

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

**THE STATE OF OKLAHOMA,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**DONALD R. HALL,** )  
**MICHAEL RAY HALL,** )  
**LEROY JAMES PATTON,** )  
**ELDON W. McCUMBER,** )  
**KENNETH L. DOUGHTY** )  
**MICHAEL S. CHALONER,** )  
**WILLIAM SPARKS,** )  
**Defendants.** )

**Case No. CF-2006-3998**

**MOTION TO QUASH INFORMATION AND TO SUPPRESS  
ANY EVIDENCE OBTAINED PURSUANT TO MULTICOUNTY  
GRAND JURY WITH MEMORANDUM OF LAW**

COMES NOW, the Defendants, Eldon W. McCumber, Kenneth L. Doughty, and William Sparks, by and through their Attorney of Record, Mack K. Martin, and moves this Court to Quash the Information in the above styled cause. In support of said Motion and Memorandum of Law requesting the Information be quashed, Defendants would show this Honorable Court as follows, to-wit:

1. The strict provisions of Article 2 of the Oklahoma Constitution, § 18 were violated by allowing the presence of two alternate grand jurors during the sessions of the grand jury.
2. The provisions of Title 22, Oklahoma Statutes, § 340 (C) were violated by allowing other persons, namely alternates, into the grand jury proceedings not authorized by statute.
3. Under Oklahoma case law failure to comply with the statutes in a grand jury

proceeding results in presumed prejudice.

### Memorandum of Law

Article II, Section 18 of the Oklahoma Constitution states, in part:

A grand jury shall be composed of twelve (12) persons, any nine (9) of whom concurring may find an indictment or true bill. . . . *All other provisions of the Constitution of the laws of this state in conflict with the provisions of this constitutional amendment are hereby expressly repealed . . . .* (Emphasis Added)

The Oklahoma Court of Criminal Appeals, when construing a constitutional provision, looks to the intent of the framers and the People who adopted it and determines that intent, when possible, "by the plain language of the provision itself." State v. Bezdicek, 2002 OK CR 28, 53 P.3d 917, 919. In Bezdicek, this Court, relying on the plain and unambiguous language of Article II, Section 18 of the Oklahoma Constitution held that a multi county grand jury was not authorized to investigate allegations of criminal activity that were alleged only in a single county. This Court stated that "[n]othing in Section 18 gives a grand jury, empaneled for a specific purpose of investigating 'multicounty criminal activities,' the authority to investigate activities *isolated to a single county*." Id. at 920-21. The Court of Criminal Appeals has consistently refused to accept arguments that propose an expansive construction of a constitutional provision, but has stated that:

In construing constitutional provisions we will never place a narrow, technical, forced, or unnatural construction upon their language; neither will we indulge in or follow any ingenious refinement or subtlety of reasoning as to the meaning of such provisions. But we will endeavor to give them that interpretation which every man, learned and unlearned, and of common understanding, must place upon them.

Scribner v. State, 1913 OK CR 131, 132 P. 933, 934 (citing State v. Frisbee, 1912 OK CR 48).

Consistent with the plain language of Article II, Section 18 of the Oklahoma Constitution, the legislature enacted Title 22 of the Oklahoma Statutes, Section 340. Section 340 (C) states, in relevant part:

No other person is permitted to be present during sessions of the grand jury except the members of the grand jury, the witness actually under examination, and one attorney representing such witness . . . provided that, no person, except the members of the grand jury, shall be permitted to be present during the expression of juror opinions or the giving of votes upon any matter before the grand jury . . .

Again the Oklahoma Court of Criminal Appeals, relying on the plain and unambiguous language of the statute, has held that all unauthorized persons are prohibited from grand jury proceedings. In Hartgraves v. State, 1911 OK CR 75, 114 P. 343, the Court of Criminal Appeals held that an attorney who was not a regularly elected or appointed officer violated Oklahoma law when he presented a case to the grand jury. The statute in question had almost identical language to Title 22, Section 340, and stated:

The grand jury may at all reasonable times ask the advice of the court or of the district attorney. The district attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them and may interrogate witnesses before them whenever he thinks it necessary, *but no other person is permitted to be present during their sessions except the members and a witness actually under examination and no person whomsoever must be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.*

Id. at 344. (quoting 1909 Snyder's Comp. Laws Okl. Section 6738) (Emphasis added).

According to the Court of Criminal Appeals, "the plain meaning and import of this statute is that no one should be permitted to be present during the sessions of the grand jury except" those authorized by law. Id. at 344.

The language of the statute itself and the strict interpretation of that language by the

Court of Criminal Appeals gives no exception to the prohibition of unauthorized individuals during grand jury proceedings. In Hattgrave, the Court stated “[t]he rule in its spirit and purpose admits of no exception. Id. at 345. In Highers v. State, 1959 OK CR 35, 337 P.2d 1112 the Court of Criminal Appeals made clear that:

The law prohibits all persons from being in the grand jury room except the officers authorized by law to examine witnesses and the witnesses to be examined, and the presence of any other person in the grand jury room at any stage of the proceedings when a witness is being examined, or when the grand jury is considering the advisability of finding an indictment, vitiates the entire proceedings. *There is no exception to this rule.*

Id. at 1116 (Emphasis added)

Additionally, once a violation of the exact language of Title 22, Section 340 occurs, prejudice to the defendant is presumed. The Court of Criminal Appeals so held in State v. Ringgold, 1981 OK CR 126, 635 P.2d 626. In that case, the State admitted violating the language of Section 340, but argued that there was “substantial compliance with the statute, and further, that the actions of the assistant attorneys general . . . were not prejudicial to the outcome of the grand jury proceedings, and the defendant’s rights were in no way infringed. Id. at 626. In its response, this Court flatly rejected the State’s argument stating:

Contrary to what the State would have us find, a showing of prejudice to the defendant is not necessary in order to quash an indictment for a violation of 22 O.S. § 340. Once a violation of the statute is found, prejudice is presumed.

Id. at 626.

Discussion

According to the transcripts from the grand jury proceedings, there were 12 regular jurors and *two alternate jurors*<sup>1</sup> present during the proceedings. [A review of the grand jury transcripts provides in several different entries that there are twelve (12) grand jurors and two (2) alternate grand jurors present at differing times during the taking of different witnesses' testimony]<sup>2</sup> Under a strict interpretation of Article II, of the Oklahoma Constitution, Section 18 and of Title 22 of the Oklahoma Statutes, Section 340, the presence of the alternate jurors was unauthorized under the law. There have been no stated exceptions to this longstanding rule, the reasons for which were articulate by the Court in Hartgraves. There it was explained that:

[I]t is unfair, unjust, and illegal to allow any person to be in a grand jury room when witnesses are being examined, unless such person was before said grand jury as a witness or was there as a regular officer of the law . . . . While we are satisfied that neither the county attorney nor the attorney who appeared for him . . . were actuated by improper motives in this case, yet this cannot cause us to sanction a proceeding which is unauthorized by law, is contrary to public policy, and which, if allowed to stand, would establish a precedent repugnant to reason and pregnant with danger to justice and innocence."

Hartgraves, at 345-46.

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<sup>1</sup> Article II, §18 of the Oklahoma Constitution, provides, in part: "A grand jury shall be composed of twelve (12) persons . . . ."

<sup>2</sup> Just two examples that reflect the presence of unauthorized persons before the grand jury are as follows:

Grand jury testimony of the witness Kenneth Doughty on April 18, 2006, at page 28:  
MS. McCORMICK: "It's April 18, 2006. Present in the grand jury room are 12 regular grand jurors, two alternates; two legal advisors, Charles Rogers, Joel-lyn McCormick. Lynn Rogers is right outside the grand jury room and will return with the witness who was previously testifying."

Grand jury testimony of the witness, Leroy Patton on May 23, 2006, at pages 25-26:  
MS. McCORMICK: "Mr. Rogers, can I interrupt for just a moment?  
Mr. Foreman, we'd like to get the grand juror who has an obligation on his way. It will leave us still with 12 grand jurors and we can continue with this testimony, but we'd like for him to be excused at this time."

The Court of Criminal Appeals relies on the plain and unambiguous language of a constitutional provision when determining the intent of the framers and the People who adopted it. Under Article II, Section 18 of the Oklahoma Constitution it clearly states that a grand jury is composed of only twelve (12) members. An interpretation that construes "twelve" to mean "twelve, plus two alternates," would run afoul of this Court's history of strictly construing the language of a constitutional provision. Under a strict interpretation of the language of Section 18, it is beyond clear that only twelve persons are authorized to sit on the grand jury, no more and no less. Additionally, Title 22, Section 340 of the Oklahoma Statutes comports with the clear intent of the Oklahoma Constitution by prohibiting any persons other than members of the grand jury, the witness being examined, the district attorney or Attorney General, an attorney representing a witness, a court reporter, and if necessary an interpreter. There are no carved out exceptions for alternate jurors, and this Court should not read one into the statute.

WHEREFORE, because Defendants have shown a clear violation of the constitutional and statutory provisions of this State, prejudice is presumed and this Court should quash the Information along with any and all evidence<sup>3</sup> the State elicited from the faulty grand jury

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<sup>3</sup> The evidence includes the testimony of the following grand jury witnesses, including any and all exhibits, summaries or other media offered to the grand jury to support the indictment and ultimate information filed in the above styled cause.

Witness:

1. Wes Edens, Office of State Auditor and Inspector, State Capitol Building, Room 100, 2300 North Lincoln Blvd., Oklahoma City, OK. 73105-4801.
2. David Michael Fenton, 655 Hanford Street, Richland, WA. 99354.
3. Ian Purtle, Cargill Corporation, P.O. Box 5624, Minneapolis, MN. 55440-5624.
4. Michael S. Chaloner, RR 1, Box 213, Hinton, OK.

proceedings. This Motion to Quash the Information is hereby made in good faith to this Honorable Court and not for any improper purpose.

Respectfully submitted,

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Oklahoma City, Oklahoma 73102  
Telephone (405) 236-8888  
Facsimile (405) 236-8844  
Attorney for Defendants  
Kenneth Doughty  
William Sparks  
Eldon McCumber

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5. Kenneth L. Doughty, P.O. Box 1040, Hinton, OK.
  6. Eldon McCumber, 401 South Marion Street, Hinton, OK.
  7. Michael R. Hall, Birmingham, AL.
  8. Leroy James Patton, 30222 Fairway Run, Fair Oakes Ranch, TX. 78015
  9. Bonnie Winsett, Savannah, GA.
  10. Donald R. Hall, 7107 Walden Park Drive, Savannah, GA.

**VERIFICATION**

I, Mack K. Martin, on this 13<sup>th</sup> day of November, 2006, being duly sworn on oath state that I have read the above and foregoing Motion and know the contents thereof to be true and correct to the best of my knowledge and belief

\_\_\_\_\_  
Mack K. Martin

SUBSCRIBED AND SWORN BEFORE ME this \_\_\_\_ day of November, 2006.

\_\_\_\_\_  
NOTARY PUBLIC

My commission No.  
Expires:

**CERTIFICATE OF SERVICE**

Undersigned does hereby certify that a true and exact copy of the above and foregoing instrument was mailed to the following recipients, as Attorneys of Record, on the \_\_\_\_ day of November, 2006.

Mr. Charles S. Rogers  
Assistant Attorney General  
313 N.E. 21<sup>st</sup> St  
Oklahoma City, OK. 73105

Mr. Garvin Isaacs  
123 N.W. 8<sup>th</sup> St.  
Oklahoma City, OK. 73102  
Attorney for Michael Chaloner

Mr. Stephen Jones  
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Enid, OK. 73702-0472  
Attorney for Leroy Patton

Mr. Chris Eulberg  
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\_\_\_\_\_  
MACK K. MARTIN