

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JULY 1996 SESSION

<p><b>FILED</b></p> <p><b>March 20, 1997</b></p> <p><b>Cecil W. Crowson</b> Appellate Court Clerk</p>
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STATE OF TENNESSEE,	)	NO. 01C01-9601-PB-00037
	)	
Appellee	)	DAVIDSON COUNTY
	)	
V.	)	HON. JACK BUTLER, SPECIAL
	)	JUDGE
JERRY D. NEELEY	)	
	)	(DUI)
Appellant	)	
	)	

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OPINION FILED: \_\_\_\_\_

AFFIRMED

William M. Barker, Judge

## OPINION

The Appellant, Jerry D. Neeley, appeals his conviction in the Probate Court of Davidson County for the offense of driving under the influence of an intoxicant. On appeal, he argues that he was denied due process of law because the special judge who presided over his trial was not legally authorized to hear the case, and the special judge had a conflict of interest because, as an attorney who regularly practiced in that court, he had an interest in currying favor with the prosecution. After reviewing the record on appeal, we affirm the appellant's conviction and his sentence.

The Appellant was indicted by the Davidson County Grand Jury on May 11, 1994, for the offense of driving under the influence of an intoxicant. On June 2, 1994, the Appellant appeared before the Honorable James R. Everett, Jr., Judge of the Probate Court for Davidson County, Tennessee, and entered his plea of not guilty. On April 18, 1995, the day of the trial, knowing that Special Judge Jack Butler was presiding in place of Judge Everett, the Appellant waived his right to a jury trial, said waiver being agreed to by the district attorney general and Jack Butler, Special Judge. Following a bench trial, the Appellant was convicted of driving under the influence of an intoxicant.

The Appellant first contends that he was denied due process of law because the special judge lacked jurisdiction to preside over his trial as he was not properly elected pursuant to Tennessee Code Annotated, section 17-2-118. The record on appeal, however, is void of any references as to how Jack Butler came to be special judge. It is the Appellant's duty "to prepare a record which conveys a fair, accurate and complete account of what transpired in the trial court with respect to the issues which form the basis of the appeal." State v. Coolidge, 915 S.W.2d 820, 826 (Tenn. Crim. App. 1995); see Tenn. R. App. P. 24(b); State v. Miller, 737 S.W.2d 556 (Tenn. Crim. App. 1987). Since the record on appeal is void of any information pertaining to how Jack Butler became special judge, we must presume that the statutorily outlined procedures were followed and that Jack Butler was properly elected. See Coolidge,

915 S.W.2d at 826-27; State v. Beech, 744 S.W.2d 585 (Tenn. Crim. App. 1987); Hudson v. State, 534 S.W.2d 322 (Tenn. Crim. App. 1975).

Moreover, it is also obvious that before the trial commenced, the appellant and his counsel knew that Mr. Jack Butler was to preside as a special judge. At no time before trial, during trial, or in his motion for new trial did appellant object to the legal authority of Special Judge Butler to conduct the trial and this issue is, therefore, also waived. Tenn. R. App. P. 3(e), 36(a). See Teague v. State, 772 S.W.2d 915, 926 (Tenn. Crim. App. 1988); State v. Killebrew, 760 S.W.2d 228, 231 (Tenn. Crim. App. 1988); State v. Clinton, 754 S.W.2d 100, 103 (Tenn. Crim. App. 1988).

Secondly, the appellant complains that he was denied due process of law because the special judge who presided at his trial is an attorney who regularly practices in the probate court and therefore cannot be impartial, thereby conveying the appearance of impropriety. The Appellant has failed to state any authority for this proposition, and there is nothing in the record on appeal which indicates that the appellant received anything less than a fair trial. The evidence of the appellant's guilt is overwhelming, and the Appellant has failed to show this Court that he was the victim of any prejudice or bias by the trial judge. In fact, it appears that since he waived his right to a jury trial he must have assumed prior to trial that he would receive more favorable treatment from the special judge than from a jury. Indeed, his only complaint to the entire proceeding came after his conviction and sentence.

For the reasons contained herein, the judgment of the trial court is affirmed in all respects.

WILLIAM M. BARKER, JUDGE

CONCUR BY:

DAVID H. WELLES, JUDGE

JERRY L. SMITH, JUDGE