

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

STATE OF MISSISSIPPI

VS.

NO. 16-0-837

**ROBERT SCHULER SMITH and
JAMIE K. MCBRIDE**

DEFENDANTS

**CO-DEFENDANT, JAMIE K. MCBRIDE'S MOTION AND DEMAND FOR
THE MISSISSIPPI ATTORNEY GENERAL'S WRITTEN PETITION REQUESTING
THE IMPANELMENT OF THE GRAND JURY**

COMES NOW, Co-Defendant, Jamie K. McBride, by and through Dale Danks, Jr., his attorney of record and files this his Motion and Demand for the Mississippi Attorney General to provide to such Co-Defendant a copy of the written petition relied upon by the Mississippi Attorney General to have the Grand Jury empaneled in the within Cause, and would show unto this honorable Court the following, to-wit:

1. On September 7, 2016, a Grand Jury, convened in Hinds County, Mississippi, returned a two count indictment against Co-Defendant, Jamie K. McBride, alleging that said Co-Defendant did commit the crimes of conspiracy and hindering prosecution in violation of §97-1-1 and 97-9-105 of the Mississippi Code of 1972. The within Cause was presented to the Grand Jury by the Mississippi Attorney General's Office and the Mississippi Attorney General is prosecuting the within matter.

2. The Mississippi Supreme Court held in *Williams v. State*, 184 So.3d 908 (Miss. 2014) that [n]either Mississippi's Constitution nor its common law permits the involuntarily disqualification of a duly elected district attorney from the lawful performance of his duty and the substitution of the attorney general in the district attorney's place and stead . . .” *Id.* 314-16. The District Attorney for Hinds County, Mississippi is the only State official authorized to represent the State and to present evidence to a Hinds County Grand Jury. “It shall be the duty of the district attorney to represent the state in all matters coming before the grand juries of the counties within his district . . .” § 25-31-11 (1) Miss. Code Ann.. While the Mississippi Attorney General can provide

assistance to the local district attorney under certain circumstance under §7-5-53 Miss. Code Ann., the Mississippi Attorney General may not usurp the independent discretion over criminal prosecutions which statutorily has been vested in local district attorneys. *Williams* at 314.

3. In the case at bar, the Hinds County District Attorney did not call for a Hinds County Grand Jury to be empaneled for the purpose of indicting himself and one of his legal assistants, Co-Defendant Jamie K. McBride. The only authority the Mississippi Attorney General has to empanel a grand jury, independent of the local district attorney, is proscribed under the Mississippi State Grand Jury Act, § 13-7-1 *et seq.* The Mississippi State Grand Jury Act requires:

Whenever the Attorney General considers it necessary, and normal investigative or prosecutorial procedures are not adequate, the Attorney General may petition in writing to the senior circuit court judge of any circuit court district in this state for an order impaneling a state grand jury. For the purposes of this chapter, such judge shall be referred to as the impaneling judge. The petition must allege the following:

- (a) The type of offenses to be inquired into;
- (b) That the state grand jury has jurisdiction to consider such matters;
- (c) That **the offenses to be inquired into have occurred within more than one (1) circuit court district** or have transpired or are transpiring or have significance in more than one (1) circuit court district of this state;
- (d) That the Attorney General has conferred with the Commissioner of Public Safety and the Director of the Mississippi Bureau of Narcotics and that each of such officials join in the petition; and
- (e) **That the Attorney General has conferred with the appropriate district attorney** for each jurisdiction in which the crime or crimes are alleged to have occurred.

§ 13-7-7 (2) Miss. Code Ann. (Emphasis Added) (Exhibit A).

4. Nothing in the Indictment in the within Cause suggests that Co-Defendant, Jamie K. McBride, committed any alleged crimes in more than one circuit court jurisdiction. Also, on information and belief, the Mississippi Attorney General never consulted with the Hinds County

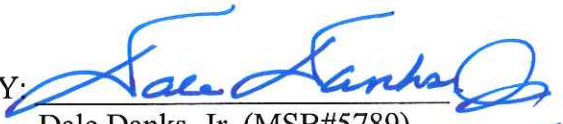
District Attorney concerning the impanelment of the grand jury that returned the Indictment in the within Cause, as required by § 13-7-7 (2) Miss. Code Ann..

5. Co-Defendant, Jamie K. McBride, herein challenges the legality of the grand jury, empaneled by the Mississippi Attorney General which returned the Indictment against him in the within Cause and as a consequence thereof request and demands that a copy of the written petition, submitted by the Mississippi Attorney General to this Court for the impanelment of said grand jury, be produced to him in order to aid his defense to the same.

WHEREFORE, premises consider, Co-Defendant, Jamie K. McBride respectfully requests this Court to Order the Mississippi Attorney General to immediately provide to Co-Defendant, Jamie K. McBride, a copy of the written petition utilized by the Mississippi Attorney General to have the grand jury, that returned the Indictment in this Cause, empaneled.

Respectfully submitted,

JAMIE K. MCBRIDE, Defendant

BY: 
Dale Danks, Jr. (MSB#5789)
Counsel for the Defendant

OF COUNSEL

Dale Danks, Jr. (MSB# 5789)
DANKS, MILLER & Cory
213 South Lamar Street
Jackson, Mississippi (39201)
Post Office Box 1759
Jackson, Mississippi 39215-1759
Telephone: 601.957.3101
Facsimile: 601.957.3160

CERTIFICATE OF SERVICE

I, Dale Danks, attorney for Jamie K. McBride, do hereby certify that I have this day caused to be served by filing with the Clerk of the Court via the ECF/MEC system, a true and correct copy of the above and foregoing, Co-Defendant, Jamie McBride's, Motion and Demand for the Production of the Written Petition Relied upon by the Mississippi Attorney General to have the Grand Jury Empaneled in the within Cause, to:

Robert G. Anderson, Esq.
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205-0220
rande@ago.state.ms.us

So certified this the 5th day of October, 2016.


Dale Danks, Jr.