

COMMONWEALTH OF KENTUCKY
CHRISTIAN COUNTY
DIVISION II
CASE NO. 19-CR-000298

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

MOTION TO SET HEARING
TO DISMISS FOR DUE PROCESS VIOLATION

CHRISTIAN MARTIN

DEFENDANT

*** **

Comes now the Defendant, CHRISTIAN MARTIN, and respectfully moves the Court to set a hearing to dismiss the above indictment as improperly obtained by the Attorney general's office. This motion is made pursuant to RCr 8.18 and his right to: proceed by proper indictment, a fair trial, a jury trial, Due Process, to present a defense, effective assistance of counsel, and Equal protection, and the prohibitions against arbitrary power, cruel and unusual punishment, & separation of powers guaranteed by the Vth, VIth, VIIIth, & XIVth Amendments to the United States Constitution, and Sections 1, 2, 7, 11, 12, 13, 17, 26, 27, & 28, of the Kentucky Constitution. In support the defendant cites:

INTRODUCTION

Was Christian Martin indicted in order to assist in the gubernatorial bid by Andrew Beshear by allowing a high profile arrest, photo opportunity, and press conference prior to the primary election? Was he secretly indicted on insufficient evidence years after someone committed a murder? If the answer to either of these questions is yes then the indictment should be dismissed to prevent the government creating a terrible injustice.

The Courts in Kentucky have adopted a standard for Due Process violations in charging decisions and the defense moves the court to employ it in this case. The standard comes from the line of cases prohibiting prosecutorial vindictiveness. While this case is not one of prosecutorial vindictiveness it is similarly a case of Due Process violation in charging decision. That standard creates a rebuttal presumption if certain facts exist regarding the charging decision.¹

- 1) There is no requirement to prove bad faith on the part of the prosecutor, instead a rebuttable presumption is created by an examination of the facts in a particular case.
- 2) The court should look at the nature of the right asserted and the timing of the prosecutions actions.
- 3) The court should examine whether the prosecution has a personal stake in the action.
- 4) Once the presumption exists the prosecution has the burden to attempt to rebut it by clear and convincing evidence.

¹ Osborne v. Commonwealth, Ky.App, 992 S.W.2d 860, 866 (1998); State v. Phipps, 959 S.W.2d 538, 546 (Tn. 1997). Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098; United States v. Goodwin, 457 U.S. 368, 102 S.Ct. 2485 at 381-82, 2493 (1982).

FACTS

1. On November 18, 2015 three people Calvin Phillips, Pamela Phillips, and Edward Dansereau were killed in Christian County Kentucky.
2. The police investigated at the time, but no arrests made in the case.
3. On April 16, 2016 the relatives of one of the victims reported a mysterious shell casing that had not been observed by any of the police officers who had searched the scene.
4. February 9, 2017 the family puts out a reward for information on the killings.
5. Attorney General Andrew Beshear has a meeting with Matt Phillips a member of the victim's family sometime in 2017. AG takes over the investigation at this point. (AG press conference May 11, 2019)
6. This shell casing was tested in 2018 and was apparently a match to a gun belonging to Christian Martin.
7. Subsequent ballistics testing has given rise to questions about the link of that firearm to the actual bullets fired in the case. (see defense report filed with the court pursuant to reciprocal discovery).
8. The police were concerned enough about the mysterious shell that they subjected the relatives who claimed to have found it to a polygraph on February 7, 2019.
9. One of the two Phillips relatives who claimed to have innocently found the mysterious shell casing could not pass the polygraph given by the state police.
10. The case is presented to the Christian County Grand jury on May 10, 2019. The same date that Christian Martin happens to be landing a plane at the Louisville airport.

11. An indictment is returned the same day and a warrant for his immediate arrest is issued. The police along with airport security arrest him hours later in a public spectacle inside the airport. It makes the news the same evening.
12. The next day then Attorney General Andrew Beshear does a large press conference announcing the arrest and lauding the hard work done by law enforcement to achieve this result.
13. Mr. Beshear was at that time is in a contested primary battle to be the Democratic nominee for Governor of the Commonwealth of Kentucky. Two other serious candidates were Rocky Adkins and Adam Edelen.
14. The primary occurred a short time after the arrest on May 22, 2019
15. Mr. Beshear won the primary with 37.9 % of the vote.
16. He goes on to win the Governors race by 5000 votes or about 0.37 % making it the closest Kentucky Governors race in over a hundred years.
17. The Attorney General's office now under Daniel Cameron continues to prosecute this case even as the evidence continues to fall apart.
18. Most recently the Attorney General sent hair samples off for DNA testing at the FBI lab and after a long wait the results have come back excluding Mr. Martin. (see FBI lab results filed as exhibit in previous motion).

ARGUMENT

A prosecutor is barred from making the decision to prosecute based on gain for themselves of their office. **KRS 15.733**. This is not limited by statute to financial gain. **KRS 15.733 (2)(c)**. The advancement of a political career. In this case literally into the governors mansion is certainly an example of gain. This case should be dismissed since it was pursued with the intent to gain an electoral advantage.

This case had been sitting uncharged for literally years. Even the recovery of the mysterious shell did not prompt any quick action on the part of the police investigating the case. In fact once the family witness could not pass a polygraph serious questions should have been raised before any prosecution went forward. Instead on the eve of the primary the case was presented by a special prosecutor to the Grand Jury.

The timing of these things is not coincidental. The Grand jury presentation was made knowing that Mister Martin was about to bring a plane to the Louisville airport. The warrant was obtained and the arrest was made in a public and dramatic manner. This maximized the political boost for the governor's campaign.

The next day on May 12, 2019 he used the occasion of the arrest to broadcast his tough on crime pro victim bona fides. Nine days later he was successful in the democratic primary beating two other serious contenders and only garnering 37.9% of the vote. He then went on to win the governor's race by the smallest margin in over one hundred years.

He did this in part upon the back of Christian Martin. To bring a criminal thin criminal case in order to improve electoral results is a form of benefit. Prosecutors may not participate in criminal prosecutions that benefit them personally.

The situation is akin to a prosecutor bringing a charge to benefit their budget. The United States Supreme Court has held that a scheme which rewards prosecutor budget is not on its face unconstitutional. **Marshall v. Jerrico,, inc. 446 U.S. 238, 100 S.Ct. (1980).**² While the court held in Marshall that strict neutrality was not required individual actions by the prosecutor for their own benefit may violate the law even if later seemingly vindicated by conviction. **Marshall, 446 U.S. at 249, 100 S.Ct. at 1616-17.** This case had not been sent to a grand jury for good reason for more than three years. A contested race for governor is no reason to bring a questionable case forward, especially a capital case.

LEGAL STANDARD

The Attorney general's office may argue that this is not sufficient grounds to dismiss a case since some political motives may routinely exist in charging decisions, but this argument does not allow bringing capital murder charges for political gain. The courts have held that the prosecution has great latitude in charging decisions prior to the initial trial. **Bordenkircher v. Hayes, 434 U.S. 357, 98 S.Ct. 663; United States v. Goodwin, 457 U.S. 368, 102 S.Ct. 2485 (1982); Commonwealth v. Leap, Ky., 179 S.W.3d 809 (2005); Thomas v. Commonwealth, Ky., 567 S.W.2d 299.** However, the courts have held that the actions of the prosecutor in bringing charges can violate the Due Process clause. This case is one of those exceptions to the general rule of latitude

A prime example of this would be the doctrine of vindictive prosecution. The Due Process clause prohibits the government from enacting vengeance against citizens for exercising their rights in court. **North Carolina v. Pearce, 89 S.Ct. 2072, 395 U.S. 711 (1969).** In Pearce

² They distinguished this from a long line of cases which had held it was a violation of Due Process for judicial decisions to effect the judge's budget. **Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437 (1927) et seq.**

the court held that the government cannot be motivated by a vindictive desire when imposing a more severe punishment must have an unbiased motive. **Id at 723-4, 2080**. In order to rebut the presumption of vindictiveness the government must place in the record the factual basis for the new enhanced punishment. **Id at 726, 2081**. The Supreme Court expressly applied this rule against the prosecution. **Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098**. In that case the court held that when the facts demonstrated a reasonable likelihood of vindictiveness that a presumption existed which could be rebutted by the prosecution. **Id at 28-9, 2102-3**.

The Courts in Kentucky recognize the presumption of vindictiveness when the prosecution seeks greater punishment after a person exercises their rights. **Osborne v. Commonwealth, Ky.App, 992 S.W.2d 860, 866 (1998)**. The courts have found that after a successful trial that is challenged by a defendant prosecutorial vindictiveness will be presumed when the Commonwealth increases the potential punishment for a case. **Id**. There is no requirement to prove bad faith on the part of the prosecutor, instead a rebuttable presumption is created by an examination of the facts in a particular case. **Id**. The court should look at the nature of the right asserted and the timing of the prosecutions actions. **Id**. The court should examine whether the prosecution has a personal stake in the action, and whether the actions by the prosecution are an attempt to prevent a retrial. **Id**. Once the presumption exists the prosecution has the burden to attempt to rebut it by clear and convincing evidence. **Id. State v. Phipps, 959 S.W.2d 538, 546 (Tn. 1997)**. The Attorney general should be held to the same standard in this case to explain their actions in making this unconstitutional charging decision.

DEATH IS DIFFERENT

The United States Supreme Court has long held that a proceeding at which the decision-maker is called upon to determine whether a defendant should live or die is fundamentally different, and requires a corresponding level of increased reliability and scrutiny at all levels of decision-making:

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976). Because “death is different,” evolving standards of societal decency have imposed a correspondingly high requirement of reliability on the determination that death is the appropriate penalty in a particular case. **Mills v. Maryland, 486 U.S. 367, 374-375, 383 (1988)**. This heightened standard of reliability is “a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different.” **Ford v. Wainwright, 477 U.S. 399, 411 (1986)**; **Lockett v. Ohio, 438 U.S. 586, 605 (1978)** (“Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases.”).

This elevated level of due process applies to any phase of a capital trial including how one is initiated. As the United States Supreme Court has explained, “To insure that the death penalty is indeed imposed on the basis of ‘reason rather than caprice or emotion,’ we have invalidated procedural rules that tended to diminish the reliability of the sentencing determination. The same reasoning must apply to rules that diminish the reliability of the guilt determination.” **Beck v. Alabama, 447 U.S. 625, 637-638 (1980)**. The Court’s “duty to search

for constitutional error with painstaking care is never more exacting than in a capital case.” **Kyles v. Whitley**, 514 U.S. 419, 422 (1995) (quoting **Burger v. Kemp**, 483 U.S. 776, 785 (1987)).

When the Commonwealth announces its intention to seek the death penalty in a case, it imposes an extraordinary burden upon the Court, itself, and defense counsel to ensure the fairness, accuracy, and reliability of the trial and any subsequent trial and possible sentencing proceeding. When a defendant’s life is at stake, a trial court must be “particularly sensitive to insure that every safeguard is observed,” **Gregg v. Georgia**, 428 U.S. 153, 187 (1976).

The Kentucky Supreme Court, too, has emphasized the special protections and stringent due process protections that must be afforded in capital cases. **Eldred v. Commonwealth**, 906 S.W.2d 694, 699 (Ky. 1994). When the death penalty is possible, the case is qualitatively different. **Smith v. Commonwealth**, 845 S.W.2d 534 (Ky. 1993).

WHEREAS the indictment is an improper exercise of the powers of the prosecutor in violation of the rights of the defendant as stated above the defendant moves this court to set a hearing to DISMISS this case.

_____/s/ Tom Griffiths_____
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NOTICE

Please take notice that the foregoing motion will be brought before the Christian Circuit Court on the previously set hearing of October 1st, 2020 at 10:00 AM central time.

CERTIFICATE OF SERVICE

