, Your Honor. And I understand the
2 court's ruling.

3 THE COURT: I don't agree with
4 that. Because why would you need the grand
5 jury if you're not looking for probable
6 cause?

7 MR. NEWCOMB: The only two people,
8 Your Honor, that have a right to bring
9 something before the grand jury is the grand
10 jury foreman, a grand juror, and the
11 district attorney general's office.

12 THE COURT: I disagree with -- oh,
13 subject to 40-12-104.

14 MR. NEWCOMB: And Rule 6, Your
15 Honor. Rule 6, where it says the duties of
16 the grand jury foreman and the district
17 attorney general's office, they have the
18 duty to bring things. They have the right
19 to bring things. No other person does.
20 40-12-104 -- and I understand the court's
21 ruling and understand we disagree, and I'm
22 trying to be respectful of that.

23 THE COURT: Well, you better be.

24 MR. NEWCOMB: Yes, sir.

25 THE COURT: You are.

1 MR. NEWCOMB: Yes, sir.

2 THE COURT: But you're not
3 listening to me.

4 MR. NEWCOMB: Well, just for the
5 record, the state avers, and I know the
6 court's ruled, that that statute just gives
7 a right to apply.

8 THE COURT: Exactly.

9 MR. NEWCOMB: But you can send in
10 affidavits, you can do these other things,
11 but it does not give a right to personally
12 appear and testify.

13 THE COURT: It does not give a
14 right to personally appear before the grand
15 jury unless by a majority vote, two out of
16 three grand jurors say that he shall. And
17 that is not reviewable by a court. Whatever
18 they decide is decided.

19 MR. NEWCOMB: And the state avers
20 that that's exactly what happened, based
21 upon legal advice sought by the grand jury
22 from the district attorney's office, when an
23 individual tries to present something to a
24 grand jury that is devoid of probable cause.

25 The other issue, Your Honor, is

1 there's not just Mr. Cooper here, but it's
2 just Mr. Evans. Mr. Evans is somebody that
3 hadn't done anything wrong that can be
4 targeted by the grand jury.

5 THE COURT: And, you know, I
6 understand that. But what you're asking the
7 court to do, in effect -- and listen, I
8 don't know anything about this case other
9 than what you gentlemen have filed here.
10 But it's up to the grand jury to determine
11 what is -- what they think is probable
12 cause. Otherwise so why would we need a
13 grand jury if the attorney general's office
14 or the court decides those things? That's
15 not what the grand jury process is about.

16 MR. NEWCOMB: But, Your Honor, in
17 this case, that three person panel met in
18 secret. Mr. Cooper requested to go ahead
19 and testify.

20 THE COURT: Well --

21 MR. NEWCOMB: They declined.

22 THE COURT: Well, he can go -- he
23 can petition again.

24 MR. NEWCOMB: The state of agrees
25 that he can, but the state --

1 THE COURT: Okay, then you agree
2 with it.

3 MR. NEWCOMB: Except, I don't
4 agree, respectfully, I do not agree with the
5 court, with most respect --

6 THE COURT: You know what you can
7 do with that? You can appeal it. That's
8 what the Court of Criminal Appeals is for.
9 And, you know, I've been reversed before, so
10 that don't scare me or it don't make me mad.

11 But General Newcomb, the court has
12 held, and I do hope and I do find that Mr.
13 Cooper does not have to execute a waiver of
14 immunity in order to ask the three grand
15 jurors whether or not to hear his testimony.
16 He's not being compelled to testify;
17 therefore, his immunity is not impacted.

18 Yes, it's right, Mr. Cooper, if a
19 grand jury, at some point -- a grand jury
20 were to determine that any witness lied, and
21 I'm not saying you are, I'm not saying that,
22 Mr. Cooper. But that's up to the grand
23 jury.

24 And if the attorney general wants
25 to present witnesses about those issues, you

1 can do that. That's what the law is.

2 MR. COOPER: Your Honor, may I
3 respond?

4 THE COURT: Just a second. I'm on
5 a roll here.

6 MR. COOPER: Thank you, sir.

7 MR. NEWCOMB: I think I've got my
8 proffer, Your Honor. Okay. Just for the
9 record.

10 THE COURT: Yes, sir.

11 MR. NEWCOMB: Matt Evans here. No
12 contact. Did not touch Mr. Cooper. Alex
13 Johnson here. No contact. He did not touch
14 Mr. Cooper. Law enforcement officers
15 investigated, found no probable cause, did
16 not bring charges against Mr. Cooper. And
17 Mr. Charlie Garren that would have the video
18 that corroborates all that from the chancery
19 courtroom on August 22nd, 2022.

20 The state avers that in review of
21 the totality of the available investigative
22 evidence, there is no probable cause and as
23 such is not triable and indictable in the
24 State of Tennessee.

25 THE COURT: And do you know what

1 you can do with that? You can present them
2 to the grand jury. You can present your
3 witnesses to the grand jury, General
4 Newcomb.

5 MR. NEWCOMB: Yes, sir.

6 THE COURT: You can do that.
7 That's done all the time.

8 You're just asking the court to
9 step in and block the application of TCA
10 40-12-104. And I can't and will not be a
11 party to that. I like everybody. I'm like
12 Riley King was, our former county
13 commissioner. I love everybody.

14 But the point here is a question of
15 law. And whether I agree with it or whether
16 I don't, I've got to try my very best to
17 enforce it. And as long as I sit here, and
18 I may not sit here long, but as long as I
19 do, I'm going to do that.

20 MR. NEWCOMB: Your Honor, again,
21 for the record, I respect the court --

22 THE COURT: You know that.

23 MR. NEWCOMB: But the state's not
24 asking the court to do that. The state is
25 asking the court to --

1 THE COURT: I think the effect of
2 what you're doing is that.

3 MR. NEWCOMB: The state -- I
4 understand, Your Honor. I don't mean to
5 interrupt the court.

6 THE COURT: No, you're fine.

7 MR. NEWCOMB: The state's asking
8 the court interpret the statute as it avers
9 it to be under Willis versus Johnson, that
10 he only has the right to apply and a grand
11 jury person, whether it be the three-person
12 panel or anybody else or the whole grand
13 jury, can decline to hear his personal
14 testimony.

15 THE COURT: Have I not been saying
16 that for the last 15 or 20 minutes?

17 MR. NEWCOMB: Well, Your Honor, I
18 think, as I understood the court's ruling is
19 that the court has ruled that he has a right
20 to personally appear upon his application.

21 THE COURT: General Newcomb, this
22 is not really complicated. I've said, and
23 I'm going to say it one last time, I'm done
24 with this issue.

25 MR. NEWCOMB: Yes, sir.

1 THE COURT: 40-12-104 says what it
2 says. Any citizen has the right, has the
3 right to ask the grand jury foreman and two
4 grand jurors of his choice, his or her
5 choice, to listen to what they wish to
6 present to the grand jury. Then those three
7 people hear that, and then they discuss it.
8 And if they want to ask your advice, they
9 can ask your advice. That's up to them.
10 The attorney general's advice, office's
11 advice. And then they vote. And it's
12 final. It's not reviewable by a court.
13 It's not reviewable by the attorney
14 general's office. And if they choose to
15 hear witnesses on the other side, they can
16 do that. But that's it. I'm done. I'm
17 done. I may be dead wrong, but I think it's
18 one of the simplest matters this court has
19 heard in a long time. Pretty clear.

20 And look, I mean, Mr. Cooper, he
21 says he has issues with the judges and the
22 whole system here, and that's fine. He may
23 not like any of us, but the law is the law,
24 and that's the way I see it.

25 Mr. Cooper, I don't want to rehash

1 what the court's just ruled on.

2 MR. COOPER: No, Your Honor .

3 THE COURT: I don't.

4 MR. NEWCOMB: Your Honor, if I
5 could, before I yield, could I file some
6 additional authorities for the record,
7 please?

8 THE COURT: Yes, sir.

9 MR. NEWCOMB: All right.

10 THE COURT: But again, the court's
11 not seen them.

12 MR. NEWCOMB: I understand, Your
13 Honor.

14 THE COURT: Can't read them by
15 osmosis.

16 MR. NEWCOMB: I understand, Your
17 Honor.

18 The only other filing I would file
19 is attorney general opinion 95-106, if I
20 could approach.

21 THE COURT: Yes, sir.

22 MR. NEWCOMB: If I can have just a
23 moment, please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. COOPER: Mr. Newcomb, do you

1 have a copy?

2 MR. NEWCOMB: I do, Mr. Cooper.

3 Just a minute, please.

4 The court's referenced it, but the
5 state would, of course --

6 THE COURT: Yes, it's interesting
7 here the state attorney general in this
8 opinion, looks like opinion 95-106. It's
9 amazing. It says here -- wait just a
10 minute. Yeah. In the first part of the
11 analysis, it says, "The grand jury in
12 Tennessee is considered to be an independent
13 legal body. The grand jury is not an agency
14 of the districts attorney or of the court.
15 Under our system, it is an agency of the
16 government and may act independently of the
17 court and districts attorney."

18 MR. NEWCOMB: Yes, sir.

19 THE COURT: It also goes on to say
20 that the grand jury should not receive legal
21 advice from the judge.

22 MR. NEWCOMB: I think, Your Honor,
23 what it says, it says that the grand jury is
24 only receiving legal advice from the
25 district attorney general's office.

1 THE COURT: And again, that's just
2 the --

3 MR. NEWCOMB: Yes, sir.

4 THE COURT: Yeah, I don't disagree
5 with that at all, General Newcomb.

6 MR. NEWCOMB: But the issue is you
7 can't give legal advice without knowing the
8 facts, and the state avers that it's not
9 just 40-12-104 that impacts us.

10 THE COURT: I don't think the
11 attorney general's office has a right to
12 impede the application of anybody to apply
13 under 40-12-104.

14 MR. NEWCOMB: Your Honor, I would
15 agree that we can't stop anybody from making
16 application.

17 THE COURT: That's right.

18 MR. NEWCOMB: But the procedural
19 issue is the issue.

20 THE COURT: I'm done.

21 MR. NEWCOMB: Yes, sir.

22 MR. COOPER: Your Honor, thank you
23 for the opportunity to be heard again. I
24 only intend to reply to a few of the
25 arguments for Mr. Newcomb briefly.

1 THE COURT: You know, there's an
2 old saying when a judge has ruled with you,
3 you probably need to --

4 MR. COOPER: Yeah, but violating an
5 individual's civil rights in this county on
6 March 27th, as Mr. Newcomb and Mr. Dunn and
7 his staff did, generates a civil rights
8 lawsuit in federal court.

9 THE COURT: File it.

10 MR. COOPER: And that will be
11 filed.

12 However, the issues that are still
13 before the court involve some things that
14 Mr. Newcomb's taken out of the worm can, if
15 you will.

16 For example, and this is a really
17 relevant issue for how these applications
18 are to be heard in this county. I've asked
19 the clerk of court, Ms. Atchley, to provide
20 all records involving how the grand jury
21 proceedings are conducted in Seiver County.
22 That includes, without limitation, the
23 application of a private citizen to appear
24 under 40-12-104, all the way down to the
25 conclusion of an indictment and the

1 presentation of that indictment to this
2 court.

3 For example, the court referenced
4 earlier a case involving two other
5 individuals for which two grand juries
6 returned about eight indictments against
7 them. Mr. Dunn has a really big stick. He
8 has the ability to choose to prosecute cases
9 he wants to and dismiss ones he doesn't.

10 THE COURT: That's correct.

11 MR. COOPER: He also has duties in
12 the platform that he runs for office on that
13 says that he supports victims rights. Well,
14 when an individual is a victim of a crime,
15 you think that somebody from the DA's office
16 would contact them to talk about the crime,
17 to talk about assistance that's supposed to
18 be provided, or even respond to emails about
19 conflicts of court hearings. Instead, they
20 rush something in under the court's nose and
21 get it dismissed. That's another matter
22 that we'll get into later --

23 THE COURT: No, we're not.

24 MR. COOPER: Not today. Not today.
25 The issue is is that Mr. Newcomb opened the

1 can of worms. That when an applicant
2 submits an application to testify, they do
3 the research. They establish the probable
4 cause. They come back and conclude whether
5 or not a crime has occurred. They speak
6 with law enforcement. They come back and
7 get videos from the courthouse. And in the
8 end, before the applicant ever appears to
9 testify, they have their case.

10 Well, that's one method to avoid
11 getting a crime indicted, right? That's one
12 of the processes to providing consultation
13 to the grand jury of legal advice. No, it's
14 facts of a case. It's whether a contact
15 took place or not. It's whether a crime
16 took place or not.

17 The only legal advice should be
18 under the statute of what the crime is
19 that's accused in the application for the
20 indictment, not legal advice about probable
21 cause or anything else.

22 And Mr. Dunn has exercised his big
23 stick authority before. He has wielded that
24 stick and dismissed charges that the grand
25 jury's indicted, which completely undermines

1 the entire integrity and value of the grand
2 jury process. Why bother presenting charges
3 that the district attorney general gets to
4 decide? We'll prosecute these maybe by race
5 and religion.

6 THE COURT: Just to interrupt you
7 just a second.

8 MR. COOPER: Yes, Your Honor.

9 THE COURT: One of the reasons
10 being, and I'm not talking about any cases
11 involving you, I have no idea about it.

12 MR. COOPER: Understood, Your
13 Honor.

14 THE COURT: But, for example, the
15 grand jury is a one-sided process. A
16 defendant is not present in the grand jury.
17 The defendant's attorney is not present in
18 the grand jury. All they hear from
19 generally is the prosecution. And so that's
20 the reason that an indictment in and of
21 itself means nothing other than you've been
22 officially accused of a crime.

23 And so then, when the other side
24 has the opportunity to get an attorney and
25 so forth, and then they start talking about

1 the cases, and a defense attorney or --
2 tells the state what their evidence may be,
3 then they start talking about it and the
4 state may realize they don't have a case and
5 dismiss it. Or they may compromise it in
6 some way. So, Mr. Cooper, that's the way
7 the process works.

8 MR. COOPER: After an indictment.

9 THE COURT: Yeah. Well, yeah.

10 MR. COOPER: Not before an
11 indictment.

12 THE COURT: The state chooses, if
13 they -- if officers come to them, for
14 example, Mr. Cooper, that want to present
15 cases to the grand jury, the state doesn't
16 have to do that. They don't have to do
17 that.

18 MR. COOPER: I understand. That's
19 why there's 40-12-104.

20 THE COURT: Exactly.

21 MR. COOPER: The point I'm making,
22 Your Honor, and again, with all due respect
23 to the court, I know I can be animated, but
24 this is a hot topic issue.

25 Mr. Newcomb wants the court to

1 understand, and he has opened that can today
2 that's going to require further judicial
3 review, that when an application is made,
4 the DA's office has the unwieldy authority
5 to conduct its own investigation to
6 determine probable cause, and to come in and
7 disrupt the grand jury process from getting
8 an indictment. Normally, criminal charges
9 are brought, the grand jury hears the
10 evidence from witnesses, including law
11 enforcement victims and so forth, and then a
12 decision is made to return an indictment or
13 not.

14 Not in this case. In this case, an
15 applicant submits an application to testify,
16 and the grand jury is already running, which
17 is why they've corrupted the process from
18 indictments before, because they do their
19 own homework. They come to their own
20 conclusions, falsely or otherwise, and then
21 make a final decision to disrupt an
22 indictment from ever being returned. It
23 needs to be in the record today. And I did
24 not introduce an individual's name.

25 Mr. Newcomb has said Matt Evans.

1 In the process of disclosing Matt Evans to
2 this court, Mr. Newcomb wants to protect Mr.
3 Evans from being indicted. That's what this
4 is about. And if you obstruct the grand
5 jury process by bending the 40-12-104 or by
6 finding some obscure case law, I mean, this
7 is a weekend's worth of work. It's unfairly
8 reasonable.

9 THE COURT: Are you disagreeing
10 with what the court said about 40-12-104?

11 MR. COOPER: No, Your Honor, I
12 appreciate the court's ruling.

13 What I'm saying is this is a bigger
14 issue for this court to pay attention to in
15 the future, in other petitions that will be
16 brought because the DA's office is abusing
17 its authority and discretion under the code.
18 And I just happen to be one individual
19 through the process that stuck the cog in
20 the wheel enough to disrupt it. And that's
21 what this is about.

22 This requires more attention from
23 the court and what happens in this county.
24 I'll bring that in future petitions.

25 For today's ruling, the only issue

1 I ask that the court has not addressed is if
2 I proceed with indictments against Mr.
3 Newcomb for his violation of three statutes.
4 How does the grand jury consult the district
5 attorney general's office for guidance in
6 making its determination under 40-12-104
7 (c)?

8 THE COURT: Well, I'll cross that
9 bridge when I have to.

10 MR. COOPER: I ask for the court's
11 availability on May 1st then.

12 THE COURT: Well, I don't know if
13 I'm the judge here on May 1st or not.

14 MR. COOPER: You are, Your Honor.

15 THE COURT: Well, if I'm around.
16 But you're going to have to file something.
17 You just can't drop in.

18 MR. COOPER: Yes, Your Honor.

19 THE COURT: You just can't drop in.
20 You can't send me a letter. File a pleading
21 in the court.

22 MR. COOPER: I will, Your Honor.
23 Thank you.

24 THE COURT: That's the way it
25 works. That's the way lawyers do it.

1 And you seem to be very talented.

2 And again, Mr. Cooper, I want you to
3 understand, yes, you filed a complaint
4 against me, and that's all well and good.
5 But I hold nothing against you --

6 MR. COOPER: Thank you, Your Honor.

7 THE COURT: -- at all. And I've
8 just got to do my job, and I'm going to do
9 it the best I know it. And that's the way
10 it is.

11 MR. COOPER: I appreciate the
12 court's time. Thank you.

13 THE COURT: Now, do you gentlemen
14 want me to actually do an order, or I can
15 have the court reporter, the state's court
16 reporter -- you can have your court reporter
17 type up, Mr. Cooper, what was said.

18 MR. COOPER: Your Honor, I'd be
19 happy --

20 THE COURT: Okay. In order for it
21 to be an official document, I guess the
22 state court reporter would need to do it, if
23 that's. And so we'll do it that way.

24 MR. COOPER: I stipulate, Your
25 Honor.

1 THE COURT: And then obviously,
2 you'd be entitled to a copy.

3 MR. COOPER: Thank you, Your Honor.
4 Are we concluded?

5 THE COURT: I hope so. Yes, sir.

6 MR. COOPER: I appreciate your
7 time. Thank you.

8 (End of Proceedings at 10:13 AM)

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1 C E R T I F I C A T E

2 STATE OF TENNESSEE:

3 COUNTY OF KNOX:

4

5 I, Jeffrey D. Rusk, Registered
6 Professional Reporter and Notary Public, do hereby
7 certify that the foregoing proceedings were captured
8 digitally and were prepared under my supervision
9 using computer-aided transcription and constitute a
10 true and accurate record of said proceedings, to the
11 best of my ability.

12 I further certify that I am not an
13 attorney or relative of any attorney or counsel
14 connected with the action, nor financially
15 interested in the action.

16 Witness my hand and official seal
17 this the 24th day of April, 2023.



21
22
23
24
25

Jeffrey D. Rusk, RPR, CLVS
Notary Public at Large
My Commission Expires: 4/29/2026
TCRB License No. 212

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT C

Defendants' Application to Appear Before Sevier County Grand Jury
(“Application”)

SUMMARY FORM

APPLICATION TO TESTIFY BEFORE THE GRAND JURY

T.C.A. 40-12-104

1. Date of criminal action _____
2. Time of criminal action _____
3. Location of the events _____
4. If you desire that the Grand Jury panel considers testimony of other persons you should submit the **sworn affidavits** of those persons so that the Grand Jury panel can schedule that additional testimony, if needed.
5. Summary statement of the actions that you believe were criminal acts. (Continue on back page)

6. Failure to fill out this form and submit proper sworn affidavits to support this Application could result in a continuance to the next Grand Jury by the Grand Jury Foreman. **This form, along with the sworn affidavits, should be submitted to the Grand Jury Foreman prior to your Grand Jury Date.**
Please return to the Foreman on: _____.

An attempt to provide information to the Grand Jury Foreman and Panel other than what is stated in your Application to Testify could result in a continuance to the next Grand Jury by the Grand Jury Foreman.

Signature

Date: _____

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT D

Defendants' Scheduling Notice and Code Citation
(“Scheduling Notice”)

Sevier County Grand Jury
Sevier County Courthouse
125 Court Avenue, Suite 204
Sevierville, TN 37862
(865)774-3730

Date: _____



Dear Applicant:

Pursuant to the provisions of Tennessee law (T.C.A. 40-12-104, a copy of which is enclosed) states that any person having knowledge or proof of the commission of a public offense may testify before the Grand Jury.

To begin this application to testify process, we would ask that you complete the enclosed **SUMMARY FORM** and supply the Grand Jury with a summary statement of the actions that you believe were criminal acts. This summary should include the date, time and location of the events. Please turn this form into the Foreman prior to the Grand Jury. See date listed below.

Please understand that mere allegations will not be sufficient to warrant Grand Jury investigation; you must have direct knowledge or proof that criminal offenses have been committed. If you desire that the Grand Jury panel consider testimony of other persons, you should submit the sworn affidavits of those persons so that the Grand Jury panel can schedule that additional testimony, if needed.

You may appear at the Grand Jury on the following date and time:

Date: _____ Time: _____

Summary and Application to Testify Form should be returned to the Grand Jury Foreman by this date: _____

The cutoff date to request to appear before this Grand Jury is _____

Sincerely,

A handwritten signature in blue ink that reads "James Medlin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Foreperson, James Medlin
Sevier County Grand Jury

Enclosures

1. Copy of T.C.A. 40-12-104
2. Summary and Application form

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Dismissal on Proof of General Rumor.

1. Constitutionality.

This section is constitutional, because it simply adds another statutory disqualification for jury service, and no provision of the organic law supposed to be violated is pointed out. *Jenkins v. State*, 99 Tenn. 569, 42 S.W. 263, 1897 Tenn. LEXIS 67 (1897).

2. Dismissal on Proof of General Rumor.

The court's discharge of an accepted juror, before the jury had been sworn, upon the charge that he was a "whitecap," is justified by proof of a general rumor that the juror was a "whitecap," which he did not offer to contradict or disprove. *Jenkins v. State*, 99 Tenn. 569, 42 S.W. 263, 1897 Tenn. LEXIS 67 (1897).

40-12-103. Reconvening to consider felony.

The judges of the circuit and criminal courts are authorized at any time during the same term of court to reconvene the grand jurors when, during the same term of court and after the jurors have been discharged, a criminal offense which is a felony has been committed in the jurisdiction.

History.

Acts 1899, ch. 324, § 1; Shan., § 5836a1; Code 1932, § 10035; T.C.A. (orig. ed.), § 40-1515.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 9.17.

40-12-104. Application to testify by person having knowledge of commission of offense.

(a) Any person having knowledge or proof of the commission of a public offense triable or indictable in the county may testify before the grand jury.

(b) The person having knowledge or proof shall appear before the foreman. The person may also submit the sworn affidavits of others whose testimony the person wishes to have considered.

(c) The person shall designate two (2) grand jurors who shall, with the foreman, comprise a panel to determine whether the knowledge warrants investigation by the grand jury. The panel may consult the district attorney general or the court for guidance in making its determination. The majority decision of the panel shall be final and shall be promptly communicated to the person along with reasons for the action taken.

(d) Submission of an affidavit which the person knows to be false in any material regard shall be punishable as perjury. An affiant who permits submission of a false affidavit, knowing it to be false in any material regard, is guilty of perjury. Any person subsequently testifying before the grand jury as to any material fact known by the person to be false is guilty of perjury.

History.

Acts 1978, ch. 727, § 1; modified; T.C.A., § 40-1626; Acts 1995, ch. 213, §§ 1-4.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 9.23.

Cross-References.

Perjury, title 39, ch. 16, part 7.

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT E

Applications Submitted by Plaintiff/Petitioner Erik Cooper
In Re Assistant District Attorney General Ronald Crockett Newcomb

SUMMARY FORM

APPLICATION TO TESTIFY BEFORE THE GRAND JURY

T.C.A. 40-12-104

1. Date of criminal action March 27, 2023
2. Time of criminal action Approximately 2:45 PM
Sevier County Courthouse
3. Location of the events 125 Court Avenue, Sevierville, TN
4. If you desire that the Grand Jury panel considers testimony of other persons you should submit the **sworn affidavits** of those persons so that the Grand Jury panel can schedule that additional testimony, if needed.

5. Summary statement of the actions that you believe were criminal acts. (Continue on back page)

On March 27, 2023, at approximately 2:45 PM and within
the Sevier County Courthouse during Grand Jury Panel
proceedings, Ronald Crockett Newcomb violated
Tenn. Code Ann. section 39-16-402 when Newcomb
interfered with the proceedings conducted in accordance
with T.C.A. section 40-12-104 and compelled affiant to
execute a Waiver form under threat and duress. Etc

6. Failure to fill out this form and submit proper sworn affidavits to support this Application could result in a continuance to the next Grand Jury by the Grand Jury Foreman. **This form, along with the sworn affidavits, should be submitted to the Grand Jury Foreman prior to your Grand Jury Date.**
Please return to the Foreman on: _____.

An attempt to provide information to the Grand Jury Foreman and Panel other than what is stated in your Application to Testify could result in a continuance to the next Grand Jury by the Grand Jury Foreman.

Signature _____

Date: April 6, 2023

SUMMARY FORM

APPLICATION TO TESTIFY BEFORE THE GRAND JURY

T.C.A. 40-12-104

1. Date of criminal action March 27, 2023
2. Time of criminal action Approximately 2:45 PM
3. Location of the events Sevier County Courthouse
125 Court Avenue, Sevierville, TN

4. If you desire that the Grand Jury panel considers testimony of other persons you should submit the **sworn affidavits** of those persons so that the Grand Jury panel can schedule that additional testimony, if needed.

5. Summary statement of the actions that you believe were criminal acts. (Continue on back page)

On March 27, 2023, at approximately 2:45 PM and within the Sevier County Courthouse during Grand Jury Panel proceedings, Ronald Crockett Newcomb violated T.C.A. Section 40-12-104 when Newcomb interfered with affiant's rights and duties afforded under TCA 40-12-104 by requiring affiant to execute a Waiver under threat and duress. Affiant demands a Grand Jury investigation in accordance with TCA 40-12-201.

6. Failure to fill out this form and submit proper sworn affidavits to support this Application could result in a continuance to the next Grand Jury by the Grand Jury Foreman. **This form, along with the sworn affidavits, should be submitted to the Grand Jury Foreman prior to your Grand Jury Date.**
Please return to the Foreman on: _____.

An attempt to provide information to the Grand Jury Foreman and Panel other than what is stated in your Application to Testify could result in a continuance to the next Grand Jury by the Grand Jury Foreman.

Signature _____

Date: April 6, 2023

SUMMARY FORM

APPLICATION TO TESTIFY BEFORE THE GRAND JURY

T.C.A. 40-12-104

T E N N E S S E E

1. Date of criminal action March 27, 2023
2. Time of criminal action Approximately 2:45 PM
Sevier County Courthouse
3. Location of the events 125 Court Avenue, Sevierville, TN
4. If you desire that the Grand Jury panel considers testimony of other persons you should submit the **sworn affidavits** of those persons so that the Grand Jury panel can schedule that additional testimony, if needed.

5. Summary statement of the actions that you believe were criminal acts. (Continue on back page)

On March 27, 2023, at approximately 2:45 PM and
within the Sevier County Courthouse during Grand Jury
Panel proceedings, Ronald Crockett Newcomb violated
Tenn. Code Ann. section 39-16-507 (a)(2) when Newcomb
attempted to influence a ffiant, appearing as a witness before
the Panel, with intent to influence the affiant/witness to
Withhold truthful testimony and information.

6. Failure to fill out this form and submit proper sworn affidavits to support this Application could result in a continuance to the next Grand Jury by the Grand Jury Foreman. **This form, along with the sworn affidavits, should be submitted to the Grand Jury Foreman prior to your Grand Jury Date.**
Please return to the Foreman on: _____.

An attempt to provide information to the Grand Jury Foreman and Panel other than what is stated in your Application to Testify could result in a continuance to the next Grand Jury by the Grand Jury Foreman.

Signature _____

Date: April 10, 2023

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT F

Mr. Dunn's Indictment of Petitioner/Plaintiff Erik Cooper

State of Tennessee v. Erik Adam Cooper
Sevier County Circuit Court
Case No. 23-CR-514-III

230R-514 (III)

True Bill

NO.:
PRESENTMENT SEALED

LIST OF WITNESSES:

1. Jim McEllin
FOREMAN OF THE GRAND JURY

2. Robin Teller

3. Johnny Foster

4. David R. Hoyer

5. Freddie Chutkan

6. Anna G.

7. Lawrence E. Graham

8. Chad Crowell

9. Steve McClure

10. Mark Dillard

11. W. A. Gandy

12. [Signature]
Witness sworn by me in the presence

13. Sam Dinkley

STATE OF TENNESSEE
VS.

ERIK ADAM COOPER

- 2 Count(s) of FALSE REPORTS TO OFFICER
- 4 Count(s) of ACTS OF CIVIL RIGHTS INTIMIDATION
- 5 Count(s) of TAMPERING WITH EVIDENCE
- 2 Count(s) of EXTORTION
- 2 Count(s) of AGGRAVATED PERJURY

Prosecutor

GRAHAM BRANTLEY-SPD
TIM WILLIAMS-GPD
JERRY MERICA-GPD
MATTHEW EVANS-PP

GRAHAM BRANTLEY-SPD
TIM WILLIAMS-GPD
JERRY MERICA-GPD
MATTHEW EVANS -PP
JACOB MATTERN- SPD
ALEX JOHNSON

of the Grand Jury 5-1-23

Foreman of the Grand Jury Jim McEllin

Filed day of , 20 2

Clerk

4:15 PM
MAY 01 2023
KAREN ATCHLEY, CLERK
SEVER COUNTY, TN

Clerk: Summon all named witnesses
for the State.
JAMES B. DUNN
DISTRICT ATTORNEY GENERAL

STATE OF TENNESSEE

CIRCUIT COURT FOR SEVIER COUNTY

COUNT ONE

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **November 1, 2021**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously make a report or statement to Gatlinburg Police Department Patrolman Jerry Merica, about an offense or incident knowing that such report or statement was false, in violation of T.C.A. 39-16-502, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT TWO

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **November 1, 2021**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowing and feloniously make, present, or use any record, document or thing with knowledge of its falsity and with the intent to affect the course or outcome of the investigation or official proceeding, to wit: did file a false statement about an offense or incident to Gatlinburg Police Department Patrolman Jerry Merica, in violation of T.C.A. §39-16-503, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT THREE

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **November 5, 2021**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously, made a statement with the intent to deceive defined as perjury by T.C.A. 39-16-702, that was material during or in connection with an official proceeding to wit: allegations in Paragraph 182 and 183 in a Counter-Complaint, Sevier County Circuit Court Docket Number 21-CV-616-I filed by the defendant under oath against Hope Mason-Agan and Jeffery Mason in violation of T.C.A. 39-16-703 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT FOUR

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 05, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously make a report or statement to Sevierville Police Department Patrolman Jacob Mattern and/or Detective Graham Brantley, about an offense or incident knowing that such report or statement was false, in violation of T.C.A. 39-16-502, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT FIVE

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 05, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowing and feloniously make, present, or use any record, document or thing with knowledge of its falsity and with the intent to affect the course or outcome of the investigation or official proceeding, to wit: did file a false statement in an affidavit about an offense or incident to Sevierville Police Department Patrolman Jacob Mattern and/or Detective Graham Brantley, in violation of T.C.A. §39-16-503, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT SIX

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 05, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously violate or attempt to violate the civil rights of Matt Evans by intimidation, by injuring or threatening to injure or coercing Matthew Evans, with the intent to intimidate Matthew Evans from the free exercise or enjoyment of any right or privilege protected by the constitution or laws of the United States or the constitution of the laws of the State of Tennessee by filing a false report falsely alleging an assault on Erik Adam Cooper by Matthew Evans in violation of T.C.A. 39-17-309 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT SEVEN

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 11, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously violate or attempt to violate the civil rights of Matt Evans by intimidation, by injuring or threatening to injure or coercing Matthew Evans, with the intent to intimidate Matthew Evans from the free exercise or enjoyment of any right or privilege protected by the constitution or laws of the United States or the constitution of the laws of the State of Tennessee by filing a false report falsely alleging an assault on Erik Adam Cooper in an application and prosecution of an Order of protection against Matthew Evans in violation of T.C.A. 39-17-309 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT EIGHT

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 11, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously, made a statement with the intent to deceive defined as perjury by T.C.A. 39-16-702, that was material during or in connection with an official proceeding to wit: application and prosecution of an Order of protection against Matthew Evans in violation of T.C.A. 39-16-703 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT NINE

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **August 11, 2022**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowing and feloniously make, present, or use any record, document or thing with knowledge of its falsity and with the intent to affect the course or outcome of the investigation or official proceeding, to wit: did file a false statement in an affidavit of an Order of Protection against Matthew Evans, in violation of T.C.A. §39-16-503, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT TEN

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 3 through March 31, 2023**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously violate or attempt to violate the civil rights of Matt Evans by intimidation, by injuring or threatening to injure or coercing Matthew Evans, with the intent to intimidate Matthew Evans from the free exercise or enjoyment of any right or privilege protected by the constitution or laws of the United States or the constitution of the laws of the State of Tennessee by filing an application and seeking prosecution of Matthew Evans, before the Sevier County, Tennessee Grand Jury in violation of T.C.A. 39-17-309 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT ELEVEN

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 3 through March 31, 2023**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowing and feloniously make, present, or use any record, document or thing with knowledge of its falsity and with the intent to affect the course or outcome of the investigation or official proceeding, to wit: did file a false statement in an application seeking prosecution of Matthew Evans, before the Sevier County, Tennessee Grand Jury in violation of T.C.A. §39-16-503, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT TWELVE

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 27, 2023 through May 1, 2023** before the finding of this indictment in the State and County aforesaid, did unlawfully, knowingly and feloniously violate or attempt to violate the civil rights of Matt Evans by intimidation, by injuring or threatening to injure or coercing Matthew Evans, with the intent to intimidate Matthew Evans from the free exercise or enjoyment of any right or privilege protected by the constitution or laws of the United States or the constitution of the laws of the State of Tennessee by filing an application and seeking prosecution of Matthew Evans before the Sevier County Tennessee Grand Jury in violation of T.C.A. 39-17-309 contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT THIRTEEN

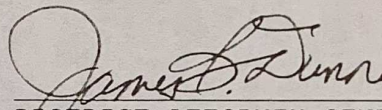
The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 3 through March 31, 2023**, before the finding of this indictment in the State and County aforesaid, did unlawfully, knowing and feloniously make, present, or use any record, document or thing with knowledge of its falsity and with the intent to affect the course or outcome of the investigation or official proceeding, to wit: did file a false statement in an application seeking prosecution of Matthew Evans to the Sevier County, Tennessee Grand Jury in violation of T.C.A. §39-16-503, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT FOURTEEN

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 3, 2023 through March 31, 2023**, before the finding of this indictment in the State and County aforesaid, did unlawfully, feloniously and knowingly use coercion upon another person, to wit: Matthew Evans, with the intent to obtain services, any advantage or immunity and/or restrict unlawfully Matthew Evans's freedom of action, by seeking prosecution of Matthew Evans, falsely for assault, which is a falsity, before the Sevier County, Tennessee Grand Jury without probable cause in violation of §39-14-112, contrary to the statute, and against the peace and dignity of the State of Tennessee.

COUNT FIFTEEN

The Grand Jurors for the State of Tennessee, having been duly summoned, elected, impaneled, sworn, and charged to inquire for the body of the County and State aforesaid, present that **ERIK ADAM COOPER** on or about **March 27, 2023 through May 1, 2023**, before the finding of this indictment in the State and County aforesaid, did unlawfully, feloniously and knowingly use coercion upon another person, to wit: Matthew Evans, with the intent to obtain services, any advantage or immunity and/or restrict unlawfully Matthew Evans's freedom of action, by seeking prosecution of Matthew Evans, falsely for assault, which is a falsity, before the Sevier County, Tennessee Grand Jury without probable cause in violation of §39-14-112, contrary to the statute, and against the peace and dignity of the State of Tennessee.



DISTRICT ATTORNEY GENERAL

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT G

Order Entered July 26, 2023 by The Honorable Judge Rex Henry Ogle
In Re: Sevier County Grand Jury /
Erik Cooper, Petitioner to Appear Before the Sevier County Grand Jury
Sevier County Circuit Court for the Fourth Judicial District
File No. 2023-PJ-07-13

(Order on Application Petition Action)

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
FOURTH JUDICIAL DISTRICT

IN RE: SEVIER COUNTY GRAND JURY	)	
	)	File No. <u>2023-PJ-07-13</u>
ERIK COOPER, PETITIONER	)	
TO APPEAR BEFORE THE	)	
SEVIER COUNTY GRAND JURY	)	

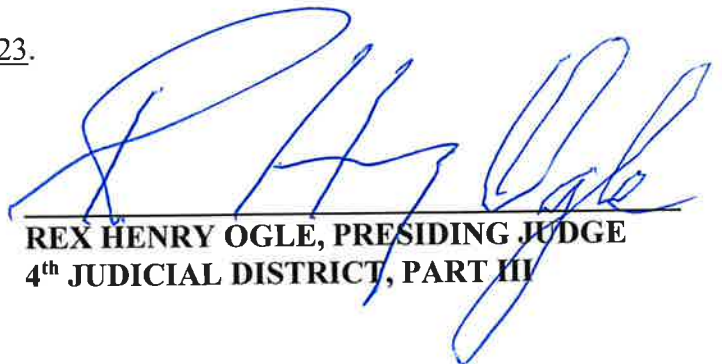
ORDER

This matter came on to be heard this the 25th day of July, 2023, upon the “Petition for Judicial Intervention and Relief During Grand Jury Proceedings Scheduled July 31, 2023” filed by the Petitioner herein. The issues are very unique based upon the particular controversies and issues raised by the Petitioner and the State of Tennessee in this matter. Based upon the pleadings filed and the arguments made in this matter, the Court herein **ORDERS, ADJUDGES and DECREES** as follows:

1. That T.C.A. §40-12-104 does not require the Petitioner to submit a written application to appear before the Sevier County Grand Jury.
2. That T.C.A. §40-12-104 does not require the Petitioner to apply by a certain deadline in order to invoke the procedure outlined in said statute.
3. That T.C.A. §40-12-104 does not require the Petitioner to schedule his appearance before the Sevier County Grand Jury and the same may be accomplished by presenting himself to the Grand Jury Foreman on the date of July 31, 2023.

4. That there is no legal authority for this Court to allow the Petitioner to appear before a Grand Jury panel outside of the jurisdiction of the 4th Judicial District.
5. That it is the opinion of the Court that a Grand Jury panel has the inherent authority to prescribe reasonable rules and regulations pertaining to appearances by private citizens pursuant to T.C.A. §40-12-104, and that absent said rules, the above findings and conclusions of law are the Orders of this Court.
6. That as the Petitioner is not being compelled to testify in the Sevier County Grand Jury by Subpoena of the State of Tennessee, or otherwise, he does not have to execute a written Waiver of Immunity in order to invoke the provisions of T.C.A. §40-12-104.
7. That a transcript of the Court's oral findings of fact and conclusions of law from the hearing on July 25, 2023 is hereby attached as "Exhibit A" and incorporated herein by reference as part of the rulings of the Court.
8. That either party herein may file a transcript of the entire hearing of July 25, 2023 in this matter as a late filed "Exhibit B."

ENTERED this the 26 day of July, 2023.



REX HENRY OGLE, PRESIDING JUDGE
4th JUDICIAL DISTRICT, PART III

CERTIFICATE OF SERVICE

I, Susan Craig, Administrative Assistant to Honorable Rex Henry Ogle, Presiding Judge, do hereby certify that a true and exact copy of the foregoing Order has been forwarded to the following:

Erik Cooper
Via Email at: CooperErik@aol.com

and

Via Regular U.S. Mail to:
Erik Cooper
P. O. Box 1413
Gatlinburg, TN 37738

James B. "Jimmy" Dunn (Via Hand-Delivery only)
District Attorney General
4th Judicial District
125 Court Avenue, Suite 301E
Sevierville, TN 37862

This 26th day of July, 2023.



Susan Craig, Admin. Asst. to
Honorable Rex Henry Ogle, Presiding Judge
4th Judicial District
P. O. Box 4245
Sevierville, TN 37864-4245

1 IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
2 FOURTH JUDICIAL DISTRICT

3 IN RE: SEVIER COUNTY GRAND JURY

File No.
2023-PJ-07013

4 ERIK COOPER, PETITIONER
5 TO APPEAR BEFORE THE
6 SEVIER COUNTY GRAND JURY

ORIGINAL

7
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10 JUDGE'S RULING

11 BE IT REMEMBERED that the above-captioned
12 cause came on for hearing, on this, the 25th day of
13 July 2023, beginning at 8:56 a.m., before the
14 Honorable Rex Henry Ogle, when and where the
15 following proceedings were had, to wit:

16
17 LYNETTE NELSON, RPR, LCR 896, CRR, CCRR, CRG,
18 CSR NO. 11585
19 Knoxville, Tennessee
20 (760)207-1932
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A P P E A R A N C E S

For the Petitioner:

ERIK COOPER
IN PRO PER
P.O. BOX 1413
Gatlinburg, Tennessee 37738

For the Sevier County Attorney General:

JAMES B. "JIMMY" DUNN
DISTRICT ATTORNEY GENERAL
4th Judicial District
125 Court Avenue, Suite 301E
Sevierville, Tennessee 37862

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P R O C E E D I N G S

(WHEREUPON, the following proceedings
were had in open court:)

THE COURT: Thank you, sir.

Gentlemen, the Court thanks you. I
thank you for your time, and there's been a lot of
work go in this, and the Court appreciates that.

I have said to attorneys, the Court does
appreciate when things are well prepared and well
argued. It makes this Court's job harder and
easier. In particular, over the years, that's one
of the things that some of the attorneys have heard
me say.

So to answer the questions raised by
Mr. Cooper in his petition, pursuant to 40-12-104,
the Court is of the opinion that Mr. Cooper or
individuals so situated do not, absent reasonable
regulations imposed by the grand jury -- now, we are
not dealing with that today. That's a separate
total issue.

But the issue before the Court today is
whether or not Mr. Cooper has to file a written
application. The Court says, no, that's not
required by 40-12-104.

1 Absent a reasonable regulation by the
2 grand jury itself, the Court does not think it has
3 the authority to impose a deadline, much less anyone
4 else. I don't think that we do.

5 And now, the scheduling of an
6 appearance, i.e., by talking to the grand jury
7 foreman saying, you know, can I come in, what time
8 can I come in and see you, and then a request, the
9 two additional grand jurors, I think the grand jury
10 foreman in the inherent authority that he does have,
11 I think he can say -- he or she, can say, you need
12 to come in, be here then, and we will take that up
13 at this particular time. Because again, they have
14 many, many, many other cases. So they can't -- and
15 the DA's office, as I said, has a right to schedule,
16 to tell their people when to be there. That's true.

17 But I do think that the petitioner has
18 the right to go, to attend the process of the next
19 grand jury, and to ask the foreperson, Mr. Medlin in
20 this case, to hear him and to give you the
21 opportunity to choose two grand jurors of your
22 choice, Mr. Cooper. That's the law.

23 And let's see. And you have the right,
24 as does any citizen, whether the grand jury chooses
25 to agree with you or not, any citizen has the right

1 under 40-12-104 to ask the three grand jurors the
2 opportunity to present evidence. And they can ask
3 you at that interview what that evidence is, what it
4 is you are seeking to do. They can do that.

5 But other than that, it would appear to
6 the Court that 40-12-104 gives a private citizen
7 pretty much unrestricted access to the grand jury.
8 That's what I think.

9 And so the Court has already asked the
10 State Court Reporter that I will have for my
11 purposes, my ruling here, typed. And then I will do
12 a written order as quickly as I can.

13 I've got court the rest of the day
14 here -- or maybe the rest of the day. We will see.

15 And I will do that at least I will have
16 it out. Let's see, this is Tuesday. When do you
17 think I can have my ruling?

18 STATE COURT REPORTER: Within a month
19 probably.

20 THE COURT: A month?

21 STATE COURT REPORTER: Maybe two weeks.

22 THE COURT: I will need it before then.

23 STATE COURT REPORTER: Okay.

24 THE COURT: A week?

25 STATE COURT REPORTER: Yeah.

1 THE COURT: Because this is -- now,
2 let's see. The grand jury meets --

3 MR. COOPER: The 31st, Your Honor. May
4 I offer my court reporter, if I expedite and pay for
5 that cost for the expedition of the transcript?
6 Would that assist the Court?

7 THE COURT: It's early. That would be
8 fine. I mean, I have no reason to doubt that she
9 wouldn't do the job she's supposed to do, at all.
10 Let's see the grand jury meets Monday.

11 So how quickly could you have the Court's ruling --
12 I'm not talking about a transcript of all of the
13 argument so forth, but just what the Court just
14 said.

15 THE STENOGRAPHER: Tomorrow.

16 THE COURT: Really? Okay. Well, if you
17 can get that to my office.

18 THE STENOGRAPHER: Is electronic okay?
19 Email?

20 THE COURT: Ms. Susan.

21 My assistant here, Ms. Susan Craig
22 sitting right behind you, she is my gatekeeper, and
23 she tells me where to go sometimes not very nicely.

24 THE STENOGRAPHER: Thank you, Your
25 Honor.

1 THE COURT: If you would get with her.
2 Ever how she says that I can get it is fine with me.
3 Okay?

4 THE STENOGRAPHER: All righty.

5 (WHEREUPON, the proceedings were
6 concluded at 9:56 a.m.)

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2 **REPORTER'S CERTIFICATE**

3

4 STATE OF TENNESSEE

5 COUNTY OF KNOX

6

7 I, LYNETTE NELSON, Licensed Court
8 Reporter, with offices in Knoxville, Tennessee,
9 hereby certify that I reported the foregoing
10 proceeding by machine shorthand to the best of my
11 skills and abilities, and thereafter the same was
12 reduced to typewritten form by me. I am not
13 related to any of the parties named herein, nor
14 their counsel, and have no interest, financial or
15 otherwise, in the outcome of the proceedings.

16 I further certify that in order for this
17 document to be considered a true and correct copy,
18 it must bear my original signature, and that any
19 unauthorized reproduction in whole or in part
20 and/or transfer of this document is not authorized,
21 will not be considered authentic, and will be in
22 violation of Tennessee Code Annotated 39-14-104,
23 Theft of Services.

24 *Lynette Nelson*

25
23 LYNETTE NELSON, RPR, LCR, CRR, CCRR,
24 CRG, CSR NO. 11585
LCR #896 - Expires: June 30, 2024

The Gatlinburg Free Press, et. al. v. James Bruce Dunn, et. al.
Sevier County Circuit Court for the Fourth Judicial District
Case Number: (pending)

EXHIBIT H

Tennessee Public Records Request No. GFP-EC-TSA-104
Submitted by *The Gatlinburg Free Press* and Erik Cooper

(“Request”)



Tennessee Public Records Request No.: GFP-EC-TSA-104

1 message

Gatlinburg Free Press <gatlinburgfreepress@gmail.com>

Fri, Jun 30, 2023 at 8:12 AM

To: "James B. Dunn" <JBDunn@tndagc.org>

Cc: SNWoods@tndagc.org, wbmarsh@tndagc.org, rcnewcomb@tndagc.org

Bcc: Aaron@kimseydefense.com, geniebrabham07@gmail.com

Re: Tennessee Public Records Request No.: GFP-EC-TSA-104

Dear Records Custodian for the Office of the District Attorney General for the Fourth Judicial Circuit, Sevier County, Tennessee:

Greetings.

This communication shall serve as a public records request under the Tennessee Public Records Act submitted to the Office of the District Attorney General for the Fourth Judicial Circuit, Sevier County, Tennessee.

The Gatlinburg Free Press has assigned the captioned request number to this matter as indicated above. Please utilize the captioned number when responding to this request.

The Gatlinburg Free Press seeks the following records from the Office of the District Attorney General for the Fourth Judicial Circuit, Sevier County, Tennessee:

All documents, records, materials and things including, without limitation, all forms, documents and/or records in possession of the Office of the District Attorney General for the Fourth Judicial Circuit, Sevier County, Tennessee ("Office") pertaining or relating in any manner or in any form to any application to testify before the Sevier County Grand Jury in accordance with Tenn. Code Ann. section 40-12-104 including, without limitation, any record(s) titled or otherwise identified as "Summary Form Application to Testify Before the Grand Jury T.C.A. 40-12-104" and including, without limitation, any other similar application(s), request(s), or submission(s) received by or in the possession of the Office for the period beginning on or about January 1, 2013 and ending on or about June 28, 2023.

Please submit any questions or inquiries concerning this request via email to:
GatlinburgFreePress@Gmail.com.

Please advise of any cost greater than \$20.00 for production of any records responsive to this request.

Thank you for your timely attention and assistance with this matter.

Erik Cooper
The Gatlinburg Free Press

1216 East Parkway, #1413
Gatlinburg, Tennessee 37738

GatlinburgFreePress@Gmail.com

bcc
