

**IN THE CHANCERY COURT FOR ROBERTSON COUNTY, TENNESSEE
AT SPRINGFIELD**

FILED
CLERK & MASTER ROBERTSON CO, TN

NOV 15 2006

AT _____ O'CLOCK _____ M
BY KENNETH HUGGINS _____

STATE OF TENNESSEE, Upon the
Relation of John W. Carney, Jr.,
District Attorney General for the
Nineteenth Judicial District of Tennessee,
Plaintiff,

vs.

DANNY J. CROSBY,
Defendant.

Docket # 19286

**MEMORANDUM OPINION
AND ORDER**

This cause came to be heard on November 13, November 14, and November 15, 2006, for a trial on the State's Petition for Ouster pursuant to T.C.A. § 8-47-101 et seq. Upon the testimony offered at the temporary suspension hearing as allowed by Tennessee Rule of Civil Procedure 65.04(7), as well as the testimony of additional witnesses presented at trial to include the deposition testimony of Elie R. Bernard, Jr., the statements of counsel and the record as a whole, the court makes the following Findings of Fact and Conclusions of Law:

1. The original ouster petition filed by the state on June 27, 2006 was limited pretrial to 14 allegations as follows:

- i. By instructing Coopertown police officers to engage in profiling soldiers of the United States Armed Services for traffic violations;

- ii. By instructing Coopertown police officers to engage in racial profiling of Hispanic individuals for traffic violations;
- iii. By instructing Coopertown police officers to target non-residents of the City of Coopertown on the interstate for traffic violations;
- iv. By instructing Coopertown police officers to unlawfully arrest a critic of the mayor to include fabricating evidence to support the unlawful arrest;
- v. By refusing to accept a check forwarded by a Davidson County resident to the Coopertown city court clerk for the payment of a traffic citation, when the check contained the notation "for speed trap;"
- vi. By instructing Coopertown police officers to cite and/or arrest inspectors from the Department of Labor who were in the City of Coopertown investigating the town's use of underage minors;
- vii. By intimidating citizens of Coopertown who had signed the Petition for Ouster by threatening legal action and by instructing Coopertown police officers to write tickets for their activities;
- viii. By instructing Coopertown police officers to arrest certain political adversaries;
- ix. For causing certain documents to be placed in an employees personal file after she was terminated in an effort to avoid an

unemployment claim;

- x. By instructing a Coopertown police officer to arrest a former Police Chief for impersonating a police officer;
- xi. By directing city officials not to allow news media in city meetings;
- xii. By directing Coopertown police officers to arrest city residents who had not returned census forms sent out by the city;
- xiii. By directing a Coopertown police officer to post scandalous information regarding an alleged sexual relationship between an Alderman and a particular political adversary; and,
- xiv. By violating T.C.A. § 39-16-510 for Retaliation For Past Action with regard to two police officers who testified at the temporary suspension hearing, based upon certain communications with the General Sessions Judge for Robertson County, Tennessee.

2. With regard to the allegation of unlawful profiling of soldiers of the United States Armed Services, the court finds that the defendant did actually encourage police officers of Coopertown, Tennessee to "ticket soldier boys," but the court further finds that there was no evidence upon which this court could conclude that soldiers were ticketed more frequently than other classes of individuals, or that soldiers were ticketed in circumstances in which they were not actually traveling at speeds in excess of ten miles an hour over the posted speed limit through the city limits of Coopertown, Tennessee.

3. With regard to the claim of unlawful racial profiling of Hispanic individuals, the court

finds that the defendant did actually encourage police officers of Coopertown, Tennessee to issue multiple citations to Hispanic individuals due to the likelihood that these persons would not contest the citations in court, but there was no evidence upon which this court could conclude by a clear and convincing standard that Hispanic individuals were stopped for suspected traffic offenses because of their race, or that Hispanic individuals were given traffic violations for offenses they did not commit.

4. With regard to the allegation of ticketing "out of towners" on the interstate, the court finds that the defendant did in fact encourage police officers of the City of Coopertown, Tennessee to ticket out of town residents, but there was no proof upon which this court could conclude that out of town residents were ticketed because of their residency, as opposed to the speeds at which they were operating their automobiles within the city limits of Coopertown, Tennessee.

5. With regard to the allegation that the defendant instructed a Coopertown police officer to conduct an unlawful arrest of Ms. Glenda Slawson for driving under the influence, to include fabricating evidence to support the unlawful arrest, the court finds that the evidence does not support this allegation.

6. With regard to the claim that the Mayor refused to accept a check forwarded by a resident of Davidson County, Tennessee for the payment of a traffic citation, the court finds that the Mayor did in fact instruct the city court clerk to refuse to accept the check, but did nothing to interfere with the City Judge's opinion that the check should in fact be accepted.

7. With regard to the allegation that the defendant instructed Coopertown police officers to cite and/or arrest inspectors from the Department of Labor, the court finds that the defendant did actually instruct Coopertown police officers as alleged, but that no Department of Labor investigator was cited and/or arrested for doing his or her job within the city limits of Coopertown, Tennessee.

8. With regard to the allegations of intimidation associated with gathering signatures on

the ouster petition, the court finds that Mr. Crosby did threaten to sue the individuals who signed the petition. The court further finds that defendant instructed Coopertown Police Officers to cite and/or arrest the individuals collecting signatures in the event their activities were blocking city streets, or otherwise posing an unreasonable risk of harm for the motoring public.

9. With regard to the allegation that the defendant instructed Coopertown police officers to "arrest on sight" certain political adversaries of the mayor, the court finds that there is no proof upon which this court can conclude that these instructions were actually given by the defendant to Coopertown police officers. The court further finds that the criminal warrants issued against Ms. Slawson in connection with an altercation with the city's road crew were issued after a finding of probable cause by a Judicial Commissioner.

10. With regard to the allegation that the defendant caused certain back dated documents to be placed in an employee's personnel file, the court finds that the state offered no proof on this allegation.

11. With regard to the allegation that the defendant instructed Coopertown police officers to arrest a former police chief for impersonating a police officer, the court finds that a Coopertown police officer was in fact encouraged to cite the former chief of police, who at the time was operating a security service, but no arrest or traffic stop was made.

12. With regard to the allegation that the defendant directed city officials not to allow the media in city meetings, the court finds that the defendant did in fact instruct a police officer to give first priority for seating to citizens, and only after citizens were accommodated, that media could be seated.

13. With regard to the allegation that the defendant instructed Coopertown police officers to arrest city residents who had not returned census forms, the court finds that although these comments may have been made by the defendant, no arrests were made.

14. With regard to the allegation that the defendant instructed a Coopertown police officer to post scandalous, information regarding a city Alderman and a political adversary on the internet, the court finds that the defendant did in fact request this act to be accomplished by a city police officer, but that the city police officer did not post such information as result of the defendant's encouragement.

15. With regard to the allegation that the defendant violated T.C.A. § 39-16-510 for Retaliation For Past Action by making a telephone call to the Robertson County General Sessions Judge, the court finds that the phone call was in fact made, and the statements were communicated as alleged. However, the court finds that no harm was caused and no unlawful act was committed, as the communication was made between friends and political supporters during the time of a contested General Sessions Judge race.

16. The District Attorney General for the 19th Judicial District has petitioned this court for a Writ Of Ouster which would permanently remove the defendant from office. To be entitled to such relief, the state must prove by clear and convincing evidence that the defendant knowingly or willfully committed misconduct in office.

The ouster procedure is seldom used in Tennessee. Our Tennessee Supreme Court has stated that "Proceedings against an officer should never be brought unless there is a clear case of official dereliction, as such a drastic statute should be invoked only in plain cases. . . ." Wilson v. Bush, 208 S.W. 607 (Tenn.1918). Our Supreme Court has also cautioned that "those administering [the ouster statute] should guard against its over encroachment." Estep Ex. Rel. v. Peters, 815 S.W.2d 161 (Tenn.1991).

This court has heard many instances of conduct attributable to the defendant which the state offers to support this court's exercise of its authority to remove him from office. These instances could be labeled as and could be said to range from bigotry, sexism or utter foolishness to insidious

discrimination or the purposeful violation of the constitutional rights of others. How much of the facts of this case can be resolved as small town politics and how much may constitute the actual misuse of power is a decision today to be made by this court, but in the future must be made by the voters of the City of Coopertown.

Based on the facts of this case, this court hereby finds that the state has not proved by clear and convincing evidence that the defendant knowingly or willfully committed misconduct in office that could support the issuance of a Writ of Ouster under the jurisprudence of this state. Had individuals been the victims of insidious discrimination caused at the direction of the defendant; had fundamental constitutional rights of others been violated at the knowing or willful direction of the defendant; or, had evidence been fabricated to support an unlawful arrest at the insistence of the defendant, the decision in this case would be very, very different.

Accordingly the defendant shall immediately be reinstated to his duties as Mayor of the City of Coopertown without condition.

It is so ORDERED.

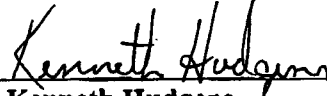
This the 15 day of November, 2006.



Laurence M. McMillan, Jr., Chancellor

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was sent by United States Postal Service first class mail, postage prepaid to W. Timothy Harvey, 310 Franklin Street, Clarksville, TN 37040 and John W. Carney, Jr., District Attorney General, 502 South Main Street, Springfield, TN 37172, this 15th day of November, 2006.



Kenneth Hudgens
Clerk & Master