

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

RAYMOND RZEPLINSKI,
Defendant,

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DIVISION II

No. 316374

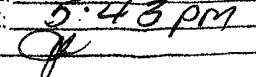
STATE'S MOTION REGARDING ATTEMPTS AT JURY NULLIFICATION

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

I. Background Information

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

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

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DATE: 7-25-24
TIME: 5:46 PM
BY: 

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

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

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

II. THE LAW REGARDING JURY NULLIFICATION

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

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

III. THE LAW REGARDING STRIKING OR CHALLENGING JURORS FOR CAUSE

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

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

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

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

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

V. STATE'S ARGUMENTS AND REQUESTS

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

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

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

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

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

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

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

VI. CONCLUSION

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

This the 25th day of July, 2024.

Respectfully submitted,

COTY WAMP
DISTRICT ATTORNEY GENERAL



By: _____

Nicole Evans
Assistant District Attorney General
State Bar No. 038697
Nicole.Evans@hcdatn.org

CERTIFICATE OF SERVICE

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



Nicole Evans
Assistant District Attorney General
Nicole.Evans@hcdatn.org

Tulis Report

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2 women DAs, judge, lawyer lay trap for '2A Ray'



David Tulis

July 23, 2024

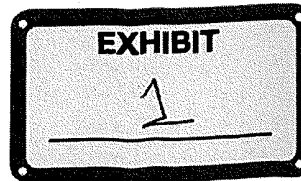
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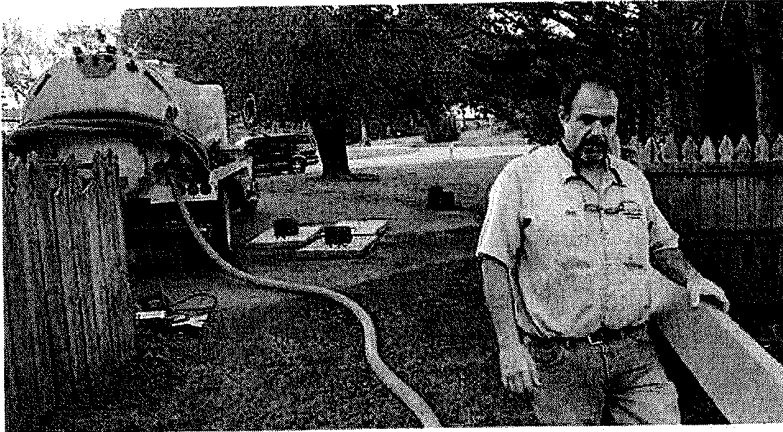
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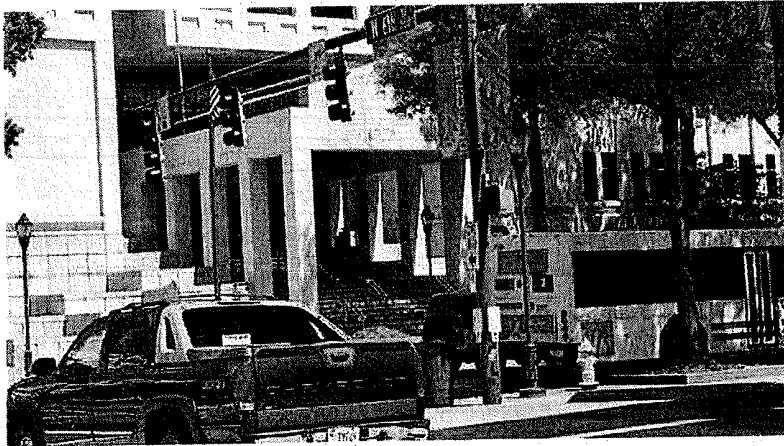
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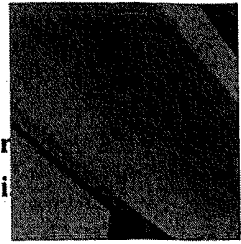
Ray Rzeplinski works at a house in which he is replacing a septic tank, but first having to order it drained. (Photo David Tulis)



The Rzeplinski "2A Ray" trial is being held in this Hamilton County monstrosity of a courthouse in on Market Street in Chattanooga starting July 30, 2024. (Photo David Tulis)

CHATTANOOGA, Tenn., Tuesday, July 22, 2024 — The Ray Rzeplinski trial set Monday in a 4-year-old revenge prosecution is an attack generally on due process, and arguably on each juror's right of conscience to judge the facts and the law in "jury nullification."

Among the irregularities in the prosecution brought by district attorney Coty Wamp is a bid to prevent jury member's judging the case according to their own consciences and voiding ✓erstwhile legal pretenses (law). accordina to arauuments and



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Coty Wamp is district attorney in Hamilton County (Photo Coty Wamp)

Lawyerly processes and judicial conduct seem united to avoid having a revolted jury throw the tumor out onto Market Street, throbbing, stinking and oozing as it is, with charge stacking behind it so foul that Mr.

Rzeplinski faces 1,270 years in prison because he didn't cop a plea.

Ray Rzeplinski has been charged in a 57-count indictment that was reissued nearly 4 years into the case after he refused federal government pressure to plea bargain with Coty Wamp's office and admit he is a "felon in possession" of a gun collection.



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For not pleading guilty, naturefreshpurifier.com person, he faces a death sentence or life behind bars. Miss Wamp charges him with one felony count per weapon seized from Mr. Rzeplinski's house on Banks Road in Hixson, with more than 1 million rounds of ammunition, all investments from a profitable small plumbing business in which he lives out *a life of hard work and honorable dealings with all customers.*

Best defense may not be front, center

Court-appointed attorney Ben McGowan may not exploit fully the only defense that appears likely to succeed, and that is the reliance defense. His reference to a "nonviolent felon like Mr. Rzeplinski" shows he concedes the nomenclature of "felon" to the other side, and refuses to see the case from his client's perspective.

Miss Wamp's lawyer on the case, Nicole Evans, insists burglary — the underlying alleged felony out of the defendant's past — is "a crime of violence," based on Tennessee law.

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Because Mr. Rzeplinski has engaged a lawyer, he is trapped behind the forms and limitations lawyers bring in any criminal matter. Mr. McGowan has written excellent briefs and motions with great erudition and insight into law in cases *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) ("a little twilight zone-ish," Mr. McGowan says), and *United States v. Rahimi*, 602 U.S. ___ (2024), decided June 21.

In a "felon in possession" case in which the underlying criminal history lacks violence, "Is it still viable after *Rahimi*?" Mr. McGowan asks.

What Mr. Rzeplinski is seeing is that when a lawyer is in charge, his options and control diminish as he gets closer to trial. The "reliance defense" under the lawyer's stewardship is a defense that seems from this distance *forgone* in the course of pre-trial proceedings. With a lawyer in charge, orderly sequencing is important, and the attorney calculates what he can yield, and what he must insist on. Mr. McGowan appears not to be intending to center the case on the alibi of "I knew I wasn't a felon."

✓ '2A Ray' ordeal is 4 years

- REFORMED
- FAITH?
- REGIONALISM
- VS. LOCALISM
- RIGHT TO
- TRAVEL
- SEARCH &
- SEIZURE
- SKY STRIPING
- SMALL
- BUSINESS
- STATE SLAVERY
- WEAPONS
- WELFARE

Mr. Rzeplinski's main defense — his lack of *mens rea*, or guilty conscience — has been traded away. Mr. McGown's oral pleadings Monday are erudite, theoretical, and abstract. Scratching out notes, it was hard for me to see a clear argument for dismissal, applying Bruen and Rahimi to the Chattanooga defendant.

"Every saint has a past, every sinner has a future," Mr. McGowan says, citing Oscar Wilde.

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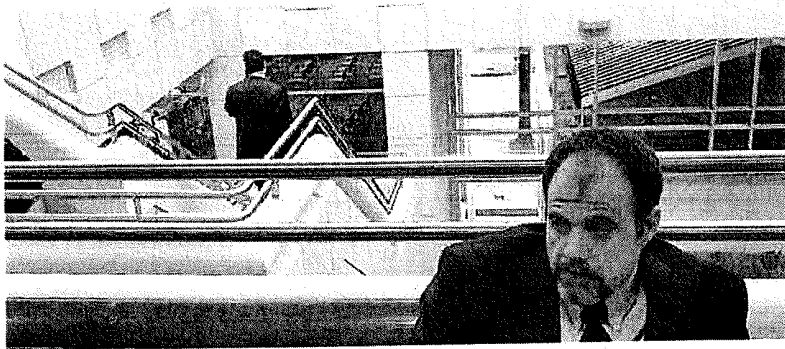
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Judicial convention, custom and usage control. If Mr. Rzeplinski sees hope vanishing, and not knowing his lawyer's plan, he will stand up and object? Will he get into the record what he has long insisted in his real defense?

Will he accept "Shut up and sit down" when his life is at stake?

Judge Dunn will order him to sit down — and he won't. A bailiff will aggressively move toward him to wrestle him into the swivel chair. Mr. McGown will express extreme agitation, stand up next to him, and turn to him, nearly grabbing him by the arm. They will tell him he cannot speak, cannot question a witness, cannot make any argument whatsoever because he is "represented" by a lawyer. He is, in other words, incompetent by presumption. You may testify as witness, they'll say, but

"Sir, do not attempt to disturb these proceedings." They will try to force him to waive objections, and deny him basis of appeal on his objecting to abandonment of the reliance defense.



Ray Rzeplinski waits Monday, July 22, as his attorney, Ben McGowan, ducks to a floor below for another proceeding on the day of a last-hour motion hearing in his trial set for the following Monday. (Photo David Tulis)

Rely on constitution

The only way he can save himself if the lawyer lets him down is to insist on his rights under the constitution, and to object to the court railroading him in violation of his rights to be the principal and not his lawyer's subject, and to speak in his defense.



Government tells Mr. Rzeplinski he's at worst a misdemeanor:

- ▶ *A handgun carry permit by the Tennessee department of safety and renewed at least once*
- ▶ *Purchases of firearms from retail outlets, each with a TBI background check*
- ▶ *A plumber's license, which you cannot hold if you are a felon, he says*
- ▶ *Numerous contracts to work in government buildings, not allowed to a felon*
- ▶ *When he was in jail in Bradley County under a child support judgment, he was made a trustee immediately on entry, not something afforded to any felon. What does that 2005 jail record say about criminal status?*
- ▶ *A disputed SBR, short-barreled rifle, obtained in private sale by a police officer*



What about other important facts? How come when DOS revoked his handgun carry permit he did not get a hearing under the UAPA, the uniform administrative procedures act? Why, before he got notice of revocation, was he "swatted" by Sheriff Jim Hammond deputies who beat him badly, breaking several ribs? The violence of two arrests in this case constitute a breach of due process.

All adding up to this: ***Government is estopped from prosecuting him because he has a clean record and he is being abused.***

Every single record.



The

Alaska Evans, spokeswoman (Photo: Alaska Law Firm)

Jail records.

Purchase receipts.

Plumber's license.

The only way he can make that defense is to insist on his right to address the court himself, and not necessarily merely as witness.

Due process violations

In 1995 one evening Mr. Rzeplinski was in a car used by three other young men who burgled a Bradley County store and stole smokes and crackers. With no attorney, he was indicted, had a no-jury trial, and was convicted for his role. He understood the case to have involved a lesser theft of property charge. The story may also have involved a plea bargain ending in misdemeanor. He'd been told the matter would not be on his record. He'd engaged a Chattanooga attorney on an expungement, too.

Troubles with the sheriff's office began when Mr. Rzeplinski's ex-wife married a deputy. The vendetta ran smack into the plumber's requests for HCSO help in massive thefts in his business on Middle Valley Road. Bradley County officials returned a "no file" response to requests about his record. Two HCSO employees went to the Cleveland, Tenn., archive, and found a disputed file proving the burglary was not a misdemeanor, but a felony (felony = crime with more than a year in prison).



Debated Monday is whether the petty theft was a "crime of violence," and if that definition applies against his 2nd amendment right to bear arms.

It's not clear what substance Mr. McGowan plans to offer in defense.

The only option Mr. Rzeplinski appears to have regarding his alibi is to assert his constitutional rights are **paramount over customs and usages when lawyers control the process** in "the way we do things here."

'Right to be heard by himself'

Mr. Rzeplinski opts for a jury trial in confidence in the American public which is increasingly angered by government abuse, and willing to be skeptical, despite decades of public education and media propaganda on TV, radio and in print.

Will there be juror knowledgeable enough to reject the

Mr. Rzeplinski's "right to be heard" at trial doesn't mean just taking the stand as fact witness. He controls the case and manages the case, with **assistance** of counsel. The right covers every part of the trial. Opening statements. Questioning witnesses. Argument.

The federal 6th amendment says "In all criminal prosecutions, the accused shall enjoy *** to have compulsory process for obtaining witnesses in his favor, and to have the **assistance of counsel for his defense.**"

Sect. 9 of the Tennessee bill of rights states, "That in all criminal prosecutions, the accused hath the **right to be heard by himself** and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have **compulsory process for obtaining witnesses** in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself" (emphasis added).

Tennessee constitution art. 1, sect. 19, says, "and in all indictments for libel, the jury shall have a right to **determine the law and the facts**, under the direction of the court, as in other

This provision says that the jury judges the facts and the law in a law in a law in a law case quote just as in other cases.

It is going to take a superhuman effort for Mr. Rzeplinski to get his defense before the jury if indeed "the system" is blocking him. Last thing he wants is to fire his attorney in the middle of the trial. He wants to get out the only evidence that will clear him, that is being suppressed over Mr. McGowan's likely objections.

He's going to have to fight for his life, and overthrow the pretended forms of law that are encrusted all about him like barnacles. If he doesn't stand on his constitutionally guaranteed rights and object on the record, he will have nothing to stand on in the appeal.

"2A Ray" will be shown to have waived his rights.



David Tulis

David Tulis is live on the air weekdays 7 a.m. to 11 a.m. on NoogaRadio 96.9 FM and other NoogaRadio Network stations, covering local economy and free markets in Chattanooga and beyond. Nothing here is legal advice; if you want legal advice, find a law firm downtown or on another planet – where the law actually matters.



◀ PREVIOUS ARTICLE

State terror has a persistent foe: Your

ONE RESPONSE



Danny Murphy Author



In your article you refer to rights under the constitutions. I'm pretty sure that they are presuming him to be a US citizen and thereby his jury limited to US citizens and he gets a the results indicated below.

The privileges and immunities clause of the Fourteenth Amendment protects very few rights because it neither incorporates any of the Bill of Rights nor protects all rights of individual citizens. See Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873). Instead, this provision protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship. Id. Jones v. Temmer, 829 F. Supp. 1226, 1232 (1993).

The only absolute and unqualified right of citizenship is to residence within the territorial boundaries of the United States ... which Puerto Ricans acquired when they were made United States citizens ... United States v. Valentine, 288 F.Supp. 957, 980 (1968).

Both before and after the Fourteenth



7/25/24, 4:44 PM

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549 (1875); Slaughter-House Cases, 83 U.S. (16 V
74 (1873). Crosse v. Board of Elections, 243 Md. !
(1966).

July 24, 2024

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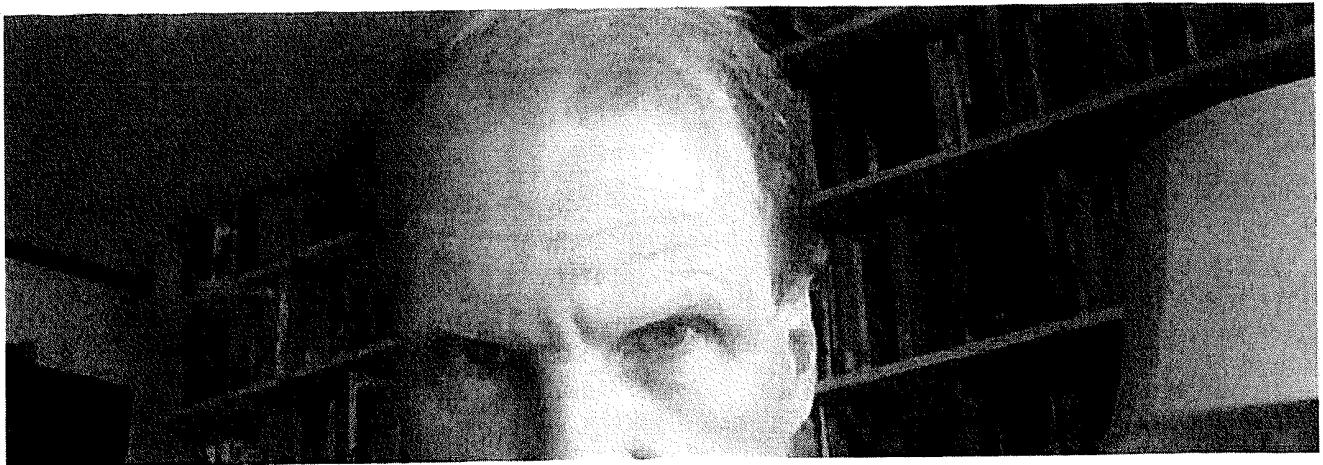
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9:24 / 10:38

Juror's duty to acquit Plumber Ray in vicious prosecution

Our power to nullify misapplied law is God given, recognized in TN bill of rights



DAVID TULIS
JUL 13, 2024



Share

≡ Transcript

CHATTANOOGA, Tenn., Saturday, July 13, 2024 — The juror in the Ray Rzeplinski criminal case starting July 30 has a duty under God to vote his conscience and to judge the facts and the law.

<https://davidtulis.substack.com/p/jurors-duty-to-acquit-plumber-ray>



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David Tulis



You have a right under Tenn. const. art. 1, sect. 19, to judge the law and declare it, by voting not guilty, irrelevant to the facts alleged.

The last provision says this, in the context of press investigations of public doings, wherein the facts of the report are judged by the jury, as well as the law.

“[A]nd in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, *as in other criminal cases.*”



Holding his evidence, plumber Ray Rzeplinski says he replaced piping in a bedroom at my house in Soddy-Daisy, Tenn. Mr. Rzeplinski runs Ray's Plumbing, providing exceptional service and reasonable prices in the Chattanooga area. Call him at 423-421-6341. (Photo David Tulis)

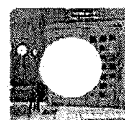
Mr. Rzeplinski faces 1,270 years in prison because he would not accept a plea bargain and would not yield to coercion with a federal prosecutor's in the Solomon building downtown.

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JUL 24 • DAVID TULIS



Ruling unlikely to favor Rzeplinski prior to anti-gun...

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Hearing to help stuff '2A Ray' into bottle before trial

JUL 23 • DAVID TULIS



Papers from my formerly newsprint ink-stained...

JUL 18 • DAVID TULIS



My Christian ministry is to sue officials for oppressing orpha...

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Asking your help for filing fee, transcript

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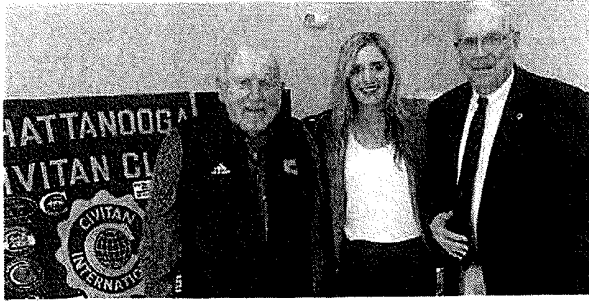
JUN 21 • DAVID TULIS

Hamilton County District attorney Coty Wamp and staff prosecutrix Nicole Evans are behind the case and committed to it in light of the bias of past investment. Having spent so much time and effort on the botch of a case, they won't let themselves dismiss it. The case arises out of personal acts of malice, Mr. Rzeplinski says, emanating from the marriage of a sheriff's deputy to Mr. Rzeplinski's ex-wife.

The prosecutors will try to duck the issue of his "knowing" he is a felon, which is a defense. They allege he knew he was a felon and "intentionally" possessed weapons, including one formerly banned under state law (short-barreled rifle). The defense of knowing differently should "estop" the case.

The owner of Ray's Plumbing in Chattanooga knows he's not a felon. Curing the felony allegations are original and renewed concealed carry gun permits from the department of safety and homeland security, OKs by the TBI for retail gun purchases and a plumber's license to prove his state of mind.

Please pray for Mr. Rzeplinski, his lawyer Ben McGowan and the state actors involved in this case. And share this file — and subscribe. No charge.



Coty Wamp, center, is state prosecutor based in Chattanooga, Tenn., shown here with members of a civi group.

1 Like

0 Comments



Write a comment...

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,)	
)	
<i>Plaintiff,</i>)	SECOND DIVISION
)	
vs.)	
)	NO(s). 317323
TAMELA GRACE MASSENGALE,)	
)	
<i>Defendant.</i>)	

ORDER OF DISMISSAL AS TO PETITION FOR WRIT OF CERTIORARI

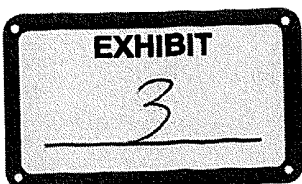
This matter is before the Court following the filing of a document entitled *Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for Writ of Certiorari* filed by David Tulis on April 29, 2024. As noted in the petition and accompanying affidavit, Mr. Tulis is not a licensed attorney, but has filed this petition as “next friend” of Ms. Massengale. The Petition specifically requests that this Court “lift the criminal case pending in general sessions, take jurisdiction over the substance of the case, and ministerially dismiss it as a nullity and void because of violations of due process.”

Defendant was arrested on March 27, 2024 for theft under \$500; theft of property; harassment; and registration, improper display of plates. Those cases remain pending in the General Sessions Court for Hamilton County, docket numbers 1941912 – 1941915. The present petition was filed on April 29, 2024, which is the same day that the office of the Public Defender was appointed to represent this Defendant.¹

Tenn. Const. art. VI, § 10 provides that “[t]he Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation.” This right was codified in *T.C.A §27-8-104*, and was cited throughout the petition as a statement of jurisdiction.

Although the power to issue writs exists in certain cases, the petition fails to cite any legal authority for this Court’s consideration of its petition relative to four *criminal* cases pending in the General Sessions Court. *T.C.A §27-8-101* makes clear that the writ of certiorari may be granted only when authorized by law. Thereafter, Title 27 of the Tennessee Code Annotated only confers authority to the circuit and chancery courts in *civil* matters, and does not specifically authorize the removal of a matter from the general sessions court in criminal cases.

¹ Counsel for the Defendant has now filed a *Motion to Strike Affidavit and Remonstrance in re Tamela Grace Massengale False Imprisonment and False Arrest: Petition for Writ of Certiorari*, which the Court has taken under advisement



Filed Electronically by the Second Division on Tuesday, June 4, 2024

Filed By Email
DATE: 6-4-24
TIME: 2:03 PM
BY: [Signature]

Accordingly, the Court does not have jurisdiction to consider the petition filed on Ms. Massengale's behalf.

The Court also finds that there is a separate issue in this matter related to standing. The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief. Knierim v. Leatherwood, 542 S.W.2d 806, 808 (Tenn. 1976); Garrison v. Stamps, 109 S.W.3d 374, 377 (Tenn. Ct. App. 2003). In order for standing to exist, the Court must make a finding that the plaintiff has alleged a sufficiently personal stake in the outcome of the litigation to warrant a judicial resolution of the dispute. SunTrust Bank v. Johnson, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000).

To establish standing, a plaintiff must show (1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct; and (3) that the injury is one that can be addressed by a remedy that the court is empowered to give. City of Chattanooga v. Davis, 54 S.W.3d 248, 280 (Tenn. 2001). To be clear, the focus in a standing analysis focuses on the party, not the merits of the underlying claim.

In the present case, Mr. Tulis has brought this action as "next friend" of Ms. Massengale, and attached an affidavit whereby the Defendant named him as "next friend." However, the Court finds that there is no basis for this Defendant to be appointed a next friend absent some showing that she is an infant or otherwise incompetent.

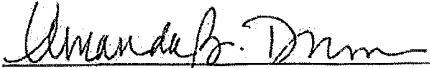
The civil code is replete with examples in which a person can be named "next friend" for an individual who is incapable of proceeding on their own behalf. *See T.C.A. §20-12-128; T.R.C.P. 17.03.* In each instance, there must be a showing that the injured party has been adjudicated incompetent or is an infant, as well as a Court order naming the next friend or guardian who can act on their behalf. It is insufficient for an alleged injured party to simply name another citizen as next friend to take up legal action on her behalf.

Accordingly, having considered the filings in this matter and the record as a whole, this Court finds no authority for a circuit court judge remove a criminal proceeding from the jurisdiction of the general sessions court, and therefore this Court lacks jurisdiction to grant the relief requested. In addition, the Court finds that Mr. Tulis does not have standing to file a petition on behalf of any person other than himself. Mr. Tulis has not established a sufficient personal stake in the outcome of Ms. Massengale's criminal charges to have standing to file this action on his own behalf. Likewise, he has not been authorized by this or any other court to act as her "next friend" for purpose of filing suit. Defendant's "appointment" of a next friend is insufficient in the eyes of the law.

Therefore, for the reasons stated herein, the *Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for Writ of Certiorari* is respectfully **DISMISSED**.

It is so ordered.

Enter.


AMANDA B. DUNN, Judge

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE * DOCKET NO(s). 317323
*
v. *
*
TAMELA GRACE MASSENGALE * SECOND DIVISION

MOTION TO STRIKE AFFIDAVIT AND REMONSTRANCE IN RE: TAMELA GRACE MASSENGALE FALSE IMPRISONMENT AND FALSE ARREST; PETITION FOR WRIT OF CERTIORARI


Comes the defendant, Tamela Grace Massengale, by and through counsel of record, and moves this Honorable Court to enter an order striking the pleading titled Affidavit and Remonstrance in re: Tamela Grace Massengale False Imprisonment and False Arrest; Notice of Petition for Writ of Certiorari filed by a non-lawyer on April 25, 2024.

The Public Defender's Office was appointed in Hamilton County General Sessions Court on April 29, 2024. Since the appointment the defendant agrees with undersigned counsel that this motion to strike is appropriate. The State of Tennessee does not object to this Motion.

WHEREFORE, the defendant, Tamela Grace Massengale, respectfully moves this Honorable Court to strike the said motion filed by the non-lawyer for the reason set forth in this motion.

Respectfully submitted,

STEVE SMITH
DISTRICT PUBLIC DEFENDER

By: 
Mike A. Little
Attorney for Defendant
Deputy District Public Defender
720 Cherry Street
Chattanooga, TN 37402
423-209-6771

CERTIFICATE OF SERVICE
Proper service is hereby certified
under the applicable rule of procedure
this 30th day of May, 2024.
DISTRICT PUBLIC DEFENDER

By: 

7:53
MAY 30 2024
80:2:43 03:11:47

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE	*	DOCKET NO(s). 317323
	*	
v.	*	
	*	
TAMELA GRACE MASSENGALE	*	SECOND DIVISION

ORDER

The defendant, through appointed counsel, has filed a motion with the court requesting that the Court strike the motion titled Motion to Strike Affidavit and Remonstrance in Re: Tamela Grace Massengale False Imprisonment and False Arrest; Petition for Writ of Certiorari filed by a non-lawyer on April 25, 2024.

The Court agrees that the motion to strike is appropriate under the circumstances. The State of Tennessee does not object to this order.

For good cause shown the motion to strike the motion titled Motion to Strike Affidavit and Remonstrance in Re: Tamela Grace Massengale False Imprisonment and False Arrest; Petition for Writ of Certiorari of Petition for Writ of Certiorari filed by a non-lawyer on April 25, 2024 is granted.

ENTER this _____ day of _____, 2024.

JUDGE AMANDA DUNN