IN THE CIRCUIT COURT OF BRADLEY COUNTY, TENNESSEE
PART III

STATE OF TENNESSEE,	)	
	)	
v.	)	Case No. 17-CR-206
	)	
MIRANDA CHEATHAM,	)	
Defendant.	)	

THE STATE OF TENNESSEE'S RESPONSE TO DEFENDANT'S MOTION TO DISQUALIFY THE 10TH JUDICIAL DISTRICT ATTORNEY GENERAL'S OFFICE FROM ANY FURTHER INVOLVEMENT IN THE MATTER OF MIRANDA CHEATHAM

Comes now the State of Tennessee, by and through the Office of Stephen D. Crump, District Attorney General for the 10th Judicial District to respond to the defendant's Motion to Disqualify the Office of the District Attorney General from the above-styled case. In response, and upon information and belief, the State of Tennessee would show:

I. ***Timeline of events***.

In order to fully see the lack of merit in any of the defendant's claims, it is important to fully review the events of the case and its investigation. The timeline of events by itself fully refutes the claims of the defendant. All of the events characterized below are drawn directly from affidavits attached to this response as exhibits, and expressly incorporated herein by reference:

October 31, 2016 –	James "Tooter" Cheatham is shot by Miranda Cheatham (Aff. Daniel Gibbs).
November 1, 2016 –	An autopsy is performed on James "Tooter" Cheatham (Aff. Daniel Gibbs).

November 1, 2016 –	Det. Gibbs believes that probable cause exists to arrest Miranda Cheatham for second degree murder. (Aff. Daniel Gibbs). Forensic Biology (DNA) and Micro-Analysis are considered the key tests. (Aff. Daniel Gibbs).
December 15, 2016 –	Forensic evidence delivered to the Tennessee Bureau of Investigation. (Copies of Lab Reports, Aff. Daniel Gibbs).
April 28, 2017 –	DNA Report delivered to the Cleveland Police Department and subsequently to the District Attorney's Office. (Aff. Daniel Gibbs).
May 19, 2017 –	Members of the District Attorney's Office meet with members of the victim's family. John Loach states that if the case is not charged soon, he will find a way to get the District Attorney's office removed from the case. (Aff. Calvin Rockholt).
May 23, 2017 –	Det. Gibbs delivers an electronic version of the case file to the District Attorney's Office. Mehye Scott is instructed to wait to prepare indictments until the Micro-Analysis report is received. (Aff. Daniel Gibbs, Aff. Mehye Scott).
May 24, 2017 –	Presentation of the case to the Bradley County Grand Jury is discussed between then lead trial counsel, ADA Drew Robinson, and District Attorney Crump. The decision is made to present the case on First Degree Homicide, Second Degree Homicide, Voluntary Manslaughter and Self Defense. (Aff. Daniel Gibbs, Aff. Martin Drew Robinson).
May 31, 2017 –	The purported recording made by John Loach and Dana Cheatham is delivered to Det. Gibbs. District Attorney Crump is made aware of the existence of the recording. (Aff. Daniel Gibbs, Aff. Mark Gibson).
June 16, 2017 –	The Micro-Analysis report from TBI is uploaded to TBI's website. It is subsequently delivered to the District Attorney's Office. (Aff. Daniel Gibbs, Aff. Mehye Scott).
June 16, 2017 –	Indictments are prepared for the presentation of the case to the Bradley County Grand Jury. (Aff. Mehye Scott).
June 19, 2017 –	Det. Gibbs is informed that the case will be presented to the Bradley County Grand Jury on June 21, 2017. (Aff. Daniel Gibbs).

June 21, 2017 –	The case is presented to the Bradley County Grand Jury. Det. Gibbs presents the evidence. ADA Drew Robinson, who is at the time lead trial counsel, advised the Grand Jury. Drew Robinson asked the Grand Jury to choose the crime according to the evidence and their judgment. He did not ask for any particular indictment to be returned or for the Grand Jury to disregard the defendant's claim of self-defense. (Aff. Daniel Gibbs, Aff. Martin Drew Robinson).
June 21, 2017 –	Bradley County Grand Jury chooses Second Degree Murder and returns an indictment on that charge. (Signed indictment). Case is assigned to ADAG Drew Robinson and ADA Matt Dunn.
August 7, 2017 –	Defendant is arraigned and District Attorney Crump and Amy Reedy discuss potential conflicts. (Testimony of Amy Reedy, Aff. Stephen Crump).
November, 2018 –	ADA Coty Wamp is named lead counsel on the case and learns of the existence of the recording. Det. Gibbs has not listened to the recording and ADA Wamp does not listen at that time. ADA Drew Robinson was reassigned as second chair on the case. (Aff. Coty Wamp).
January 15, 2019 –	Jury trial is commenced in Bradley County Criminal Court. (Court Records).
January 23, 2019 –	Jury finds the defendant guilty of Second Degree Murder, as indicted. (Judgment form).
April 12, 2019 –	Sentencing hearing is conducted. (Court Records).
August 26-30 2019 –	Attorney Stephen Hatchett meets with Chief of Police Mark Gibson and asks about the recording. He indicates that he will file an open records request and that if the department no longer has the recording, he has another way to get the recording. Although recording was available at the Cleveland Police Department, no demand for its production was ever made. (Aff. Mark Gibson).
September 2-6, 2019 –	Attorney William Speek requests the recording and is told by ADA Wamp to file an open records request with the Cleveland Police Department and he can obtain the recording. He does not. ADA Wamp and Det. Gibbs listen to the recording for the first time. (Aff. Coty Wamp).

July 14, 2020 –	Attorney William Speek inquires about a statement given by Dana Cheatham to a detective. He is told that he has been given the only recorded statement given by Cheatham to a detective. He inquires further and is again instructed to file an open records request with CPD and he can obtain the recording. (Aff. Coty Wamp).
July 16, 2020 –	Attorney William Speek obtains the recording after filing an open records request. (Aff. of Mark Gibson).

The timeline and affidavits which support the timeline all speak to the deliberate and conscientious efforts to correctly indict the defendant. There is no objective evidence of blackmail in the timeline. Blackmail is, in fact, refuted by the timeline. There is no evidence that the recording was, "hidden," or, "suppressed." Those claims made by the defendant in her motion are likewise refuted by the timeline and the affidavits attached hereto.

II. ***The existence of the recording was not hidden nor suppressed.***

The existence of this recording was not hidden from or suppressed by anyone. There was never an occasion where anyone who requested the recording was told it did not exist or did not receive the recording when they requested it. Additionally, District Attorney Crump informed Amy Reedy (Defense counsel) that potential conflicts had arisen and invited her to discuss them with him.

This recording was delivered to the Cleveland Police Department on May 31, 2017. (Aff. Daniel Gibbs). John Loach brought the recording to Cleveland Police Department and delivered it to Daniel Gibbs. Gibbs did not listen to the recording at that time, but instead delivered it to Chief Mark Gibson. (Aff. Daniel Gibbs). Chief Gibson did listen to the recording, and after conferring within the department, made the decision that the recording did not contain evidence of a crime and was not

"evidentiary." (Aff. Mark Gibson). Chief Gibson and Detective Gibbs then determined that the recording should not be placed in the Cheatham case file, as it did not have any evidence about the homicide or other criminal activity. (Aff. Mark Gibson, Aff. Daniel Gibbs).

Subsequently, Chief Gibson contacted District Attorney Crump and asked him to meet with members of the Cleveland Police Department. During that meeting, District Attorney Crump was told about the recording and the "gist" of the allegations. (Aff. Mark Gibson). District Attorney Crump offered his cell phone to Chief Gibson for his department to review. Chief Gibson declined to do that, and told District Attorney Crump that the recording was not "credible." (Aff. Mark Gibson). District Attorney Crump then told Chief Gibson that he should do anything he thought appropriate with the recording. (Aff. Mark Gibson). District Attorney Crump further told Chief Gibson that he would contact the District Attorneys General Conference, should Chief Gibson think it necessary at any time. (Aff. Mark Gibson). District Attorney Crump declined to listen to the recording and did not actually hear the recording until August 3rd, 2020. (Aff. Mark Gibson, Aff. Stephen Crump). District Attorney Crump declined to listen to the recording because he believed it to be a ploy by John Loach to make good on his threat to get District Attorney Crump's office "off" Miranda Cheatham's case. (Aff. Stephen Crump, Aff. Calvin Rockholt). Contrary to the assertions of the defendant in her filings, no copy of the recording was ever delivered to the Office of the District Attorney General until after the defendant filed her, "Motion to Continue."

Miranda Cheatham was arraigned on August 8, 2017. On that day, District Attorney Crump approached then counsel for the defendant, Amy Reedy, to discuss the

potential conflicts of interest in the case. While District Attorney Crump disputed and still disputes the allegations in the recording, he believed that counsel should be made aware that potential conflicts existed and they should be discussed. (Aff. Stephen Crump).

It is believed that Amy Reedy will confirm the substance of that discussion. It is believed that Amy Reedy will confirm that District Attorney Crump told her that potential conflicts had arisen in the case and that they should discuss them. It is believed she will confirm that District Attorney Crump indicated that the potential conflicts involved both personal and professional relationships with members of the victim's family.

It is further believed that Amy Reedy will confirm that District Attorney Crump told her that the two of them could discuss them or, that if Mrs. Reedy felt it more appropriate, she could file a motion to recuse District Attorney Crump, and then they could discuss the potential conflicts. Mrs. Reedy, on information and belief, will confirm that District Attorney Crump told Mrs. Reedy that if the defendant asked Mrs. Reedy to continue moving forward with the motion to recuse, District Attorney Crump would agree to the recusal of his office and that he had secured the agreement of the Knox County District Attorney General to serve as a District Attorney General *pro tempore*. District Attorney General Charme Allen of Knoxville has confirmed that District Attorney Crump requested that she provide a prosecutor from her office to prosecute the case if District Attorney Crump recused his office. (Aff. Charme Allen).

While Mrs. Reedy has not disclosed any of her communications with the defendant to this office, it is a reasonable belief that Mrs. Reedy, whom is an extremely diligent attorney, would have communicated about this issue with her client. In any

event, Mrs. Reedy never filed a motion or asked to discuss the conflicts. The potential existence of conflicts was not hidden in any way from defense counsel.

In late August of 2019, attorney Stephen Hatchett approached Chief Gibson and asked for a copy of the recording. (Aff. Mark Gibson, Aff. Daniel Gibbs). It is unknown how Mr. Hatchett knew of the recording, but he inquired about obtaining a copy. (Aff. Mark Gibson). He was told by Chief Gibson that the recording was a public record and that Mr. Hatchett could obtain one by filing an open records request. (Aff. Mark Gibson). Mr. Hatchett did not obtain a copy of the disk, but shortly after their conversation, the Cleveland Police Department was contacted about a "recording" by the office of William Speek. (Aff. Daniel Gibbs).

Assistant District Attorney Coty Wamp learned of the inquiries by defense counsel and called Mr. Speek in September of 2019. (Aff. Coty Wamp). Coty Wamp told Mr. Speek that he could get a copy of the recording by filing an open records request with the Cleveland Police Department. (Aff. Coty Wamp). He did not do so for almost a year. Upon requesting the recording for a second time, and upon being told for a second time to file an open records request, Mr. Speek's office did file an open records request. (Aff. Coty Wamp, Motion filings of defendant). Mr. Speek's office obtained a copy of the recording shortly after filing an open records request. (Aff. Daniel Gibbs, Aff. Coty Wamp).

Both Chief Gibson and Assistant District Attorney Wamp unequivocally state that District Attorney Crump clearly indicated that the recording was a public record and that anyone inquiring for the recording was entitled to receive a copy if entitled under the Tennessee Open Records Act. (Aff. Mark Gibson, Aff. Coty Wamp).

III. ***The recording is not credible and does not contain evidence of blackmail.***

The recording in question contains several significant internal discrepancies. These discrepancies not only lead to the inescapable conclusion that no blackmail occurred or was attempted, but the discrepancies alone call into question any allegation made in the recording.

At 24:48 in the recording, Mrs. Cheatham (now Pritchard) states that she never met alone with District Attorney Crump because, "I don't want him to say that I did anything or used anything or I tried to set him up." That quote is inconsistent with any claim of blackmail having been accomplished prior to the making of the recording. In fact, it is the *antithesis* of blackmail. Mrs. Cheatham-Pritchard says she took a witness with her specifically to thwart any claim that she had attempted to do anything that would appear to be blackmail.

While Mrs. Cheatham-Prichard does indicate that she sent messages demanding action at 5:18 in the recording, clearly those messages did not include any reference to the claimed affair or to any scheme to blackmail. Mrs. Cheatham-Pritchard indicates that she sent them to Mr. Loach as well. If they had contained any evidence of an affair or of blackmail, the entire recording would have been unnecessary. Mr. Loach would have had text messages proving any such conduct and therefore would not have needed a recording. Additionally, since Mrs. Cheatham-Pritchard was so concerned about not appearing to "use anything", it is not logical for her to have sent text messages which would be written proof of such conduct. The recording is, in fact, evidence that no such conduct had occurred.

Mrs. Cheatham-Pritchard asks for Mr. Loach to send her the photographs (14:47 in the recording) so that she can use them to "blackmail" District Attorney Crump. Mr. Loach never possessed the pictures and they never existed, according to Mr. Loach. (Aff. Calvin Rockholt). Clearly these pictures were never sent to anyone, as they never existed. As such, no blackmail attempt could have been accomplished as Mrs. Cheatham-Pritchard states that she has no proof of the alleged affair.

The alleged pictures do not even match the alleged tryst in Knoxville, Tennessee in 2012. The photographs were allegedly of Mrs. Cheatham-Pritchard and District Attorney Crump entering a "house" or "garage" (Recording at 19:52). Mrs. Cheatham-Pritchard clearly, unequivocally and repeatedly states she had "never been to a house with him." (Recording 20:23).

Even had the photographs existed, and even had the event occurred in Knoxville, these photographs would have been wholly useless in any sort of blackmail attempt. Even though Loach repeatedly tries to get her agree that a house was involved (Recording at 20:12 and at 20:30) in a colloquy that seems like the two participants had predetermined a storyline and one of them did not follow it, Mrs. Cheatham-Pritchard continues to deny that a house was involved. Even if one assumes that the Knoxville event was a real happening, these photographs could not have ever formed the basis of a "blackmail" attempt.

The inconsistencies in the story told by Mrs. Cheatham-Pritchard continue as to who she has told about the alleged tryst in Knoxville. Mrs. Cheatham indicates that she had told her stepmother, Traci Cheatham, about the affair and her ability to use it to force a prosecution. (recording at 7:05 and 16:30). Yet when Traci Cheatham calls

during the making of the recording, Mrs. Cheatham-Pritchard tells Traci Cheatham that John Loach has pictures of her and District Attorney Crump. She quickly assures Traci Cheatham that the pictures aren't, "sexual or anything," but rather just, "us together." Mrs. Traci Cheatham seems puzzled about any pictures of the two together. If Mrs. Traci Cheatham was aware of the tryst and the alleged affair, she would not have needed any explanation, nor would Mrs. Cheatham-Pritchard felt the need to explain about the pictures in an innocent way.

The inconsistent storyline, the seemingly staged conversation and the clear indication that Mrs. Traci Cheatham knew nothing of any event that could lead to an affair all destroy any credibility of the recording as evidence of blackmail or anything else.

IV. ***The conduct of District Attorney Crump does not match that of a person that has any fear of exposure, nor of a person being blackmailed.***

The whole purpose of blackmail is to intimidate or coerce another person to do something that they do not want or intend to do by exposing embarrassing information or criminal conduct. There is absolutely no evidence that either of these things occurred.

There was never any question that the killing of James Cheatham was a homicide. (Aff. Daniel Gibbs). From the day after the killing until the indictment of Miranda Cheatham by the Bradley County Grand Jury, Det. Gibbs believed that probable cause existed to arrest Miranda Cheatham for Second Degree Murder. (Aff. Daniel Gibbs). It was District Attorney Crump and this office that made the decision to wait for forensic testing to be complete. (Aff. Daniel Gibbs, Aff. Mark Gibson). A blackmailed person or someone with something to fear would not have waited. A

blackmailed person would have rushed to charge; not waited. Even as pressure mounted from the family (Aff. Daniel Gibbs), District Attorney Crump and his office insisted on obtaining all relevant laboratory results from the Tennessee Bureau of Investigation. (Aff. Mehye Scott, Aff. Daniel Gibbs).

The timeline above is exceedingly clear proof of the lack of coercion or of any fear on the part of District Attorney Crump. The casefile from Det. Gibbs was delivered on May 23, 2017. (Aff. Mehye Scott, Aff. Daniel Gibbs). Again, there was no rush to charge. District Attorney Crump could have directed Det. Gibbs to charge Miranda Cheatham by warrant at any time during the investigation. District Attorney Crump did not.

District Attorney Crump was made aware of the existence of the recording on May 31, 2017. (Aff. Mark Gibson). Again, no warrant was issued. It was not until June 16, 2017 that the last needed laboratory result was received. (Aff. Mehye Scott). Only after the last laboratory result was received by the District Attorney's Office was an indictment drafted. (Aff. Mehye Scott). These are not the actions of one who is being blackmailed or coerced, or the actions of someone with something to fear. It is the consistent actions of a conscientious prosecutor seeking justice and that a defendant be correctly charged.

Both Det. Gibbs and Chief Gibson have stated that they wanted to move more quickly than District Attorney Crump. (Aff. Mark Gibson, Aff. Daniel Gibbs). They have also both stated that the deliberate and careful approach with all of the relevant laboratory reports was the appropriate way to handle the case. Neither Chief Gibson

nor Det. Gibbs saw any evidence of coercion or mishandling of the investigation or prosecution. (Aff. Mark Gibson, Aff. Daniel Gibbs).

Simply put: There is no evidence of any attempt to blackmail or otherwise coerce District Attorney Crump in this case.

V. ***Even if John Loach and Dana Cheatham-Pritchard were attempting to blackmail District Attorney Crump, that does not justify disqualification.***

As previously stated, there is no evidence of any attempt to blackmail or otherwise coerce District Attorney Crump. However, assuming that there was, this fact would not warrant disqualification of the Stephen D. Crump. For comparison, various defendants have attempted to control which person handles their case by engaging in a course of conduct designed to threaten, harass or intimidate a member of the prosecutor's office. See, e.g. *State v. McGuire*, 2017 Kan. App. Unpub. LEXIS 423 (Ks. Ct. App. 2017); United States v. Richardson, 2010 U.S. Dist. LEXIS 164197, at *26 (N.D. Ga. Sep. 15, 2010) (AUSA response to and planned use of the threats require his disqualification, rather than the defendant's threat itself); *Grand Jury Subpoena of Ford v. United States*, 756 F.2d 249, 254 (2d Cir. 1985) (Disqualification would incentivize defendants to remove a prosecutor by the use of threats, jeopardizing the administration of justice).

It stands to reason: If a defendant's threats toward a prosecutor does not necessitate disqualification, a victim's threats toward a prosecutor would likewise not necessitate disqualification.

VI. ***The decision to charge was not that of the District Attorney Crump.***

Defendant asserts in her Motion to Disqualify, "D.A. Crump was threatened/blackmailed into prosecuting the case..." To the contrary, the Court in the present case is exercising jurisdiction over the defendant through indictment by the Bradley County Grand Jury. (Indictment). As stated above in the timeline, Detective Gibbs presented the case to the Bradley County Grand Jury. (Aff. Daniel Gibbs). His presentation to the Grand Jury took place over the course of more than an hour. (Aff. Daniel Gibbs). Neither Detective Gibbs nor any member of the District Attorney's Office asked the Grand Jury to return an indictment for any particular charge. (Aff. Daniel Gibbs, Aff. Martin Drew Robinson). Detective Gibbs presented evidence of the defendant's claim that she was defending herself from the victim, Tooter Cheatham. (Aff. Daniel Gibbs).

Assistant District Attorney Drew Robinson instructed the Grand Jury on the defense of self-defense. (Aff. Martin Drew Robinson). ADAG Robinson asked the Grand Jury to consider four options: 1) First Degree Murder, 2) Second Degree Murder, 3) Voluntary Manslaughter, 4) No True Bill because defendant acted in self-defense. (Aff. Martin Drew Robinson).

Several regional neighbors have abandoned the Grand Jury indictment system of prosecution in favor of informations signed by the state's attorney. Tennessee is a grand jury system state – requiring an independent Grand Jury body to review and charge all crimes which are to be tried by jury. The independent Bradley County Grand Jury indicted the defendant, not District Attorney Crump. The defendant could not have been charged with Second Degree murder without the independent deliberation and unanimous vote of the Bradley County Grand Jury. Therefore, to allege that District

Attorney Crump charged the defendant because he was threatened or blackmailed is completely false.

VII. ***The State of Tennessee was not required to disclose the contents of the recording to the defense.***

Through her various pleadings, the defendant has asserted that the State of Tennessee was required to disclose the contents of the recording. For the reasons set forth below, the State disagrees.

a. The purported tape-recorded conversation between John Loach and Dana Cheatham-Pritchard is not discovery.

Discovery in Criminal cases is governed by Tennessee Rule of Criminal Procedure 16. The rule requires the disclosure of a defendant's oral statement; a defendant's written or recorded statement; the grand jury testimony of an employee or agent of an organization defendant; a defendant's prior record; documents and objects which are i) material to preparing a defense, ii) the government intends to introduce during its case-in-chief at trial, or, iii) the item was obtained from or belongs to the defendant; reports of examination or tests; and, all information subject to disclosure to a codefendant. Tenn. R. Crim. P. 16. Moreover, "Nor does this rule authorize discovery of statements made by state witnesses or prospective state witnesses." Tenn. R. Crim. P. 16(a)(2). The rule does not establish a right to pretrial discovery of statements by persons other than defendants; it only allows counsel to examine any prior statements made by a witness after the witness has testified. *State v. Williams*, 645 S.W.2d 258, 1982 Tenn. Crim. App. LEXIS 480 (Tenn. Crim. App. 1982).

Neither John Loach nor Dana Cheatham-Pritchard are defendants to this action. Moreover their purported conversation does not fall within the specifically enumerated types of statements which are subject to pretrial discovery. See Tenn. R. Crim. P. 16.

b. The purported tape-recorded conversation between John Loach and Dana Cheatham-Pritchard is not Jencks material.

"After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the state or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony." Tenn. R. Crim. P. 26.2; See also Tenn. Code Ann. § 40-17-120(a). The forerunner of Tenn. R. Crim. P. 26.2 is the 1957 United State Supreme Court opinion of *Jencks v. United States*, 353 U.S. 657 (1957). In that case the Court held that defense counsel has a right to inspect prior statements or reports by a government witness, following direct examination of the witness, to the extent that those reports or statements are related to the witness's testimony on direct examination, for the purpose of using them to prepare or conduct cross-examination. *Id.* at 672 ("We hold that the criminal action must be dismissed when the Government, on the ground of privilege, elects not to comply with an order to produce, for the accused's inspection and for admission in evidence, relevant statements or reports in its possession of government witnesses touching the subject matter of their testimony at the trial.").

Neither John Loach nor Dana Cheatham-Pritchard testified during the guilty-phase of the trial. Moreover, the contents of the recording to do not touch the subject

matter of any trial testimony. Therefore, disclosure was not required under Tenn. R. Crim. P. 26.2.

c. The purported tape-recorded conversation between John Loach and Dana Cheatham-Pritchard is not exculpatory.

The suppression of evidence favorable to the defendant is a due process violation where the evidence is material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

> The State's *Brady* obligations reach all "favorable information," regardless of its admissibility. *Jordan v. State*, 343 S.W.3d 84, 96 (Tenn. Crim. App. 2011). "Information that is favorable to the accused may consist of evidence that 'could exonerate the accused, corroborate[] the accused's position in asserting his innocence, or [contain] favorable information that would have enabled defense counsel to conduct further and possibly fruitful investigation regarding'" a potential defense. *Johnson v. State*, 38 S.W.3d 52, 56 (Tenn. 2001) (quoting *State v. Marshall*, 845 S.W.2d 228, 233 (Tenn. Crim. App. 1992)). Evidence which permits the defense to impugn the reliability of the State's investigation, impeach the credibility of witnesses, or bolster the defense's position amounts to favorable evidence. *Jordan*, 343 S.W.3d at 96.

State v. Roe, No. M2017-01886-CCA-R3-CD, 2018 Tenn. Crim. App. LEXIS 792, at *20 (Crim. App. Oct. 24, 2018). Evidence is "material" if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. *State v. Cureton*, 38 S.W.3d 64, 77 (Tenn. Crim. App. 2000) (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985)). "The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). A violation is established by showing that "the favorable evidence could reasonably be

taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.* at 435.

The defendant bears the burden of proving a *Brady* violation by a preponderance of the evidence. *State v. Edgin*, 902 S.W.2d 387, 389 (Tenn. 1995), as amended on rehearing (Tenn. July 10, 1995). In order to establish a violation based on the withholding of "favorable" evidence, the defendant must demonstrate that: (1) the defendant requested the information or that it was obviously exculpatory; (2) the State suppressed evidence in its possession; (3) the information was favorable to the accused; and (4) the information was material. *State v. Jackson*, 444 S.W.3d 554, 594 (Tenn. 2014). As the defendant states in her own brief, "...[E]vidence is favorable under Brady if 'it provides for grounds for the defense to attack the reliability, thoroughness and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks.'" Def. Motion p 8.

In the instant case, the defendant cannot argue that the tape exonerates the accused, corroborates her position in asserting her innocence, or contains favorable information that would have enabled defense counsel to conduct further and possibly fruitful investigation regarding a potential defense. See *Roe*, 2018 Tenn. Crim. App. LEXIS 792, at *20. For this reason, the tape is not *Brady* material. The defendant is not entitled to relief on this basis.

VIII. **Disqualification of District Attorneys, Generally**.

The disqualification of government attorneys is governed by Rule of Professional Conduct 1.11. *State v. Orrick*, No. M2017-01856-CCA-R9-CD, 2018 WL 4961414, at *9

(Tenn. Crim. App. Oct. 15, 2018) (no perm. app. filed). Under this rule, a lawyer serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7 and protections afforded former clients in Rule 1.9. Tenn. Sup. Ct. R. 8 ("RPC") § 1.11(d)(1) & cmt. 1. Relevant here, Rule 1.7 provides that a concurrent conflict of interest exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." RPC 1.7(a)(2).

For the reasons set forth below, disqualification of District Attorney Crump is unwarranted.

a. Defendant's "Appearance of Impropriety" argument is insufficient grounds to disqualify District Attorney Crump.

i. "Appearance of impropriety" disqualification applies only the practice of law which entangles current and former clients.

Defendant cites as grounds for disqualification the, "Strong appearance of impropriety [which] exists in this case " Def. Motion p 9. The defendant cites as authority the case of *Clinard v. Blackwood*, 46 S.W.3d 177 (Tenn. 2001), to support his argument that disqualification is mandated. The defendant also relies on Tenn. R. Prof. Conduct 1.10 to justify District Attorney Crump's disqualification. However contrary to defendant's assertion, "The 'appearance of impropriety' standard existing under the Code of Professional Responsibility has not been retained in these rules." Tenn R. Prof. Conduct 1.10, cmt. 9. Further the notes to Rule 1.10 specifically reference to the *Clinard* opinion. The rules explain,

> In that case, the Tennessee Supreme Court held that screening mechanisms were generally not effective to avoid imputed disqualification of a law firm when a lawyer was perceived as "switching teams" in the course of pending litigation. Although the holding of *Clinard* was grounded in the prior standard from the Code of Professional Responsibility guarding against the "appearance of impropriety," the Court also noted that its holding was necessary to further lawyer-client communications and to avoid the impression that the judiciary favors considerations of lawyer mobility over those of client confidentiality. Consequently, the *Clinard* rule continues under the present Rules. As was the case in *Clinard*, this narrow exception to paragraph (c) will vicariously disqualify the law firm only when the interests of a client of that firm are presently and directly adverse with those of a person who was formerly represented in substantial part by the disqualified lawyer.

Id. Additionally, as previously discussed above, Tenn. Sup. Ct. R. 8 ("RPC") § 1.11 governs the disqualification of government attorneys – not § 1.10.

In generally determining attorney disqualification issues, the Rules of Professional Conduct specifically reject the appearance of impropriety standard in favor of a "function approach," concentrating on preserving confidentiality and avoiding positions actually adverse to the client. *State v. Dimaplas*, 978 P.2d 891, 894 (Kan. 1999); *Johnson v. State*, 61 P.3d 1234, 1243 (Wyo. 2003). The Tennessee Appellate Courts have recognized as much. See *State v. Casteel*, No. E2003-01563-CCA-R3-CD, 2004 WL 2138334, at *16 (Tenn. Crim. App. Sept. 24, 2004) ("Neither Rule 1.10 or 1.11 adopts an appearance of impropriety standard."), perm. app. denied (Tenn. Dec. 28, 2004); see also *State v. Tipton*, No. E2004-01278-CCA-R3-CD, 2005 WL 2008178, at *6 (Tenn. Crim. App. Aug. 22, 2005) ("the appearance of impropriety is not the central concern"), perm. app. denied (Tenn. Jan. 30, 2006).

Like Tennessee, the North Carolina Rules of Professional Conduct conflicts of interests similarly omits the "appearance of impropriety" standard. The North Carolina

Supreme Court in *State v. Camacho*, 329 N.C. 589 (1991), rejected the notion that a trial court has broad authority to remove a District Attorney from his or her prosecutorial role based on a perceived conflict of interest. District Attorneys are, as the court noted, special constitutional officers and Courts must, "make every possible effort to avoid unnecessarily interfering with the District Attorneys in their performance of such duties." *Camacho*, 329 N.C. at 595. More recently, the North Carolina Court of Appeals held, "a prosecutor may not be disqualified from prosecuting a criminal action in this State unless and until the trial court determines that an *actual conflict of interests exists*," [emphasis added]. *State v. Smith*, 813 S.E.2d 867, 870 (N.C. Ct. App. 2018) (quoting *Camacho*, 329 N.C. at 601-02). "The Court defined 'an actual conflict of interests' as arising when 'a District Attorney or a member of his or her staff has previously represented the defendant with regard to the charges to be prosecuted and, as a result of that former attorney-client relationship, the prosecution has obtained confidential information which may be used to the defendant's detriment at trial.'" Id. at 870 (quoting Camacho, 329 N.C. at 601).

Therefore, both District Attorney Crump, and his office, "are not subject to the *Clinard per se* disqualification rule based upon the appearance of impropriety." *State v. Orrick*, 592 S.W.3d 877, 889 (Tenn. Crim. App. 2018).

ii. The facts of the case do not justify a disqualification under the "old rules."

The State asserts that even with the application of the former Code of Prof. Conduct cited in defendant's Motion, the totality of the proof is insufficient to disqualify District Attorney Crump from the case at bar. Under the former Code, to determine

whether to disqualify a prosecutor in a criminal case, the trial court must first determine whether there is an actual conflict of interest. See Tenn. R. Sup.Ct. 8, EC 5-1. This analysis included any circumstances in which an attorney cannot exercise his or her independent professional judgment free of, "compromising interests and loyalties." *Id.*

If the Court's analysis failed to reveal any *actual* conflict of interest, the former Code of Prof. Conduct directed Courts to consider whether the circumstances created an "appearance of impropriety." See Tenn. R. Sup.Ct. 8, EC 9-1, 9-6. The defendant dedicates a sizable portion of her Motion to Disqualify to the argument that "A strong appearance of impropriety exists." Def. Motion, p 9.

> If disqualification is required under either theory, the trial court must also determine whether the conflict of interest or appearance of impropriety requires disqualification of the entire District Attorney General's office... The determination of whether to disqualify the office of the District Attorney General in a criminal case rests within the discretion of the trial court. Appellate review of such a ruling is limited to whether the trial court has abused its discretion.

State v. Culbreath, 30 S.W.3d 309, 312-313 (Tenn. 2000) (citing *State v. Tate*, 925 S.W.2d 548, 550 (Tenn.Crim.App.1995)). In *Watson v. Ameredes*, the Court of Appeals explained that,

> . . . [E]xcept in the rarest of cases, the appearance of impropriety alone is "simply too slender a reed on which to rest a disqualification order." To warrant disqualification, a lawyer's conflict of interest must tend to taint the trial's fairness either by undermining the court's confidence in the attorney's ability to vigorously represent the client or by creating a reasonable concern that the attorney will give the present client an unfair advantage by using otherwise privileged information obtained while employed by the former client.

Watson v. Ameredes, C.A. No. 03-A-01-9704-CV-00129, 1997 Tenn. App. LEXIS 884, at *12-13 (Ct. App. Dec. 10, 1997) (Citing *Board of Education v. Nyquist*, 590 F.2d

1241, 1246-47 (2nd Cir. 1979). See also, *State v. Bender*, 598 So. 2d 629, 633-34 (La. Ct. App. 1992) ("Concerning the issue of the personal friendship of the district attorney and the victim, the evidence presented by defendant at the hearing on this motion did not establish by a preponderance of the evidence that victim and the district attorney were close personal friends. When questioned about the extent of his friendship with the victim, the District Attorney testified that he did not socialize with the victim, except at functions such as the Sheriff's Christmas party.").

Applying the *Watson* analysis, the Defendant cannot, and does not, explain how an *unproven and denied* affair tainted the trial's fairness either by undermining the court's confidence in District Attorney Crump's ability to vigorously represent the State of Tennessee. *Watson,* 1997 Tenn. App. LEXIS 884, at *12-13. Furthermore, the defendant fails to explain how the *unproven and denied* allegation tainted the trial's fairness by creating a reasonable concern that District Attorney Crump will give the State of Tennessee an unfair advantage by using otherwise privileged information obtained while employed by Dana Cheatham-Pritchard. *Id.* The State argues that even if the purported affair in 2012 was true, the defendant would still fail under the *Watson* analysis. *Id.*

As the 5th Circuit Court of Appeals noted, "We emphasize that an attorney need not be disqualified even where there is a reasonable possibility of improper professional conduct. As we have seen, a court must also find that the likelihood of public suspicion or obloquy outweighs the social interests which will be served by a lawyer's continued participation in a particular case. Under Canon 9, an attorney should be disqualified

only when both of these standards have been satisfied." *Woods v. Covington Cty. Bank*, 537 F.2d 804, 813 n.12 (5th Cir. 1976).

The defendant is not entitled to relief.

b. There does not exist a conflict which disqualifies District Attorney Crump from representing the State of Tennessee in this matter.

i. Ownership interest in a title company is not the practice of law.

Defendant asserts in her Motion to Disqualify that, "District Attorney Steve Crump continued to practice law," on behalf of Dana Cheatham-Pritchard. Defendant references two deeds which are submitted as Exhibit 3 and Exhibit 4 of her Motion to Disqualify. The defendant further states, "In fact D.A. Crump is statutorily prohibited from the very behavior he has engaged in. District attorneys may not in any private capacity represent individuals, because while they are serving as district attorneys general they may not practice law in any other capacity. See T.C.A. 8-7-104."

Defendant's assertion is incorrect. Tenn. Code Ann. § 8-7-104 states, "District attorneys general are prohibited from engaging in the practice of law." Simply put, title work is not the "practice of law." The practice of law is defined twice in Tennessee law and both definitions contain an element of representation or advocacy.

> Under the Tennessee Unauthorized Practice of Law statutes, the "practice of law" means: the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services. Tenn. Code Ann. § 23-3-101(2) (emphasis added).

> The Tennessee Supreme Court Rules define the practice of law for purposes of determining who must pay certain periodic assessments. This definition states: the term, "the practice of law" shall be defined as any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy , in or out of court, rendered in respect to the rights, duties, regulations, liabilities or business relations of one requiring the services. It shall encompass all public and private positions in which the attorney may be called upon to examine the law or pass upon the legal effect of any act, document or law. Tenn. Sup. Ct. R. 9, § 20.2(e) (emphasis added).

2006 Tenn. AG LEXIS 88, *2-3. "The plain language of both definitions contemplate action in a representative capacity, either as an advocate for the interests of another or as a counselor concerning a client's rights, obligations or affairs." *Id.* at *3; See also *Ticor Title Ins. Co. v. Smith*, 794 S.W.2d 734, 738 (Tenn. Ct. App. 1990) ("The statute is clear that non-attorneys may engage in the title insurance business without engaging in the practice of law."); *Bar Ass'n. of Tenn., Inc. v. Union Planters Title Guar. Co.*, 326 S.W.2d 767 (1959); *State v. Retail Credit Men's Ass'n.*, 43 S.W.2d 918 (1931). Rather, "A real estate title company provides a law related service and therefore lawyers must adhere to RPC 5.7(a) with regard to their responsibilities regarding law related services." 2017 TN Legal Ethics Ops. LEXIS 2, *6. "The lawyer should communicate in writing to the person using the law-related service the significance of the fact that the provision of the law related service will **not create a client-lawyer relationship**." *Id.* at *7 [emphasis added]. The Board of Professional Responsibility's opinion is consistent with other jurisdictions who have held that title insurance companies may review the status of title to real property as a condition precedent to the insurance of title insurance policy without engaging in the practice of law. *See, e.g.*, *Cooperman v. West Coast*

Title Co., 75 So. 2d 818 (Fla. 1954); *La Brum v. Commonwealth Title Co.*, 358 Pa. 239, 56 A.2d 246 (1948); *Florida Bar v. McPhee*, 195 So. 2d 552 (Fla. 1967).

> "Lawyers have historically engaged in law related activities by operating non-lawyer entities. Some of the law related ventures or ancillary businesses operated, and law related services provided, by lawyers are real estate title companies/agencies, real estate closing companies/agencies, trust/escrow services, brokerage firms, lending institutions, collection companies/agencies, arbitration/mediation services, management/business consulting, tax/financial planning, lobbying, real estate development, environmental consulting, etc."

1994 TN Legal Ethics Ops. LEXIS 24, *1.

In light of the above, District Attorney Crump did not engage the practice of law. Rather, Crump & Richardson, PLLC engaged in a law-related activity.

ii. The alleged relationship between District Attorney Crump and Dana Cheatham-Pritchard does not create a conflict of interest.

Defendant in her motion asserts that, "A clear conflict of interest exists in this case..." Def. Motion p 6. However, as defense counsel points, out, "An actual conflict of interest is usually defined in the context of one attorney representing two or more parties with divergent interests." *State v. Tate*, 925 S.W.2d 548, 552-53 (Tenn. Crim. App. 1995). The defendant does not elaborate as to how the decision to prosecute Ms. Cheatham, was, "helpful to one client but harmful to the other." *Id.* At 553 (citation omitted). Additionally, the defendant's bare allegation is not sufficient to establish a conflict of interest. See, e.g., *Armstrong v. State*, No. W2007-00703-CCA-R3-PC, 2007 Tenn. Crim. App. LEXIS 874, at *23 (Crim. App. Nov. 19, 2007)("The Petitioner's bare allegation of a conflict of is not enough to establish that counsel 'actively represented

conflicting interests'"). For this reason, the defendant has failed to make the requisite showing of proof.

c. Assertion that disqualification of Stephen D. Crump would require disqualification of the entire office.

"'The disqualification of Government counsel is a drastic measure and a court should hesitate to impose it except where necessary.'" *United States v. Bolden*, 353 F.3d 870, 878 (10th Cir. 2003) (quoting *Bullock v. Carver*, 910 F. Supp. 551, 559 [D. Utah 1995]). Such a disqualification raises two concerns: the separation of powers issues and the incentive to remove certain prosecutors from a case. Recognizing the significant separation of powers issues implicated by such judicial action, the federal appeals courts have uniformly reversed the disqualification of an entire United States Attorney's Office. See *Bolden*, 353 F.3d at 879. "[E]very circuit court that has considered the disqualification of an entire United States Attorney's office has reversed the disqualification." *Id.* The second concern raised by such an action is that disqualifying an entire prosecutor's office could incentivize defendants to remove a prosecutor by the use of threats, jeopardizing the administration of justice. "[I]f the disqualification of one government attorney could serve as the predicate for the disqualification of the entire United States Attorney's Office, the administration of justice would be irreparably damaged." *Grand Jury Subpoena of Ford v. United States*, 756 F.2d 249, 254 (2d Cir. 1985). Such a pattern of conduct to disqualify specific attorneys has been attempted locally in the matters of *State of Tennessee v. John Underwood* (Defendant assaulted an Assistant District Attorney in Court) and *State of Tennessee v. Bryan Erwin* (Defendant mailed copies of his handgun carry permit to an Assistant District Attorney's

wife at the marital residence). "It is well within trial counsel's authority to refrain from seeking recusal if he did not professionally [feel] that anything could be gained or that said disqualification was justified." *Lipton v. State*, No. E2019-01037-CCA-R3-PC, 2020 Tenn. Crim. App. LEXIS 410, at *16 (Crim. App. June 15, 2020).

Indeed, The Court of Criminal Appeals has never affirmed the disqualification of an entire District Attorney General's office since the March 1, 2003 adoption of Rule of Professional Conduct 1.11, the provision governing conflicts of interest for government attorneys. See *State v. Woodard*, No. E2017-02307-CCA-R10-CD, 2019 WL 454276, at *3 (Tenn. Crim. App. Feb. 5, 2019) (office not disqualified for defendant's having been an intern there); *State v. Orrick*, --- S.W.3d ---- No. M2017-01856-CCA-R9-CD, 2018 WL 4961414, at *10-11 (Tenn. Crim. App. Oct. 15, 2018) (office not disqualified for employing attorney who had previously represented defendant in bail proceeding); *State v. Sisco*, No. M2017-01202-CCA-R3-CD, 2018 WL 1019870, at *9-10 (Tenn. Crim. App. Feb. 21, 2018) (office not disqualified where an attorney who previously represented the Defendant in another county in a matter involving a different daughter was now employed as an assistant district attorney); *State v. Odum*, No. E2017-00062-CCA-R3-CD, 2017 WL 5565629, at *8 (Tenn. Crim. App. Nov. 20, 2017) (office not disqualified where attorney represented codefendant at preliminary hearing in private practice and subsequently took a position with the District Attorney's Office); *Rose v. State*, No. E2015-00768-CCA-R3-PC, 2016 WL 3215682, at *4 (Tenn. Crim. App. June 2, 2016) (office not disqualified in post-conviction proceeding where prosecutor delayed disclosure of notes at trial); *State v. Askew*, No. M2014-01400-CCA-R3-CD, 2015 WL 9489549 at *5 (Tenn. Crim. App. Dec. 29, 2015) (office not disqualified where

prosecutor had interviewed defendant in preparation for its case against third party); *State v. Kennedy*, No. E2013-00260-CCA-R3-CD, 2014 WL 3764178, at *68-71 (Tenn. Crim. App. July 30, 2014) (office not disqualified on account of allegation that prosecutor withheld discoverable and exculpatory evidence); *State v. Teats*, No. M2012-01232-CCA-R3-CD, 2014 WL 98650, at *17 (Tenn. Crim. App. January 10, 2014) ("a criminal defendant cannot create a conflict of interest (or an appearance of impropriety) requiring the disqualification of a prosecutor's office simply by filing a federal lawsuit against the office and its members"); *Rawlins v. State*, No. M2010-02105-CCA-R3-PC, 2012 WL 4470650, at *13 (Tenn. Crim. App. September 27, 2012) (no ineffective assistance of counsel for failing to preserve disqualification issue where screening mechanisms were sufficient to ensure that no prejudice resulted to the petitioner); *State v. Bush*, No. M2010-00186-CCA-R3-CD 2011 WL 2848266, at *14-15 (Tenn. Crim. App. July 18, 2011) (office not disqualified where district attorney investigated claim on Criminal Injuries Compensation Fund); *Nelson v. State*, No. M2009-02166-CCA-R3-PC, 2011 WL 208386, at *6 (Tenn. Crim. App. Jan. 12, 2011) (no ineffective assistance of counsel for failing to move for disqualification of office on grounds that district attorney had represented the petitioner in a previous drug case); *State v. Bartlett*, No. M2008-02408-CCA-R3-CD, 2010 WL 3488234, at *10 (Tenn. Crim. App. Sept. 7, 2010) (office not disqualified where defendant filed civil rights action against prosecutors); *State v. Owens*, No. E2007-02296-CCA-R3-CD, 2009 WL 4931340, at *21 (Tenn. Crim. App. Dec. 22, 2009) (office not disqualified where Assistant District Attorney was a witness to a taped interview of witness and refused witnesses' request for immunity); *State v. Ownby*, No. M2007-01367-CCA-R3-CD, 2009

WL 112582, at *10 (Tenn. Crim. App. Jan. 14, 2009) (office not disqualified where assistant district attorney questioned defendant during the criminal investigation); *State v. Clinard*, No. M2007-00406-CCA-R3-CD, 2008 WL 4170272, at *5 (Tenn. Crim. App. Sept. 9, 2008) (office not disqualified where a former assistant district public defender obtained a position as an assistant district attorney general during the pendency of the defendant's case); *State v. Graham*, No. E2005-02937-CCA-R3-CD, 2008 WL 199851, at *7 (Tenn. Crim. App. Jan. 24, 2008) (office not disqualified where defendant and two assistant district attorneys were associated with the same civic organization); *Morris v. State*, No. W2005-00426-CCA-R3-PD 2006 WL 2872870, at *41 (Tenn. Crim. App. Oct. 10, 2006) (office not disqualified where assistant district attorney had represented defendant on prior drug charge); *State v. Noble*, No. E2005-00011-CCA-R3-CD 2006 WL 317005, at *7 (Tenn. Crim. App. Feb. 10, 2006) (office not disqualified where defendant alleged that prosecutors would become material witnesses at trial if the presentment were not dismissed); *State v. Tipton*, No. E2004-01278-CCA-R3-CD 2005 WL 2008178, at *6 (Tenn. Crim. App. Aug. 22, 2005) (office not disqualified where defense counsel began employment with district attorney's office).

Similarly, no federal court of appeals has ever upheld the disqualification of an entire United States Attorney's office. See *United States v. Bolden*, 353 F.3d 870, 875 (10th Cir. 2003); *United States v. Whittaker*, 268 F.3d 185, 196 n.6 (3d Cir. 2001); *United States v. Caggiano*, 660 F.2d 184, 190-91 (6th Cir. 1981); see also *United States v. Hasarafally*, 529 F.3d 125, 128 (2d Cir. 2008) ("While a private attorney's conflict of interest may require disqualification of that attorney's law firm in certain cases, ... such an approach is not favored when it comes to the office of a United States Attorney....");

United States v. Radosh, 490 F.3d 682, 686 (8th Cir. June 25, 2007) (noting "strong precedent . . . contrary" to the "drastic action" of disqualifying entire US Attorney's office, but holding that appellant had failed to preserve the issue); *United States v. Silva-Rosa*, 275 F.3d 18, 22 (1st Cir. 2001) ("In essence, then, appellants are asking this Court to dictate to the executive branch whom it can appoint to serve as its prosecutors. Such a position would expand the power of judicial officials to such a degree as to trigger weighty separation of powers concerns."); *United States v. Hoapili*, Nos. 91-10448 to 91-10450, 1992 WL 379398, at *1 (9th Cir. Dec. 17, 1992) (testimony by members of a U.S. Attorney's Office does not disqualify the entire office); *United States v. Goot*, 894 F.2d 231, 236-37 (7th Cir. 1990) (rejecting implication of prejudice to defendant, citing *Caggiano*, and holding that screening measures were sufficient to avoid disqualification of entire USA's office); *United States v. Heldt*, 668 F.2d 1238, 1278 (D.C. Cir. Oct. 2, 1981) (affirming district court's refusal to disqualify all prosecutors in the office of the United States Attorney for the District of Columbia, and requiring a showing of actual prejudice).

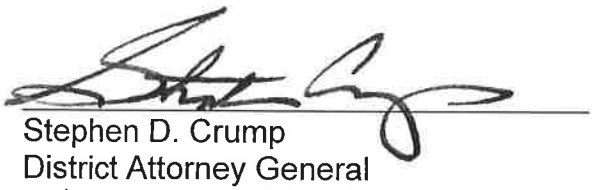
The Tennessee Supreme Court's decision in *State v. Culbreath*—a case decided before the adoption of the Rules of Professional Conduct—furnishes the rare exemplar of a constitutionally permissible office-wide disqualification. In *Culbreath*, a private prosecutor received $410,931.87 from a special interest group. 30 S.W.3d at 312. While noting the "unique office" held by the District Attorneys, the Supreme Court imputed the private prosecutor's actual conflict of interest to the entire office. *Id.* at 314, 317. It did so because the District Attorney was aware of the conflict, attended a fund-raiser with the private prosecutor which stressed the necessity of continuing

prosecutions of the kind at issue in the case, and made the decision to seek the criminal indictments against the defendants. *Id.* at 317. Additionally, the private prosecutor had "daily working involvement" with several other members of the office. *Id.* at 316. It was this constellation of features—a practice fundamentally inimical to the fair administration of justice, a personal taint on the elected official, and a conflict that suffused both the institution and maintenance of the litigation—that convinced the Court the integrity of the judiciary was at stake.

WHEREFORE, premise considered, the State of Tennessee asks the Court to enter and Order DENYING the defendant's Motion styled, "Defendant's Motion to Disqualify the 10th Judicial District Attorney General's Office from any Further Involvement In the Matter of Miranda Cheatham."

FURTHER, the State has filed along with this response a Motion in Limine seeking to require Amy Reedy to testify to the matters described above. The State reserves the right to amend this response based upon the Court's ruling on that motion.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion has been served upon all parties of interest to this action by:

_____ Hand delivery;
_____ United States Mail with sufficient postage;
__✓__ Email with subsequent mailing; or,

William Speak
Speek, Turner & Newkirk, PLLC
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kristin@speekandwebb.com

_____ Facsimile with subsequent mailing.

This the 1st day of September, 20 20.

Office of the District Attorney General