



IN THE CIRCUIT COURT OF LIMESTONE COUNTY

STATE OF ALABAMA,

PLAINTIFF,

vs.

CASE NO. CC19-476

BLAKELY, MICHAEL ANTHONY,

DEFENDANT.

AMENDED MOTION FOR NEW TRIAL

Comes now the Defendant, by and through undersigned Counsel and moves this Honorable Court for a New Trial. As grounds Defendant states as follows:

1. The Trial Court erred by closing the courtroom to spectators and the media for a day and a half during voir dire thus violating the Defendant's constitutional right to a public trial.

2. The Trial Court erred by denying the Defendant's Motion to Dismiss Count 2 of the indictment. The State alleged that the Defendant violated the Fair Campaign Practices Act but did not charge the defendant under the FCPA. Even though the FCPA has its own penalty section for violations, the State charged the Defendant with common law theft of property.

3. The Trial court erred by denying the Defendant's Motion to Dismiss Count 2 due to a violation the Statute of Limitations. The State alleged that the Defendant violated the Fair campaign Practices Act but charged the Defendant with common law theft. The statute of limitation for violating the FCPA is two years.

4. The Trial Court erred in acting without jurisdiction by allowing the State to improperly charge a violation of the Fair Campaign Practices Act as common law theft of property in Count 2. Only the Alabama Legislature can create a crime.

5. The Trial Court erred in denying the Defendant's Motion for a Mistrial Regarding the testimony of Trent Willis. In spite of numerous requests by the Defendant, the State withheld the fact that Trent Willis was under investigation for the theft of nearly \$100,000 from the campaign funds of a candidate for State office. The State revealed the investigation after Trent Willis had testified for the State but before he was cross examined by the Defendant's attorneys. This was a blatant Brady Violation and effort by the State to thwart effective cross examination of Trent Willis by having Willis advised of his Miranda rights just prior to being cross examined. This action by the State was Prosecutorial Misconduct. The Trial court failed to offer a remedy for this conduct.

6. Then trial Court erred by allowing witness Rawlston to testify as an expert witness over

objection and without proper foundation.

7. The Trial Court erred by allowing witness Rawlston to testify regarding the process followed by the Alabama Ethics Commission in handling an ethics complaint.

8. The Trial Court erred by allowing witness Rawlston to testify about State's exhibits and dates associated with the exhibits that were outside his knowledge.

9. The Trial Court erred by granting an objection by the State regarding the testimony of witness Plunk. Plunk was a member of the Ethics Commission and was called to rebut the testimony of witness Rawlston.

10. The Trial Court erred by allowing e-mails written by Trent Willis to be authenticated and admitted as evidence through the testimony of Investigator Stewart even though Stewart did not write or receive the e-mails in question.

11. The Trial Court erred in giving the jury an Allen Charge when they announced that they were hopeless deadlocked on two counts.

12. The Trial Court erred in denying the Defendant's Motion for a mistrial over Juror Pentacost's assertion that she was not in agreement with the other jurors and the verdict was not unanimous as required by law. The Trial Court further erred in neglecting to hold a hearing and evaluate Juror Pentacost's assertions set out in her affidavit to determine whether a true unanimous verdict was reached, as required by law

13. The Trial Court erred in its application of the Sentencing Guidelines in sentencing the Defendant to serve 36 months in custody.

14. The Trial Court erred in allowing the State to interject various aggravators into the sentencing by way of a sentencing memorandum filed after the verdict but before sentencing in violation of the rule requiring aggravators to be plead 7 days prior to the start of trial.

15. The Trial Court erred by allowing the State to improperly interject aggravators that are elements of the offense in violation of law.

16. The Trial Court erred by allowing evidence to be presented under the auspices of 404(b) that was too remote in time and too far removed from the facts and issues of the case to be relevant.

17. The Court erred by allowing the State to introduce 404(b) evidence that was more prejudicial than probative in violation of the Alabama Rules of Evidence.

18. The Trial Court erred by not granting the Defendant's motion to dismiss counts 1-5 of the indictment. Specifically, the Court erred in allowing the jury to hear testimony and receive evidence contrary to the law with the resulting effect being unreasonable prejudice to the Defendant and poisoning of the jury through repeated testimony and argument over matters that were confusing

and matters from outside the trial of the case that the jury should not have been privy to.

19. The Trial Court erred in refusing to grant the Defendant's two Motions for Judgment of Acquittal in that the State failed to prove that monies taken from any account within the Sheriff's Department were not used "in furtherance of law enforcement".

20. The Trial Court erred by sentencing the Defendant to a custodial sentence in consideration of aggravators without stating the reasons in open court and in a sentencing order.

21. The Trial Court erred by allowing Jasper Roberts, an attorney of record for the State of Alabama, Attorney General's Office, to testify regarding an issue in the case.

22. The Trial Court erred in ruling that the State had not given witness Trent Willis a deal or inducement in exchange for testimony in that not prosecuting Trent Willis for Theft of Property 1st Degree for two years until after he testified in the trial at hand is leniency likely to influence his testimony at trial.

23. The State failed to prove a prima facie case in regards to Counts Two and Thirteen in that there was no proof that any money was missing.

24. The Trial Court erred in excluding parts of expert witness Steve Raby's testimony after the testimony was heard by the jury and by giving a limiting instruction regarding the same.

25. The Trial Court erred in not declaring a mistrial due to witness intimidation by the State or agents of the State.

26. The State committed prosecutorial misconduct through overt and continuous efforts by the prosecution to confuse the jury by referencing local, county and state laws over objection.

27. The State committed prosecutorial misconduct by invading the province of the Court, over objection, and improperly commenting on the law.

28. The State committed prosecutorial misconduct by interjecting their personal feelings about the evidence and bolstering their witnesses.

29. The verdict is contrary to the great weight of evidence.

30. The verdict is contrary to law.

31. The conviction is contrary to law and evidence.

32. The evidence produced at trial is insufficient to support a finding of defendant's guilt beyond a reasonable doubt.

33. The evidence produced at trial is insufficient to support a verdict.

34. The judgment of the Court is contrary to the law.
35. The Court erred by overruling the separate and several objections of defendant during the trial.
36. The Court erred by sustaining the separate and several objections of the State made during trial.
37. The Court erred in its rulings as to the admissibility of testimony at trial.
38. The Court erred in its ruling on the admissibility of evidence presented at the trial of this case.
39. The Court erred by overruling Defendant's motions to suppress evidence presented at trial.
40. The Court erred by failing to sustain each and every objection made by the defendant during the course of the trial.
41. The Court erred by failing to sustain each and every motion made by defendant before, during and after trial.
42. The Court erred by denying defendant's motions for mistrial.
43. The trial court erred by refusing to give each and every jury instruction requested by the defendant.
44. Defendant's sentence is in violation of State and Federal constitutional provisions.
45. The court erred by allowing the prosecutor to repeatedly interject his personal views into the trial, to vouch for the credibility of witnesses and evidence and give his opinion as to the strength of certain evidence.
46. The Trial Court erred in allowing the State's visual aids to be sent to the jury room during deliberations.
47. The Trial Court erred in allowing the Court Clerk to excuse potential jurors without the Court's knowledge of the reason or the Court's approval of the excuse.
48. The Defendant adopts, re-asserts and incorporates herein by reference as if set out in full, all previous motions to dismiss or motions for mistrial whether written or oral.
49. Even though the Defendant was convicted of Theft 1st Degree, the Trial Court refused to order that the Defendant pay restitution. The State failed to prove that the Defendant acted with

an “intent to deprive” as required by law.

50. The Defendant requests a hearing and oral argument.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order for hearing for Motion for New Trial due to all aforementioned stipulated bases.

Dated this 30th day of August, 2021.

/s/ Robert B. Tuten

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CERTIFICATE OF SERVICE

This document has been filed electronically and served upon opposing counsel pursuant to the Administrative Procedure for Filing Signing and Verifying Documents by Electronic Means in the Alabama Judicial System. For any opposing counsel or unrepresented parties who are not registered to file electronically, a copy of this pleading shall be served via the U.S. mail, postage pre-paid, to the litigant’s address as maintained in the office of the Circuit Clerk.

Done this 30th day of August, 2021.

/S/ Robert B. Tuten

ROBERT B. TUTEN