

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2006-CA-002437-MR

RICKY ROBBINS

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE DAVID TAPP, JUDGE  
ACTION NO. 06-CR-00006; 06-CR-00007; 06-CR-00009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM,<sup>1</sup> SENIOR JUDGE.

ROSENBLUM, SENIOR JUDGE: Ricky L. Robbins appeals from a conditional guilty plea pursuant to RCr<sup>2</sup> 8.09 in which he reserved for our review the issue of whether the trial court erred in denying his motion to quash the above captioned indictments because a law enforcement officer was a member of the grand jury, allegedly had outside

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<sup>1</sup> Senior Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> Kentucky Rules of Criminal Procedure.

knowledge of the case, and was allegedly related to the prosecutor. Finding no error, we affirm.

On January 27, 2006, the Lincoln County Grand Jury returned three separate indictments (06-CR-00006, 06-CR-00007, and 06-CR-00009) against Robbins. Each indictment included one count of third-degree burglary and one count of theft by unlawful taking. Indictments 06-CR-00007 and 06-CR-00009 additionally included a count of second-degree criminal mischief, and Indictment 06-CR-00006 additionally included a count of first-degree criminal mischief. The grand jury foreman who signed the indictments was T. J. Hill, an officer with the Lincoln County Police Department.

Robbins subsequently filed a pro se motion to quash the indictments upon the basis that Hill was a law enforcement officer who was a comrade of, and was therefore predisposed to believe, the law enforcement officers who testified before the grand jury, had outside knowledge of the cases, and is related to the prosecutor. Trial counsel later filed a motion to quash; however, the ground for dismissal in this motion was limited to the issue of Hill being a law enforcement officer.

A hearing on the motions was held, following which the trial court denied same. Robbins thereupon entered into a conditional guilty plea to three counts of third degree burglary. The remaining counts were dismissed. Robbins was sentenced to three years imprisonment on each count, to run consecutively. This appeal followed.

Before us, Robbins contends that the trial court erred in denying his motions to quash the indictments. He argues that the indictments should have been

dismissed because Grand Jury Foreman Hill was a law enforcement officer predisposed to support the prosecutor and his fellow officers who investigated the case, because Hill allegedly had outside knowledge of the case, and because Hill is related to the prosecutor.<sup>3</sup>

KRS<sup>4</sup> 29A.080 limits the reasons for disqualification from serving on a petit jury or grand jury as follows:

(2) A prospective juror is disqualified to serve on a jury if the juror:

(a) Is under eighteen (18) years of age;

(b) Is not a citizen of the United States;

(c) Is not a resident of the county;

(d) Has insufficient knowledge of the English language;

(e) Has been previously convicted of a felony and has not been pardoned or received a restoration of civil rights by the Governor or other authorized person of the jurisdiction in which the person was convicted;

(f) Is presently under indictment; or

(g) Has served on a jury within the time limitations set out under KRS 29A.130.

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<sup>3</sup> The Commonwealth suggests that Robbins failed to comply with RCr 8.09 by preserving the issue reserved in his conditional guilty plea in writing. While we agree that the writing requirement of the rule was not complied with; nevertheless, because it is clear from the record that Robbins' guilty plea was conditional and the issue reserved was the trial court's denial of his motion to quash because of Hill's service on the grand jury, the issue is preserved. *Gabbard v. Commonwealth*, 887 S.W.2d 547, 550 (Ky. 1994).

<sup>4</sup> Kentucky Revised Statutes.

“Challenges for bias, or for any cause other than lack of legal qualifications, are unknown as concerns grand jurors. No provision is made for peremptory challenges of grand jurors and no such challenges are permitted. Likewise no voir dire examination exists in respect to grand jurors. In other words, the status of a member of a grand jury may not be questioned except for lack of legal qualifications.” *Partin v. Commonwealth*, 168 S.W.3d 23, 30 (Ky. 2005) (citing *United States v. Knowles*, 147 F.Supp. 19 (D.D.C.1957)). Because Robbins' contentions are not based upon Hill's legal qualifications to serve on the grand jury ( as set forth in KRS 29A.080), we believe *Partin* precludes his arguments for quashing the indictments based upon Hill's occupation, outside knowledge, and relationship to the prosecutor. *See also Rice v. Commonwealth*, 387 S.W.2d 4, 5 (Ky. 1965) (fact that county attorney's wife and Department of Highways employee sat on grand jury not basis for quashing indictment) and *Hammer v. Commonwealth*, 332 S.W.2d 267 (Ky. 1959) (fact that foreman of the grand jury was one of the victims of the defendant's crime not basis to quash indictment).

We acknowledge that “[p]ersons engaged in certain businesses or occupations are, or at times have been, disqualified by statute from serving on a grand jury[,]” 38A C.J.S. Grand Juries § 22 (June 2007), and that “[i]f the statute so provides, a person engaged in a certain business or occupation may be disqualified to serve on a grand jury.” *Id.* However, “[u]nless the statute so provides, persons are not disqualified because of their particular occupations.” *Id.*

KRS 29A.080 does not disqualify law enforcement officers from serving on a grand jury. It follows that the mere basis that Hill is a law enforcement officer is not a ground for dismissing the indictments, and the trial court did not err in denying Robbins' motion to dismiss upon that basis.

The trial court made no findings concerning Hill's outside knowledge of the case or his purported relationship to the prosecutor, nor did Robbins request additional findings upon these issues. CR<sup>5</sup> 52.04 requires a motion for additional findings of fact when the trial court has failed to make findings on essential issues. Failure to bring such an omission to the attention of the trial court by means of a written request will be fatal to an appeal. *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982). Because the trial court did not make findings upon Hill's outside knowledge of the case and his alleged relationship to the prosecutor and because Robbins did not request additional findings on these issues pursuant to CR 52, we will not additionally review these aspects of the case.

For the foregoing reasons the judgment of the Lincoln Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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<sup>5</sup> Kentucky Rules of Civil Procedure.