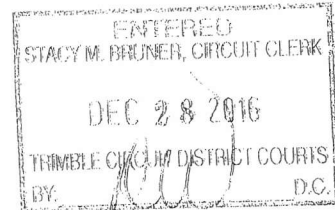


Commonwealth of Kentucky Court of Justice	<u>ORDER</u>	No. 16-M-00043 16-M-00020 District Court Trimble County
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Commonwealth of Kentucky

VS.

Ali Al-Maqabli



** ** *

This matter comes before the Trimble District Court on the motion of the defendant to dismiss the charges of Harassment and Falsely Reporting and Incident in two (2) separate incidents. The defendant argues that he is entitled to immunity from prosecution by virtue of the language contained in KRS 620.050. However, the same statute the defendant cites in support of his motion also contains the following:

However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

In the complaints served upon the defendant, the affiant alleges that the defendant intentionally made false reports to the Cabinet for Health and Family Services and/ or law enforcement with the intent to intimidate, harass, annoy, or alarm her. Based upon the allegations contained in the complaint, the Court is satisfied that the charges against the defendant may proceed. The Commonwealth shall continue bear the burden of proving the allegations against the defendant.

Furthermore, the Kentucky Supreme Court has noted the strictures placed on trial courts which are asked to summarily dismiss charges:

[A] trial judge has no authority to weigh the sufficiency of the evidence prior to trial or to summarily dismiss indictments in criminal cases. *Commonwealth v. Hayden*, 489 S.W.2d 513, 516 (Ky.1972); *Barth v. Commonwealth*, 80 S.W.3d 390, 404 (Ky.2001); *Flynt v. Commonwealth*, 105 S.W.3d 415, 425 (Ky.2003). However, there are certain circumstances where trial judges are permitted to dismiss criminal indictments in the pre-trial stage. These include the unconstitutionality of the criminal statute, *Hayden*, 489 S.W.2d at 514-515; prosecutorial misconduct that prejudices the defendant, *Commonwealth v. Hill*, 228 S.W.3d 15, 17 (Ky.App.2007); a defect in the grand jury proceeding, *Partin v. Commonwealth*, 168 S.W.3d 23, 30-31 (Ky.2005); an insufficiency on the face of the indictment, *Thomas v. Commonwealth*, 931 S.W.2d 446 (Ky.1996); or a lack of jurisdiction by the court itself, RCr 8.18.

Commonwealth v. Bishop, 245 S.W.3d 733, 735 (Ky.2008). None of the circumstances described in *Bishop* apply to this case. The proper time for an evaluation of the sufficiency of the evidence is following the conclusion of the Commonwealth's proof by means of a motion for a directed verdict. *Commonwealth v. Isham*, 98 S.W.3d 59, 62 (Ky.2003).

DATE: 11/10/10


Judge, Oldham District Court