

FILED IN CLERKS OFF
JEFFERSON CIRCUIT CT

NO. SEPTEMBER 2020 GRAND JURY 2020 SEP 28 PM 4:18 JEFFERSON CIRCUIT COURT
DIVISION TWO

GRAND JUROR CLERK \$ PLAINTIFF
BY _____ D.C.

NOTICE – MOTION – ORDER

COMMONWEALTH OF KENTUCKY DEFENDANT

NOTICE

TO: Hon. Daniel Cameron, Attorney General
Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

Please take notice that the following motion will be made on Monday, October 5th,
2020 at 9:00 a.m. or in such time as the above Court may so docket.

**MOTION FOR RELEASE OF GRAND JURY
TRANSCRIPTS/RECORDINGS/REPORTS AND FOR DECLARATION OF RIGHTS
PURSUANT TO KRS 418.040**

Comes the Plaintiff, Grand Juror, by counsel, and moves this Honorable Court to release any and all recordings of the grand jury pertaining to what is commonly known as the Breonna Taylor case that resulted in Indictment No. 20CR1473 styled Commonwealth vs. Brett Hankison, pursuant to RCr 5.24. Grand Juror further petitions this Court for declaration of rights pursuant to KRS 418.040. Specifically, Grand Juror seeks for the Court to make a binding declaration that Grand Juror, and any additional members of this grand jury, has the right to disclose information and details about the process of the grand jury proceedings held in Jefferson County, Kentucky regarding the above case known as the Breonna Taylor case and any potential charges

presented or not related to the events surrounding that matter. In support of his motion, Grand Juror states the following:

1. Grand Juror was a member of the grand jury for the month of September 2020 in Jefferson County, Kentucky. Supporting documents attached.

2. Beginning on or about September 21 and until September 23, 2020, Grand Juror and the other grand jurors were tasked with being the grand jury for the presentation by the Office of the Attorney General in purportedly all matters related to the death of Ms. Breonna Taylor after a Louisville Metro Police Department raid of her apartment.

3. Subsequent to the above referenced Indictment, Attorney General Daniel Cameron held a press conference to publicly announce the charges against Mr. Hankison and to further announce that there would be no charges against Sergeant Jon Mattingly and Detective Myles Cosgrove.

4. Attorney General Cameron made many definitive remarks during his press conference. Among them, he stated that his office's investigation found "...and the grand jury agreed that Mattingly and Cosgrove were justified in the return of deadly fire after having been fired upon by Kenneth Walker."

5. When questioned about whether he made a recommendation to the grand jury, Attorney General Cameron stated that "[g]rand jury proceedings are secret. And so I'm not going to get in to the specifics of details about that proceeding. What I will say is that we presented all of the information and they ultimately made a determination about whether to charge. In this instance, they decided to indict Detective Hankison."

6. Upon inquiry regarding approximately a dozen witnesses stating they did not hear the police knock and announce and the Attorney General relying on one witness to the contrary,

Attorney General Cameron stated in part that he thought the "...more pertinent question is what was the evidence provided to the grand jury? What was sufficient for their purposes? They got to hear and listened to all the testimony and made the determination that Detective Hankison was the one that needed to be indicted knowing all of the relative points that you made."

7. When asked if the grand jury considered manslaughter, reckless homicide or those kinds of charges, Attorney General Cameron stated the following:

I won't get into the specifics again of the proceedings themselves are secret. But what I will say is that our team walked them through every homicide offense, and also presented all of the information that was available to the grand jury. And then the grand jury was ultimately the one that made the decision about indicting Detective Hankison for wanton endangerment.

8. The secrecy of grand jury proceedings and their potential disclosure are controlled by RCr 5.24(1) which states as follows:

Subject to the right of a person indicted to procure a transcript or recording as provided by Rule 5.16(3), and subject to the authority of the court at any time to direct otherwise, all persons present during any part of the proceedings of a grand jury shall keep its proceedings and the testimony given before it secret, except that counsel may divulge such information as may be necessary in preparing the case for trial or other disposition.

9. The Court of Appeals of Kentucky stated plainly and clearly that only the court itself may order the release of grand jury proceedings to which the Office of the Attorney General found and actually agreed in Opinion of the Attorney General 95-17 issued on May 10, 1995. "A grand jury is a part of the court and under judicial control, so there can be no doubt

that a session of the grand jury is 'proceeding in a circuit court.'" *Greenwell v. Commonwealth*, Ky., 317 S.W.2d 859,861 (1958). The Opinion of the Attorney General further pointed to *Ex Parte Farley* Ky., 570 S.W.2d 617 (1978) and *York v. Commonwealth*, Ky.App., 815 S.W.2d 415 (1991) in further agreeing that the judiciary has exclusive custody and control of grand jury testimony and proceedings as a court record.

10. There can similarly be no doubt that this Court had and has the exclusive custody and control of the grand jury proceedings in question as the grand jury reported to this Court for the month of September, 2020 and reported the very proceedings in question, at least in part, to this Court.

11. The Attorney General publicly made many statements that referenced what the grand jury heard and decisions that were made based on what certain witnesses said. He further laid those decisions at the feet of the grand jury while failing to answer specific questions regarding the charges presented. Attorney General Cameron attempted to make it very clear that the grand jury alone made the decision on who and what to charge based solely on the evidence presented to them. The only exception to the responsibility he foisted upon the grand jurors was in his statement that they "agreed" with his team's investigation that Mattingly and Cosgrove were justified in their actions.

12. There is a compelling public interest for these proceedings to be released of a magnitude the city and Commonwealth have never seen before that could not be confined, weaving its way across the country. The citizens of this Commonwealth have demonstrated their lack of faith in the process and proceedings in this matter and the justice system itself. Using the grand jurors as a shield to deflect accountability and responsibility for these decisions only sows

more seeds of doubt in the process while leaving a cold chill down the spines of future grand jurors.

13. The public interest spreads across the entire Commonwealth when the highest law enforcement official fails to answer questions and instead refers to the grand jury making the decisions. The interest of the individual grand jurors is parallel to the public but also manifests as fears of persecution, condemnation, retribution, and torment. Unfortunately, they do not get to hide behind any entity, person, or office.

14. The handbook that grand jurors are given in Jefferson County, Kentucky at the beginning of their service encourages them "...to share, without divulging the content of any Grand Jury hearings, your experiences in the criminal justice system with your family, friends and neighbors." See attached. It would seem from that statement that at least the Jefferson County Office of the Commonwealth's Attorney intends for their experience to be one that should be used to promote the education and future participation of the public. It certainly seems to suggest that grand jurors are free to discuss their participation in the grand jury process even if they are to keep secret the content of the hearings. This highly likely includes informing their family, friends, neighbors, and employers of their participation as grand jurors. The level of attention this matter has received across the country creates an inability to calculate how far these seemingly innocuous disclosures of their participation have reached. It is precisely for these reasons that Grand Juror wishes to remain anonymous while feeling compelled to act in a manner that promotes transparency, truth, and justice without further sacrificing anyone's right to feel comfortable in their own mind and body for their compulsory grand jury participation and the decisions that were alleged to be exclusively theirs by Attorney General Daniel Cameron.

15. It is patently unjust for the jurors to be subjected to the level of accountability the Attorney General campaigned for simply because they received a summons to serve their community at a time that adherence to the summons forced them to be involved in a matter that has caused such a palpable divide between sides.

16. Truth being of paramount importance to all affected parties and the community as a whole, justice demands a full public release of the grand jury proceedings. Not only are the grand jury proceedings the sole province of the Court but there is “an inherent power and the inescapable duty of the trial court to lift the lid of secrecy on the grand jury proceedings in aid of the search for truth.” *Dennis v. United States*, 384 U.S. 855, 868 (1966).

17. For the reasons stated above and in the interest of justice being applied equally and appropriately to all interested parties regardless of their race, position, or association, Grand Juror respectfully asks that this Court exercise its power pursuant to RCr 5.24(1) and Order the release of all recordings, transcripts and reports of the grand jury related to this matter to the public.

DECLARATION OF RIGHTS PURSUANT TO KRS 418.040

18. Grand Juror further seeks for the Court to make a binding declaration that Grand Juror has the right to disclose information and details about the process and details of the grand jury proceedings held in Jefferson County, Kentucky regarding the Breonna Taylor case and any potential charges and defendants presented or not presented related to the events surrounding that matter. Grand Juror asserts that the RCr 5.24(1) only governs what was recorded during the proceedings held by the grand jury and, therefore, any details surrounding the actions outside of those recorded proceedings and anything that did NOT happen in the grand jury proceedings are

permitted to be disclosed. The penalty of contempt as detailed in RCr 5.24(3) shall not apply to any such disclosures nor should any other civil or criminal penalty.

19. A petition for declaratory judgment pursuant to KRS 418.040 provides for the venue and cause of action, providing as follows:

In any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

In order to state a claim under KRS 418.040, a Petitioner must show “that an actual controversy exists.” *Foley v. Commonwealth*, 306 S.W.3d 28, 31 (Ky.2010). “An actual controversy for purposes of the declaratory judgment statute requires a controversy over present rights, duties, and liabilities; it does not involve a question which is merely hypothetical or an answer which is no more than an advisory opinion.” *Barnett v. Reynolds*, 817 S.W.2d 439 441 (Ky.1991) (citing *Dravo v. Liberty Nat'l Bank & Trust Co.*, 267 S.W.2d 95 (Ky.1954)).

20. Grand Juror states that there is an actual controversy over their own rights, duties and liabilities as a grand juror and a citizen of both the Commonwealth of Kentucky and the United States of America. Grand Juror states that RCr 5.24(1) does not apply to anything that WAS NOT recorded as a part of the grand jury proceedings and that they are well within the bounds of permissible disclosures to the public when those disclosures pertain to details and information tangent to, but not part of, the recorded grand jury proceedings. Similarly, the rule does not prohibit disclosing things that DID NOT happen during the proceedings. Specifically, the rules does not restrict discussion of charges that were NOT presented to the grand jury, explanations of the law that were NOT provided to the grand jury, defenses or justifications that were NOT detailed during the proceedings, witnesses that did NOT testify, potential defendants

that were NOT presented, and/or individuals or officials who were NOT present for the proceedings.

21. This request is for declaratory relief from a fear of prosecution for disclosing information that was not a part of the grand jury proceedings and for a finding that it is permissible by law and not subject to civil or criminal liability to so disclose.

22. As stated above, the Breonna Taylor case is a matter of great public interest that has been subject to much national scrutiny. Attorney General Cameron stated publicly in his press conference that no details would be discussed regarding the proceedings because they are secret. He then, however, disclosed information and acknowledged publicly other information that was a part of at least the investigation. The multiple mentions of the proceedings being secret and Attorney General Cameron's efforts and desires for it to remain so create the controversy addressed in this action. It is the fear of the Petitioner that Attorney General Cameron would attempt to utilize the court's contempt powers under RCr 5.24(3) if there was a public disclosure that contradicted certain things that he stated happened during the proceedings, characterized the singularity of the decision in a different light, or raised doubts about charges that were presented during the proceedings.

23. The same concerns argued above in favor of releasing the grand jury proceedings to the public are incorporated herein and further asserted that the need for a declaration of rights is to quell the fears of persecution, condemnation, retribution, and torment along with the fear of prosecution that apply not only to Grand Juror but quite possibly to the other grand jurors in this matter.

24. The full story and absolute truth of how this matter was handled from beginning to end is now an issue of great public interest and has become a large part of the discussion of

public trust throughout the country. The legal system has placed the grand jurors in this matter on an island where they are left to wonder if anyone who finds them will treat them well or hold the pain and anger of the lingering questions against them. Their choices are to remain there hoping they are never found or attempt to find a way to a safer position. That position is the ability to disclose everything the law provides to the public so that the truth may prevail. It should be noted that, as mentioned in the motion to disclose the recordings, this action is filed anonymously not only for protection but also because there is no desire for notoriety or acclaim, only truth. This action does not seek any monetary damages and there are no other actions pending that seek them either. Only the truth, the whole truth, and nothing but the truth.

25. Attorney General Cameron further stated in a press release in response to a news conference held by the legal team for Ms. Breonna Taylor's family, "...everyone is entitled to their opinion, but prosecutors and Grand Jury members are bound by the facts and by the law." This illustrates his position in the conflict raised in this action. The Attorney General has stated in an official press release his anticipation of grand jury members desires to talk about what did NOT happen during the proceedings by mentioning them when there was no need to do so in his response. Attorney General Cameron's last remarks in his press conference following the indictment were as follows:

And I will fight for those across our state who feel like their voice isn't heard, who feel marginalized, judged, and powerless to bring about change. In a world that is forcing many of us to pick a side, I choose the side of justice. I choose the side of truth. I choose a path that moves the Commonwealth forward and toward healing. You have that choice as well. Let's make it together.

Public speakers like to end on a powerful note and the Attorney General did exactly that. He chose wisely in his speech, now he has another choice in his response. Choose truth. Choose justice. Together Kentucky.

WHEREFORE, Grand Juror respectfully requests that this Court releases the grand jury proceedings to the public and grants declaratory relief that properly limits the scope of RCr 5.24(1) to only prohibit disclosures of things that actually occurred during the proceedings of the grand jury and testimony thus freeing the grand jurors to publicly discuss their experiences.

CERTIFICATE

This is to certify that a copy of the foregoing motion was sent to the Honorable Daniel Cameron, Attorney General, or his agent, on this the 28th day of September 2020.

This further certifies that a courtesy copy was sent to all parties that would be potentially affected by this pleading to include the following:

Hon. Stewart Matthews
817 Main Street, Suite 500
Cincinnati, Ohio 45202
Fax (513) 621-5646
Counsel for Mr. Hankison

Hon. Kent Wicker
DBL Law
321 W. Main Street, #2100
Louisville, Kentucky 40202
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Counsel for Sergeant Mattingly

Hon. Bill Brammell
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Counsel for Detective Cosgrove

Hon. Lonita Baker
1201 Story Avenue
Louisville, Kentucky 40206
lonita@kylawoffice.com
Counsel for the family of Breonna Taylor

Hon. Frederick W. Moore
2000 Warrington Way, Suite 170
Louisville, Kentucky 40222
fmoore@grossmangreen.com
Counsel for Kenneth Walker

A handwritten signature in black ink, appearing to read 'Kevin M. Glogower', with a long horizontal flourish extending to the right.

Kevin M. Glogower
Attorney for Grand Juror
214 S. 8th Street, Suite 201
Louisville, KY 40202
(502) 384-5656

AOC-005
Rev. 10-17
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Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
KRS Chapter 29A; AP Part II



JUROR SUMMONS

Juror ID: [REDACTED]
JEFFERSON_SEPT GJ GROUP [REDACTED]

DEAR PROSPECTIVE JUROR: You have been selected to serve as a **JUROR** in the **JEFFERSON** County Courts. You are summoned to appear at the following place, date, and time. **Failure to appear may result in a fine or jail time.** Even if you believe you are disqualified from serving, are asking to be excused from jury service, or are asking that your service be postponed, **YOU MUST COMPLETE, SIGN, AND RETURN THE ENCLOSED JUROR QUALIFICATION FORM WITHIN FIVE (5) DAYS AFTER RECEIVING THIS SUMMONS.**

KEEP THIS PAGE and bring it with you when you report for jury service.

[REDACTED]
LOUISVILLE, KY [REDACTED]

Date: Tuesday, September 1, 2020

Time: 08:30 AM

Place: 700 West Jefferson Street

Room 244

Louisville, KY 40202

(502) 595-3460

Barcode ID: [REDACTED]

Juror ID: [REDACTED]

Group ID: [REDACTED]

Jefferson County Jury Administrator
Name/Title

GENERAL INFORMATION ABOUT JURY SERVICE

Learn more about jury service at the Kentucky Court of Justice website at <http://www.courts.ky.gov>

REPORT ON THE DATE and AT THE TIME INSTRUCTED ABOVE: This is the only notice you will receive. **Failure to comply with this Summons is punishable as CONTEMPT OF COURT.** KRS 29A.150.

JURY TERM and HOURS: Jury service begins on the date shown on this Summons. Jury service may be served on consecutive days or over a period of several months as determined by the Chief Circuit Judge or designee, and can last up to thirty (30) court days. If selected to serve on a trial, plan to spend a full day in Court for the length of the trial.

DRESS: Jurors are officers of the Court as much as Judges and other court personnel. You are expected to dress accordingly while performing this serious and solemn duty.

JUROR PAY: You will receive, as set by state law, **\$12.50 for each day of jury service** (\$5.00 of this amount is considered actual pay and \$7.50 is reimbursement for expenses). Check with your employer for personnel policies regarding jury service.

NOTE TO EMPLOYERS and EMPLOYEES: The law says an employer shall not deprive an employee of employment, threaten, or coerce an employee regarding jury service, KRS 29A.160(1). An employer who violates this law is guilty of a misdemeanor. KRS 9A.990(1). The Court will provide a Certificate of Jury Service (AOC-015) to a Juror or employer requesting verification of a Juror's service.

POSTPONEMENT OF SERVICE: If you need to postpone or be excused from jury service, you must demonstrate **undue hardship, extreme inconvenience, or public necessity.** KRS 29A.100(1). You may be excused from service entirely, or have our number of days of service reduced, or have your service postponed temporarily for a period of time not to exceed twenty-four (24) months. KRS 29A.100(3). Be sure to explain your request on the enclosed Juror Qualification Form (AOC-005-A) and indicate an alternative time within the next twelve (12) months when you will be available to serve. You will be notified by mail, or phone, or mail if you are disqualified, excused, or your service is postponed. Otherwise, you will need to report for jury service on the date shown on this Summons, at which time you may discuss any situations that you think might prevent you from being able to serve.

ACCOMMODATIONS: If you are **physically disabled** and require an accommodation to serve, **OR** if you are **deaf or hard-of-hearing** and an interpreter is needed, indicate the disability and needed service(s) in the space provided on the Juror Qualification Form.

JUROR QUALIFICATION FORM: COMPLETE, SIGN, and RETURN the enclosed Juror Qualification Form **within five (5) days** to the return address listed on the form.



OFFICE OF
THOMAS B. WINE
COMMONWEALTH'S ATTORNEY

Erwin Roberts
First Assistant

514 W. Liberty Street
Louisville, Kentucky 40202-2887
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(502) 595-2300
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JEFFERSON COUNTY GRAND JURY SEPTEMBER 2020

GRAND JURORS

You have been ordered by the Jefferson Circuit Court to serve as a **GRAND JUROR** for the month of **September, 2020**. As a Grand Juror, you are required to be in attendance when the Jefferson County Grand Jury is in session. At least twelve Grand Jurors must be present in order to do business. The first twelve jurors selected as "the Grand Jury" will be expected to be in attendance unless a request is made for an alternate. Alternates, unless you have committed to a day or days of service before you leave the jury pool room, you will be serving as a Grand Juror this month on an "on-call" basis. When one of the twelve members of "the Grand Jury" can't be in attendance, you will be called to fill in for that juror.

GRAND JURY MEETING LOCATION AND DAYS OF SERVICE:

You must report each morning that the Grand Jury is scheduled to be in session to the **10th floor Appellate Courtroom**, located on the 10th floor of the Judicial Center, 700 West Jefferson Street. **Report at 8:00 a.m.** The Jefferson County Grand Jury is generally in session from 8:00 a.m. to approximately 4:00 p.m., Mondays, Tuesdays, Wednesdays, and Thursdays.

CONTACT NUMBER: [REDACTED]

If an issue arises about serving on the Grand Jury outside of the time the Grand Jury is in session, please call or text [REDACTED] (This is the cell phone of the Assistant Commonwealth Attorney [REDACTED]) [REDACTED] will return your call or text. If you are requesting to be excused for a day that you are scheduled to be at Grand Jury duty, **you must hear back from the Grand Jury attorney before you are excused.** Any requests to be excused from your Grand Jury service for the remainder of the month must be made to the Grand Jury Judge. [REDACTED] can assist you in speaking to the Judge.

GRAND JURY PERSONNEL:

Attorney: [REDACTED]

Grand Jury Staff: [REDACTED] and [REDACTED]

**COMMONWEALTH
OF
KENTUCKY
GRAND JURY
HANDBOOK**



**JEFFERSON COUNTY
OFFICE OF THE COMMONWEALTH'S ATTORNEY**

AFTER THE GRAND JURY

After you have finished your term of jury duty, we hope you will consider it as a service to the community and yourself. Hopefully, it will increase your awareness and interest in government and civic affairs. You should have a greater understanding of the nature of crimes and the possible ramifications of the commission of those crimes. Also, you may be able to understand why the maximum penalties are not levied in each and every case and why it is necessary for the prosecution and the Court to use discretion in arriving at the proper outcome in each case. Your tenure as a Grand Juror should impress upon you the obligations each individual has to contribute to fair and impartial law enforcement in your community. If you and other Grand Jurors have done your job well, both our community and government will be improved.

We again urge you to share, without divulging the content of any Grand Jury hearings, your experiences in the criminal justice system with your family, friends and neighbors. Only by educating the entire community about the problems which confront the enforcement of our laws will we be able to best serve each and every individual in the community. You, as a knowledgeable representative, can be of great service in sharing such information.

**JEFFERSON COUNTY JUDICIAL CENTER
10TH FLOOR COURTROOM
700 WEST JEFFERSON STREET
LOUISVILLE, KENTUCKY 40202**

Grand Jury Office #

502-595-2384

Grand Jury Emergency #

502-649-8784