IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
July 7, 2020 Session

STATE OF TENNESSEE V. DEREK T. GROOMS, STEVEN HAMM, JEREMIAH LESSLIE, CHRISTIAN COLE SMITH, ALLEN HATLEY, and BENNIE SWAFFORD

Appeal from the Circuit Court for Benton County
No. 18-CR-36, 18-CR-139, 18-CR-146, 18-CR-152, 18-CR-94, 18-CR-96, 18-CR-121, 18-CR-140 **C. Creed McGinley, Judge**

No. W2019-01324-CCA-R10-CD

Following the trial court's denial of interlocutory appeals pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, the State sought extraordinary appeals pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure in the above cases, which this court granted and consolidated. On appeal, the State contends that the trial court abused its discretion in disqualifying the District Attorney General's Office for the Twenty-Fourth Judicial District after finding that Derek T. Grooms and Allen Hatley were defendants in cases prosecuted by this district attorney's office but were also victims in other cases prosecuted by this office. After review, we reverse the orders of the trial court and remand for further proceedings in accordance with this opinion.

Tenn. R. App. P. 10 Extraordinary Appeal by Permission; Orders of the Circuit Court Reversed; Case Remanded

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, P.J., and J. ROSS DYER, J., joined.

Herbert H. Slatery III, Attorney General and Reporter; James E. Gaylord, Senior Assistant Attorney General; Matthew F. Stowe, District Attorney General; and K. Michelle Morris-Deloach, Assistant District Attorney General, for the Appellant, State of Tennessee.

Robert "Tas" Gardner, District Public Defender, and Paul D. Hessing, Assistant Public Defender, for the Defendant-Appellees, Derek T. Grooms and Bennie Swafford.

OPINION

Defendants Grooms, Hamm, Lesslie, and Smith. On November 3, 2017, the Benton County Sheriff's Department responded, following a 9-1-1 call, to 60 Jayson Street, Camden, Benton County, Tennessee and found the Defendant Derek T. Grooms' wife, Ashley Grooms, dead in the hallway of the home they rented. Further investigation revealed that Defendant Grooms had fired multiple rounds from an AK-47 assault rifle inside the home and that Ashley Grooms had been in the bedroom with the couple's fourteen-month-old son, J.G.[1], when she was fatally hit by one of these rounds. As a result of this shooting, J.G. suffered emotional trauma, injuries to his hearing, and burns to his foot. Grooms was arrested and charged with offenses relating to the death of his wife and the abuse of his son. In February 2018, the Benton County Grand Jury indicted Grooms for first degree premeditated murder, first degree felony murder, unlawful possession of a firearm, aggravated child abuse, possession of methamphetamine, and unlawful use of or possession with the intent to use unlawful drug paraphernalia stemming from the November 3, 2017 incident.

In October 2018, Defendants Steven Hamm and Jeremiah Lesslie were indicted by the Benton County Grand Jury for aggravated burglary and theft of property committed on July 17, 2018, at the home at 60 Jayson Street, Benton County, Tennessee. Also in October 2018, Defendant Christian Cole Smith was indicted by the Benton County Grand Jury for theft of property committed on July 30, 2018, related to his pawning certain items of property stolen from the home at 60 Jayson Street. The victims listed on the Hamm, Lesslie, and Smith indictments were Willie and Amanda Parks, who were the parents of Ashley Grooms and the owners of the home at 60 Jayson Street.

On March 27, 2019, Grooms filed a "Motion for Pro Tem Prosecutor" requesting the disqualification of the entire District Attorney General's Office for Twenty-Fourth Judicial District on grounds stemming in large part from the presence of Assistant District Attorney (ADA) Morris-Deloach, the prosecutor assigned to his case, at the crime scene. On April 3, 2019, ADA Morris-Deloach filed the State's response to Grooms' motion, arguing that no actual conflict existed. At the April 4, 2019 hearing on Grooms' "Motion for a Pro Tem Prosecutor," the trial court remarked that the fact that the district attorney and assistant district attorneys had been present at the crime scene was not a "wise practice" because it could make them "potential witness[es]," and should that occur, they would be disqualified from Grooms' homicide case. The trial court initially indicated that it was leaning toward denying Grooms' motion for a pro tem prosecutor. However, the court stated that it would disqualify ADA Morris-Deloach if she became a witness in Grooms'

[1] It is the policy of this Court to refer to minor victims by their initials.

homicide case. At that point, Grooms' attorney asked if he could put on proof because he claimed that ADA Morris-Deloach would, in fact, be a witness in Grooms' case.

Grooms' attorney also stated that although he had not included this issue in his motion, the district attorney general's office was also prosecuting the aggravated burglary/theft cases that occurred at Grooms' house after Grooms was arrested and that Grooms' property was "alleged to have been stolen" during these offenses. He acknowledged that Grooms was "not . . . listed as a witness or victim" on those aggravated burglary/theft cases and that Grooms' mother-in-law and father-in-law, who actually owned the house at 60 Jayson Street, were listed as the victims on the indictment. Grooms' attorney then asserted:

> I assure you [Grooms] is a victim of this [t]heft, no matter what the . . . three . . . pending indictments [say] and that's not even in [my] motion. So there's a conflict for him being a victim in one sense and then being prosecuted by the same D.A. and the same office, and has he been contacted as a victim? Has he been listed as a victim? No, Your Honor. There's an actual conflict and I can put on proof. I will put on proof with the T.B.I. Investigator who was the lead investigator [in Grooms' homicide case].

The trial court assured the parties that it would "hear anything that touches on this case."

Grooms' attorney then presented testimony from former TBI Special Agent Joe Walker, whose testimony focused primarily upon the homicide investigation and individuals present at the crime scene. At the close of the hearing, the trial court announced that it was going to continue the hearing to April 23, 2019. It said it did not want to "shortchange" Grooms and that it wanted to hear about Grooms being a "victim in another case that [the district attorney general's office wa]s prosecuting[,]" which it believed to be a "stronger point for disqualification[.]" The court remarked that a pro tem prosecutor might be needed in both the homicide case and the aggravated burglary/theft cases where Grooms was the alleged victim "in order to clean it up, so that the public can have confidence."

On April 22, 2019, the day before this hearing was to occur, Grooms, at the State's request, filed a second motion for pro tem prosecutor, alleging: that Grooms had resided at the home located at 60 Jayson Street on and prior to November 3, 2017, the date his wife died; that Grooms' personal property remained at that home following his arrest; that the home at 60 Jayson Street was burglarized on July 17, 2018, and that some of Grooms' personal property was stolen; that the arrest warrants associated with the aggravated

burglaries and thefts were sworn for Hamm, Lesslie, and Smith and that while these arrest warrants did not name Grooms as a victim, Grooms was the owner of the stolen property; that the District Attorney General's Office for the Twenty-Fourth Judicial District, by virtue of simultaneously prosecuting the homicide case against him and the aggravated burglaries and thefts against Hamm, Lesslie, and Smith, had "a real, actual, tangible, identifiable conflict [of interest] which [could not] be resolved or shielded."

At the April 23, 2019 hearing on Grooms' first and second motions for a pro tem prosecutor, no evidence was presented. The trial court stated that based upon Agent Walker's testimony, it did not believe that ADA Morris-Deloach's presence at the crime scene would disqualify the district attorney general's office because she was "nowhere in the chain of custody on any of the evidence[.]" However, the court noted that "the bigger problem" was the "conflict of interest" that existed because Grooms was being prosecuted by the district attorney's office in the homicide case but was a victim in the theft cases. The trial court announced:

> [I]t looks like to me there's an absolute conflict in the case[s] that [Grooms is] a victim.
>
> Potentially, [the district attorney general's office] could be witness in [the theft cases] because where the Burglary or Theft occurred, is the same crime scene that they were present on [when investigating the homicide case] . . . .
>
> . . . .
>
> And there's an absolute conflict of that.
>
> I have since revisited to see if that would conflict [the district attorney general's office] on the case in which [Grooms] is charged with Homicide. While not being certain there is an absolute conflict, I am certain there is an appearance of conflict, and the best course of action would be to remove [the district attorney general's office] from both cases.
>
> [The district attorney general's office] ha[s] been involved in the investigation of both cases. They have received information. They've worked both cases for some period of time and there is a very strong appearance of conflict, if not an actual conflict.

Upon hearing the trial court's statements, ADA Morris-Deloach argued that she had been unable to find any law supporting Grooms' argument that a conflict of interest existed or that the district attorney general's office should be disqualified. She asserted that the homicide case in which Grooms was a defendant was "totally unrelated" to the theft cases in which Grooms was allegedly a victim and that the only connection between these crimes was that they both occurred at the same address. She also asserted that the investigation in the homicide case had been completed by the time the investigation occurred in the aggravated burglary/theft cases and that the district attorney general's office was not involved in the actual investigation of the aggravated burglary/theft cases beyond its prosecution of those cases after they were brought by warrant in General Sessions Court. Moreover, she maintained that the aggravated burglary/theft cases occurred at the home owned by the parents of Grooms' deceased wife and that the only way these cases were connected was because Grooms "potentially . . . own[ed] some of the personal property that was stolen." She added that if Grooms was actually a victim, Grooms would only testify that he owned specific property, that he did not give Hamm, Lesslie, and Smith permission to have this property, and that the value of the property was a certain amount. ADA Morris-Deloach then argued:

> [T]he District Attorney's Office represents the State of Tennessee. We do not represent the victims of crimes. We speak for them. Their interests are protected, if you will, but they are not our clients and that is the understanding in multiple districts, is my understanding, as why [district attorneys and assistant district attorneys] do go forward prosecuting similar situations, and I myself have done that without objection in this Court.

When the trial court reminded the State that Grooms had, in fact, objected in these cases and that Grooms was entitled to a "conflict[-]free prosecutor," ADA Morris-Deloach replied that there was no information learned by the State in the aggravated burglary/theft cases that would harm Grooms in the homicide case.

After the State made its arguments, Grooms' attorney asserted that the burglarized home was rented by Grooms and his wife and that even though Grooms' property had been taken during the aggravated burglary, Grooms had not been listed as a victim in the indictments and had not been consulted by the district attorney general's office in the aggravated burglary/theft cases. He claimed "this D.A.'s office is treating [Grooms] differently than any other victim, intentionally or unintentionally" and that this issue became "an actual conflict" when the district attorney presented evidence to the Grand Jury that property of value had been stolen. Grooms' attorney asserted that Grooms could be called as a witness to testify to ownership and value of the property stolen, which meant

that the assistant district attorney would have to present Grooms as a "honest" victim in the aggravated burglary/theft cases and as a "dishonest" defendant in the homicide case."

Upon hearing this, ADA Morris-Deloach immediately countered that no proof had been presented to the court that the stolen property actually belonged to Grooms. She stated that the crime was reported as an aggravated burglary by the owners of the home, which affected how those cases were investigated. She reiterated that there could be no conflict of interest because crime victims are not clients of the district attorney general's office.

After hearing these arguments, the trial court asserted that although victims might not be the district attorney general's client, they were "certainly an interested party." The trial court held that there was "an absolute conflict" in the aggravated burglary/theft cases, which included three indictments. The court explained, "[W]e've got the appearance of [a] conflict [of interest] because [Grooms is] being prosecuted in one case and in the other case he is the alleged victim[.]"

On May 10, 2019, the trial court entered a written order granting Grooms' second motion:

> An actual conflict of interest exists in the 24th Judicial District Attorney General's office's prosecution of Benton County Circuit Cases 18-CR-139 [Defendant Hamm's case], 18-CR-146 [Defendant Lesslie's case], and 18-CR-152 [Defendant Smith's case] requiring the appointment of a pro tem prosecutor. Additionally, an appearance of a conflict of interest exists in the present case due to the 24th Judicial District Attorney General's office's prosecution of . . . Defendant [Grooms] in this [homicide] case, No. 18-CR-36, and its prosecution of Benton County Circuit Court Cases 18-CR-139, 18-CR-146, and 18-CR-152, of which . . . Defendant [Grooms] is an alleged victim in each. Therefore, the 24th Judicial District Attorney General's office is ordered to obtain pro tem prosecutors from the State of Tennessee District Attorney General's Conference for Benton County Circuit Court Cases 18-CR-36, 18-CR-139, 18-CR-146, and 18-CR-152.

On May 16, 2019, the trial court likewise entered orders in the Hamm, Lesslie, and Smith cases disqualifying the Twenty-Fourth Judicial District Attorney General's Office and requiring the appointment of a pro tem prosecutor because "an actual conflict of interest, as well as an appearance of a conflict of interest, exists in the 24th Judicial District

Attorney General's office's prosecution of all of these cases because Defendant Grooms is also an alleged victim . . . ."

On June 4, 2019, the State filed motions for permission to file an interlocutory appeal in the Grooms, Hamm, Lesslie, and Smith cases, which were subsequently denied. On July 24, 2019, the State filed its application for an extraordinary appeal in the Grooms homicide case, arguing that "the trial court erred in disqualifying the entire office of the District Attorney General for the Twenty-Fourth Judicial District on grounds that [Grooms] was an alleged victim in other cases the office was prosecuting." On July 25, 2019, the State similarly filed its application for an extraordinary appeal in the Hamm, Lesslie, and Smith cases, arguing that the trial court erred in disqualifying the entire district attorney general's office on grounds that an alleged victim in these cases was a defendant in another case the office was prosecuting. The attorneys representing Grooms, Hamm, and Smith each filed a response opposing the State's application. Counsel for Lesslie filed a response stating that he was "not adversely affected by the conflict of interest in this case, because his role in this matter is limited to being a defendant" and that "[a]ny adverse effect would be to the detriment and harm of Derek Grooms as an alleged victim of the Appellee in one case and as a defendant in another matter currently pending prosecution."

In early October 2019, this court entered four separate orders granting the State extraordinary appeals in the Grooms, Hamm, Lesslie, and Smith cases, stating:

> From our review of the application and attachments, we conclude that the trial court "so far departed from the accepted and usual course of judicial proceedings as to require immediate review." Tenn. R. App. P. 10(a). Furthermore, review is necessary to prevent the State from losing a right that may never be recaptured, to wit: the district attorney general's right to prosecute cases within its jurisdiction.

Defendants Hatley and Swafford. In October 2018, Defendant Allen Hatley was indicted by the Benton County Grand Jury in case number 18-CR-140 for two counts of aggravated burglary, one count of theft of property, and one count of vandalism that occurred at 101 and 112 Hazelnut Avenue in Benton County, Tennessee. Hatley's co-defendant, Bennie Edward Swafford, Jr., was indicted by the Benton County Grand Jury in case number 18-CR-96 for two counts of aggravated burglary, two counts of theft of property, and two counts of vandalism committed at the same two addresses. Defendant Swafford was also indicted by the Benton County Grand Jury in case number 18-CR-121 for two counts of identity theft related to the residents of 112 Hazelnut Avenue. Finally,

Defendant Swafford was indicted by the Benton County Grand Jury in case number 18-CR-94 for theft of property after stealing Allen Hatley's truck on March 4, 2018.

At an April 4, 2019 hearing, which consisted only of argument by the parties, Swafford's attorney asked for a trial setting because Swafford had been in jail for more than three hundred and fifty days. When the trial court asked what charges the State would be pursuing against Swafford at trial, ADA Morris-Deloach stated, "There's no Pro Tem. This is another situation where [the defense] allege[s] a conflict of interest for the State, because Mr. Hatley is a victim of Mr. Swafford, as well. Mr. Swafford was caught with possession of Mr. Hatley's truck. Mr. Hatley reported it stolen." She stated that if the State needed to put Hatley on the stand in the theft case, he would only testify, "It is my property. [Swafford] did not have my permission to have it and its value."

Swafford's attorney explained, "[Hatley and Swafford are] co-defendants in one case and out of that, [Hatley]'s a victim in another case, which I don't understand how [the State] can say, well, [it] is a limited conflict, [because] that's a conflict, Your Honor." When ADA Morris-Deloach again emphasized Hatley's limited testimony as a victim, the trial court said, "That's still a conflict." ADA Morris-Deloach then said, "We will no longer handle those types of cases if, Your Honor, deems it a conflict then, but it has been done many, many, many times." Swafford's attorney asserted that the State had previously said that they were going to "look into getting a Pro [T]em prosecutor," and ADA Morris-Deloach said that "we checked on that" and concluded that it was "not a conflict of interest." At that point, the trial court interjected, "Well, you tell your DA's Conference I want a Pro [T]em [Prosecutor]." The court then continued Swafford's three cases to May 16, 2019.

On May 16, 2019, the trial court entered a written order granting a Pro Tem prosecutor in the Hatley case and the three Swafford cases. The trial court recognized that Hatley, the defendant in case number 18-CR-140, was an alleged victim in the case against Swafford in case number 18-CR-94 and that Swafford was Hatley's co-defendant in case numbers 18-CR-96 and 18-CR-121. The trial court then ordered that "[t]he 24th Judicial District Attorney General's office shall obtain pro tem prosecutors from the State of Tennessee District Attorney General's Conference for Benton County Circuit Court cases 18-CR-140, 18-CR-94, 18-CR-96, and 18-CR-121.

On June 4, 2019, the State filed motions for permission to file an interlocutory appeal in case numbers 18-CR-140, 18-CR-94, 18-CR-96, and 18-CR-121. On July 9, 2019, the trial court, following a hearing, entered an order denying these motions on the basis that "an actual conflict of interest exists when the State prosecutes a Defendant [who] is also a victim in a separate crime thereby resulting in disqualification of the District Attorney's office in the 24th Judicial District."

On July 30, 2019, the State filed its application for an extraordinary appeal in the Hatley case, arguing that "the trial court erred in disqualifying the entire office of the District Attorney General for the Twenty-Fourth Judicial District on grounds that the defendant was an alleged victim in another case the office was prosecuting." On the same day, the State filed its application for an extraordinary appeal in the three Swafford cases, arguing that the trial court erred in disqualifying the entire district attorney general's office on the ground that an alleged victim in one case was a co-defendant in another case the office was prosecuting. Counsel for Hatley filed a response opposing the State's application. Counsel for Swafford filed a response stating that he was "not adversely affected by the conflict of interest in this case, because his role in this matter [wa]s limited to being a defendant" and that "[a]ny adverse effect would be to the detriment and harm of Allen Hatley as an alleged victim of [Swafford] in one case and as a co-defendant of [Swafford] in another during concurrent prosecutions."

In early October 2019, this court filed two separate orders granting the State extraordinary appeals in the Hatley case and in the Swafford cases, stating:

> From our review of the application and attachments, we conclude that the trial court "so far departed from the accepted and usual course of judicial proceedings as to require immediate review." Tenn. R. App. P. 10(a). Furthermore, review is necessary to prevent the State from losing a right that may never be recaptured, to wit: the district attorney general's right to prosecute cases within its jurisdiction.

Consolidation of All Eight Cases. On December 11, 2019, this court entered an order consolidating the extraordinary appeals in Grooms' case number 18-CR-36, in Hamm's case number 18-CR-139, in Lesslie's case number 18-CR-146, in Smith's case number 18-CR-152, in Hatley's case number 18-CR-140, and in Swafford's case numbers 18-CR-94, 18-CR-96, and 18-CR-121.

ANALYSIS

The State argues that the trial court abused its discretion in disqualifying the District Attorney General's Office for the Twenty-Fourth Judicial District in these eight cases. It contends that Rule 1.11 of the Tennessee Rules of Professional Conduct does not contemplate vicarious disqualification of an entire district attorney general's office. See Tenn. Sup. Ct. R. 8, Rules of Prof'l Conduct ("RPC") 1.11. It also asserts that Tennessee's Constitution, which has a stronger separation of powers guarantee than the United States

Constitution, forbids the disqualification of a district attorney general's office in all but the most extraordinary circumstances, and such circumstances are not present in this appeal. In addition, the State references Rule 1.7 of the Tennessee Rules of Professional Conduct and insists that there is no individual conflict of interest in these cases because "[a] criminal defendant's alleged status as a victim in another case does not ipso facto materially limit a prosecutor's representation in either matter." See Tenn. Sup. Ct. R. 8, RPC 1.7. Finally, the State asserts that even if a criminal defendant's status as a victim constitutes a conflict of interest, there is "no basis for imputing that putative conflict to the entire [district attorney general's] office." For all these reasons, the State asserts that the trial court's orders of disqualification should be reversed.

In response, Grooms and Swafford[2] insist that the trial court did not abuse its discretion in disqualifying the district attorney general's office in this case. They contend that the trial court imputed the conflicts of interest of certain prosecutors to the entire district attorney's office because of the "gravity of the conflicts of interest" and because of the trial court's finding that this district attorney's office had a "poor history of screening procedures."

Grooms, in particular, argues that his constitutional right to due process "must trump any separation of powers argument" by the State. He contends that the due process protections of the Tennessee and United States Constitutions afford him the right to a "conflict-free prosecutor and prosecutor's office" and that the trial court's ruling of disqualification implied that he could not receive a fair trial if the District Attorney General's Office for the Twenty-Fourth Judicial District was permitted to prosecute his case. Grooms maintains that "[n]o uniform Rule of Professional Conduct or conflict of interest principle can govern the unique circumstances existing in this case, . . . where nearly 40% of the attorneys on staff in this specific [District Attorney General's] Office were present inside the homicide crime scene[.]" He claims that although he was a victim in the cases against Lesslie, Hamm, and Smith, the State failed to grant him the rights afforded to victims pursuant to Article I, Section 35 of the Tennessee Constitution and pursuant to the Victim's Bill of Rights in Tennessee Code Annotated sections 40-38-101 to -118. He insists that "[a]ffording victims of criminal prosecutions certain rights under both the Tennessee Constitution and Tennessee statutes, while simultaneously stripping them of any means by which to challenge the recognition of their rights, renders [Code

[2] Grooms and Swafford are represented by the same assistant public defender in this appeal. Lesslie, through his own counsel, filed a notice stating that "there would be no adverse effects to his defense in the original matter, by waiving the filing of a brief on the record in this cause." Hamm and Hatley, who were both represented by still another attorney, filed a notice waiving the filing of an appellate brief, asserting that they were "submit[ting] the matter on the record and request[ing] this Honorable Court to rule on the record."

section 40-38-108] unconstitutional. Finally, Grooms asserts that because ADA Morris-Deloach has prosecuted both his homicide case and the cases against Lesslie, Hamm, and Smith since their inception, "[n]o amount of screening procedures instituted now can reverse the damage already dealt to [him]."

As a threshold matter, we note that Grooms and Swafford urge this court to consider all of the conflicts of interest alleged in both motions for a pro tem prosecutor when determining whether the trial court abused its discretion in disqualifying the district attorney's office. However, we are mindful that "[f]or extraordinary appeals, the issues are limited to those specified in this court's order granting the extraordinary appeal." Heatherly v. Merrimack Mut. Fire Ins. Co., 43 S.W.3d 911, 914 (Tenn. Ct. App. 2000). After reviewing the orders granting these extraordinary appeals, we conclude that we are limited to the narrow issue of whether the trial court abused its discretion in disqualifying the Office of the District Attorney General for the Twenty-Fourth Judicial District based upon a finding of an actual conflict of interest in that Defendants Grooms and Hatley were alleged victims in other cases currently being prosecuted by the same office.

Disqualification of a district attorney general, an assistant district attorney general, or an entire district attorney general's office can result from the existence of an actual conflict of interest or an appearance of impropriety. The Tennessee Supreme Court held that an actual conflict of interest "includes any circumstances in which an attorney cannot exercise his or her independent professional judgment free of 'compromising interests and loyalties.'" State v. White, 114 S.W.3d 469, 476 (Tenn. 2003) (quoting State v. Culbreath, 30 S.W.3d 309, 312-13 (Tenn. 2000)). In addition, this court provided the following definitions for a conflict of interest:

> An actual conflict of interest is usually defined in the context of one attorney representing two or more parties with divergent interests. A test for determining a disqualifying conflict in that situation is whether the attorney "made a choice between possible alternative courses of action [that were] helpful to one client but harmful to the other." Thomas v. Foltz, 818 F.2d 476, 481 (6th Cir.), cert. denied, 484 U.S. 870, 98 L.Ed.2d 149 (1987) (citing United States v. Mers, 701 F.2d 1321 (11th Cir. 1983)). The term has been described as "a situation in which regard for one duty tends to lead to [the] disregard of another." State v. Reddick, 230 Neb. 218, 222, 430 N.W.2d 542, 545 (1988); see Gardner v. Nashville Housing Authority, 514 F.2d 38 (6th Cir.), cert. denied, 423 U.S. 928, 96 S. Ct. 274, 46 L.Ed.2d 255 (1975). In Ford v. Ford, 749 F.2d 681, 682 (11th Cir.), cert. denied, 474 U.S. 909, 106 S. Ct. 278, 88 L.Ed.2d 243 (1985), the court declared a conflict of interest when an "attorney was placed in a position of divided loyalties." Once an actual conflict of interest is shown, disqualification is the appropriate

remedy. See Moran v. State, 4 Tenn. Crim. App. 399, 472 S.W.2d 238 (1971).

State v. Tate, 925 S.W.2d 548, 552 (Tenn. Crim. App. 1995).

On the other hand, an appearance of impropriety exists when "an ordinary knowledgeable citizen acquainted with the facts would conclude that the . . . representation poses substantial risk of disservice to either the public interest or the interest of one of the clients." Clinard v. Blackwood, 46 S.W.3d 177, 187 (Tenn. 2001) (citation and internal quotation marks omitted). However, an unrealistic or purely subjective suspicion of impropriety does not require disqualification of an attorney or firm, and the existence of an appearance of impropriety should be determined from the perspective of a reasonable layperson who has been informed of all the facts. Id. The Tennessee Supreme Court emphasized that prosecutors, in particular, have an obligation to avoid even the appearance of impropriety:

> "To ensure and maintain public confidence in the integrity of the government, public officials, including prosecutors, must act impartially and responsibly. Government officials must be held to high ethical standards to make certain their activities are conducted in the public's interest. Furthermore, 'governments have a responsibility to the public to avoid even the appearance of impropriety and to act to reduce the opportunities and incentives for unethical behavior by their officials and employees.' This is true of the prosecuting attorney because 'an appearance of impropriety on the part of a government attorney will inevitably harm not only the individual attorney, but also the entire system of government that allows such improprieties to take place.'"

Culbreath, 30 S.W.3d at 316 (quoting Roberta K. Flowers, What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors, 63 Mo. L. Rev. 60, 68 (1998) (citations omitted)). Nevertheless, the disqualification of an attorney grounded in the appearance of impropriety "is a drastic remedy and is ordinarily unjustifiable based solely on the appearance of impropriety." Clinard, 46 S.W.3d at 187 (footnote omitted).

A trial court's decision to disqualify a prosecutor or the entire district attorney general's office is reviewed under an abuse of discretion standard. Culbreath, 30 S.W.3d at 313; State v. Orrick, 592 S.W.3d 877, 882 (Tenn. Crim. App. 2018); State v. Mark

Steven Treuchet, No. E2019-00663-CCA-R3-CD, 2020 WL 4346756, at *15 (Tenn. Crim. App. July 29, 2020). A trial court abuses its discretion by "'apply[ing] an incorrect legal standard, or reach[ing] a decision which is against logic or reasoning that caused an injustice to the party complaining.'" Orrick, 592 S.W.3d at 882 (quoting State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999) (citing Clinard, 46 S.W.3d at 182). When determining whether the trial court has applied an incorrect legal standard, this court is not required to defer to a trial court's interpretation of the Rules of Professional Conduct or to a trial court's decisions regarding the legal standards related to a specific disqualification motion. See State v. Coulter, 67 S.W.3d 3, 28 (Tenn. Crim. App. 2001), abrogated on other grounds by State v. Jackson, 173 S.W.3d 401 (Tenn. 2005). This court must closely scrutinize a trial court's disqualification of a district attorney general's office for abuse of discretion arising from an improper interpretation or application of the Rules of Professional Conduct. See Clinard, 46 S.W.3d at 182.

When determining whether disqualification of a prosecutor or the entire district attorney general's office is required, appellate courts must consider the following three questions:

> (1) Do the circumstances of the defendant's case establish an actual conflict of interest that requires the disqualification of a prosecutor? (2) Do the circumstances of the defendant's case create an appearance of impropriety that requires the disqualification of a prosecutor? (3) If either theory requires the disqualification of a prosecutor, is the entire District Attorney General's office likewise disqualified?

Coulter, 67 S.W.3d at 29 (citing Culbreath, 30 S.W.3d at 312-13; Tate, 925 S.W.2d at 550; State v. Steve Mason, No. 01C01-9603-CC-00103, 1997 WL 311900, at *6 (Tenn. Crim. App., at Nashville, June 6, 1997)).

The State contends that the Rules of Professional Conduct abandoned the aspirational goal of avoiding an appearance of impropriety. See Tenn. Sup. Ct. R. 8, RPC 1.10, cmt. [9] ("The 'appearance of impropriety' standard existing under the Code of Professional Responsibility has not been retained under these rules."). It claims the Rules of Professional Conduct specifically rejected the appearance of impropriety standard in favor of a "function approach," which focuses on preserving confidentiality and avoiding positions actually adverse to the client. See State v. Frankie E. Casteel, No. E2003-01563-CCA-R3-CD, 2004 WL 2138334, at *16 (Tenn. Crim. App. Sept. 24, 2004) ("Neither Rule 1.10 or 1.11 adopts an appearance of impropriety standard."); see also State v. Michelle Tipton, No. E-2004-01278-CCA-R3-CD, 2005 WL 2008178, at *6 (Tenn. Crim. App.

Aug. 22, 2005) (noting that when a criminal defense attorney switches adversarial sides, "'the appearance of impropriety is not the central concern'"; rather, the primary concern is "'an unacceptable risk of harm or disclosure'" (quoting Coulter, 67 S.W.3d at 33)).

Although we recognize that Coulter predated the adoption of the Rules of Professional Conduct in 2003, we conclude that the three questions outlined in Coulter remain relevant today, allowing for disqualification of a prosecutor or a district attorney general's office based on an actual conflict of interest or an appearance of impropriety. This conclusion is supported by the overwhelming number of recent cases that continue to reference disqualification predicated on an appearance of impropriety. See Orrick, 592 S.W.3d at 889 (recognizing that "district attorney general's offices are not subject to the Clinard per se disqualification rule based upon the appearance of impropriety" but leaving open the possibility that a district attorney general's office could still be disqualified based on the appearance of impropriety, even though such disqualification is not automatic) (emphasis added); Penney Mosley v. City of Memphis, No. W2019-00199-COA-R3-CV, 2019 WL 6216288, at *6 n.3 (Tenn. Ct. App. Nov. 21, 2019) (reiterating the holding in Culbreath that disqualification can result from an actual conflict of interest or an appearance of impropriety); State v. Christopher Swift, No. W2018-00054-CCA-R3-CD, 2019 WL 1417870, at *6 (Tenn. Crim. App. Mar. 28, 2019) (concluding that the prosecutor's actions did not create an appearance of impropriety that would require her disqualification); State v. Timothy Wayne Woodard, No. E2017-02307-CCA-R10-CD, 2019 WL 454276, at *3 (Tenn. Crim. App. Feb. 5, 2019) (noting that "[t]he rule governing disqualification due to either an actual or apparent conflict would not usually bar the entire [district attorney general's] office from prosecuting a defendant") (emphasis added); State v. Thomas Paul Odum, No. E2017-00062-CCA-R3-CD, 2017 WL 5565629, at *8 (Tenn. Crim. App. Nov. 20, 2017) ("The implementation of screening procedures [at a district attorney general's office] usually resolves the problems pertaining to actual conflicts or the appearance of impropriety."). In reaching this conclusion, we note that a number of other jurisdictions that have abandoned the appearance of impropriety standard in their rules have nevertheless continued to apply it as a ground for disqualification. See Clinard, 46 S.W.3d at 188 n.9 (identifying several jurisdictions that continue to apply the appearance of impropriety standard even through this standard has been abandoned in their rules).

Here, the State contends that the Tennessee Constitution forbids vicarious disqualification of an entire district attorney general's office in all but the most extraordinary circumstances. It asserts that the District Attorney General is a constitutional officer, which means that he/she may be relieved of his/her office only if the Constitution compels it, see Tenn. Const. art. VI, § 5, and that coordinate branches of government "cannot enact laws which impede the inherent discretion and responsibilities of the office of district attorney general without violating Article VI, § 5 of the Tennessee Constitution," see State v. Superior Oil, Inc., 875 S.W.2d 658, 661 (Tenn. 1994). Consequently, the State

maintains that a trial court may disqualify the entire office of the district attorney general on the basis of a conflict of interest only if: (1) the conflict rises to the level of a due process violation, see, e.g., Landers v. State, 256 S.W.3d 295, 304 (Tex. Crim. App. 2008) or (2) if a prosecution would so undermine the functioning of the judiciary that it results in a separation of powers violation, see, e.g., Culbreath, 30 S.W.3d at 314, 316-17. The State argues that such circumstances are "extremely rare" and that neither of these circumstances exist in this case.

The State contends that Grooms has failed to prove a due process violation or a separation of powers violation in this case. It argues that Grooms has not shown how his homicide case is negatively impacted by the fact that he is allegedly a victim of a theft in another case prosecuted by this office. In fact, the State posits that Hamm, Lesslie, and Smith might have a stronger due process argument than Grooms because they could claim that Grooms and Hatley might have an incentive to please the district attorney's office in the theft cases in order to obtain some benefit in their own criminal cases. However, the State emphasizes that Hamm, Lesslie, and Smith never filed briefs raising such claims in this appeal.

The State asserts that the Tennessee Supreme Court's decision in State v. Culbreath, 30 S.W.3d 309 (Tenn. 2000), which was decided prior to the adoption of the Rules of Professional Conduct, "furnishes the rare exemplar of a constitutionally permissible office-wide disqualification." In Culbreath, the Tennessee Supreme Court affirmed the disqualification of an entire district attorney general's office based on its use of a private attorney, who was substantially compensated by private special interest group. Id. at 311-12. The court found that the private attorney had a conflict of interest because he owed a duty of loyalty to the special interest group that had compensated him and owed a duty of loyalty to the district attorney general's office where he was serving as a public prosecutor. Id. at 316. The court also held that the trial court did not abuse its discretion in disqualifying the district attorney general's office based on the appearance of impropriety created by the private attorney's conflict of interest. Id. The State seeks to distinguish the instant case from Culbreath, arguing that "no such features, nor any actual prejudice to the rights of the defendants, are present" and that "the defendants have failed to establish an actual conflict of interest on the part of any individual prosecutor in this case."

In reviewing a trial court's decision on a motion to disqualify, we are mindful that "improper or unethical participation by a prosecutor or a prosecutor's office in a criminal case may implicate the basic constitutional rights of a defendant, 'the orderly administration of justice, the dignity of the courts, the honor and trustworthiness of the legal profession[,] and the interests of the public at large.'" Coulter, 67 S.W.3d at 28 (quoting State v. Phillips, 672 S.W.2d 427, 435 (Tenn. Crim. App. 1984)). In order to protect these interests, the courts of this state are guided by not only the Rules of

Professional Conduct, which the Tennessee Supreme Court adopted in Tennessee Supreme Court Rule 8, but also by the principles of professional conduct created by the courts. See id. (citing State v. Ricky Raymond Bryan, No. M1999-00854-CCA-R9-CD, 2000 WL 1131890, at *3-8 (Tenn. Crim. App. Aug. 4, 2000)).

The Tennessee Supreme Court, "which bears the ultimate responsibility to regulate the practice of law in Tennessee, has the inherent authority to promulgate rules and otherwise govern conduct within the profession." Frazier v. State, 303 S.W.3d 674, 679 (Tenn. 2010) (citing Doe v. Bd. of Prof'l Responsibility, 104 S.W.3d 465, 469-70 (Tenn. 2003)). On March 1, 2003, the supreme court adopted the Rules of Professional Conduct, which replaced the previous Code of Professional Responsibility. See Tenn. Sup. Ct. R. 8, RPC (effective Mar. 1, 2003) (amended 2011); see also Tenn. Sup. Ct. R. 8, Tenn. Code of Prof'l Resp. (replaced 2003); see also In Re: Tenn. Rules of Prof'l Conduct, No. M2000-02416-SC-RL-RL (Tenn. Aug. 27, 2002) (order). On January 1, 2011, amendments to the Rules of Professional Conduct became effective, and these amendments are applicable to this case. See Tenn. Sup. Ct. R. 8, RPC, Editor's Notes (2011); see also Orrick, 592 S.W.3d at 884.

The Rules of Professional Conduct "simply provide a framework for the ethical practice of law." Tenn. Sup. Ct. R. 8, RPC, Preamble and Scope, para. [17]. Comments to these Rules "provide guidance for practicing in compliance with the Rules" and "explain[] and illustrate[] the meaning and purpose" of the Rules. Tenn. Sup. Ct. R. 8, RPC, Preamble and Scope, paras. [15], [23]. Several of these rules "proscribe conflicts of interest." Frazier, 303 S.W.3d at 679; see Tenn. Sup. Ct. R. 8, RPC 1.7, 1.8, 1.10, 1.11. While the Rules of Professional Conduct "'do not fully equate with the body of law governing courts, trials and the administration of the justice system,'" these rules often provide guidance to this court's determinations. Frazier, 303 S.W.3d at 682 n.7 (quoting Tate, 925 S.W.2d at 550).

The interpretation of rules adopted by the Tennessee Supreme Court, including the Rules of Professional Conduct, is a question of law that is reviewed de novo. Orrick, 592 S.W.3d at 886 (citing Lockett v. Bd. of Prof'l Responsibility, 380 S.W.3d 19, 25 (Tenn. 2012); Thomas v. Oldfield, 279 S.W.3d 259, 261 (Tenn. 2009)). When interpreting such rules, this court must apply the traditional rules of statutory construction. Id. (citing Lockett, 380 S.W.3d at 25; Keough v. State, 356 S.W.3d 366, 370-71 (Tenn. 2011); Thomas, 279 S.W.3d at 261; Doe, 104 S.W.3d at 469). Accordingly, we must ascertain and give effect to the Tennessee Supreme Court's intent without unduly restricting or expanding a rule's coverage beyond its intended scope. Id. "Intent is determined '"from the natural and ordinary meaning of the . . . language within the context of the entire [rule] without any forced or subtle construction that would extend or limit the . . . meaning.'" Id. (alteration in original) (quoting Doe, 104 S.W.3d at 469). "'[A]ll sections are to be

construed together in light of the general purpose and plan.'" Id. (quoting Doe, 104 S.W.3d at 469). In addition, we must not apply a particular interpretation of a rule if that interpretation "'would yield an absurd result.'" Id. (quoting Doe, 104 S.W.3d at 469). Moreover, "'a special [rule], or a special provision of a particular [rule], will prevail over a general provision in another [rule] or a general provision in the same [rule].'" Id. (quoting Keough, 356 S.W.3d at 371).

Rule 1.11 governs special conflicts of interest for former and current government officers and employees, including members of a District Attorney General's office. Tenn. Sup. Ct. R. 8, RPC 1.11 (Special Conflicts of Interest for Former and Current Government Officers and Employees). Rule 1.11 states, in pertinent part:

> (d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee:
>
> (1) is subject to RPCs 1.7 and 1.9; and
>
> (2) shall not:
>
> (i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing, or under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or
>
> (ii) negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a staff attorney to a court or as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for private employment as permitted by RPC 1.12(b) and subject to the conditions stated in RPC 1.12(b).

Tenn. Sup. Ct. R. 8, RPC 1.11(d). Comment [2] to Rule 1.11 explains,

> Paragraphs (a)(1), (a)(2), and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a private client. Although RPC 1.10 is not applicable to the conflicts of interest addressed by this Rule, paragraph (b) of this Rule permits screening and notice to avoid imputation for lawyers moving into, or out of, positions as government officers or employees in the same manner as set forth for other lawyers in RPC 1.10(c). Requirements for screening procedures are stated in RPC 1.0(k) and RPC 1.0, Comments [8]-[10]. Because of the problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Tenn. Sup. Ct. R. 8, RPC 1.11(d), cmt. [2] (emphasis added). In addition, Comment [9] to Rule 1.11 states, "Paragraph (d) does not disqualify other lawyers in the agency with which the lawyer in question has become associated." Tenn. Sup. Ct. R. 8, RPC 1.11(d), cmt. [9].

In addition, Rule 1.7, which governs conflicts of interest with current clients, provides, in pertinent part:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Tenn. Sup. Ct. R. 8, RPC 1.7 (Conflict of Interest: Current Clients). Comment [1] to Rule 1.7 explains, "Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests." Tenn. Sup. Ct. R. 8, RPC 1.7, cmt. [1]. In addition, Comment [6] to this rule provides the following guidance for identifying when representation of one client is directly adverse to another client:

> Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit.

Tenn. Sup. Ct. R. 8, RPC 1.7, cmt. [6]. Moreover, Comment [8] to Rule 1.7 provides guidance for identifying when there is a significant risk that the representation of one or more clients will be materially limited by a lawyer's other responsibilities or interests:

> Even where there is no direct adversity between clients, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are: what is the likelihood that a difference in interests will eventuate and, if it does, will it materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client?

Tenn. Sup. Ct. R. 8, RPC 1.7, cmt. [8]. Furthermore, Comment [9] of Rule 1.7 notes that "a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under RPC 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor, or corporate director." Tenn. Sup. Ct. R. 8, RPC 1.7, cmt. [9].

Rule 1.10 of the Rules of Professional Conduct provides the general rule regarding imputation of conflicts of interest of an attorney upon a firm. Tenn. Sup. Ct. R. 8, RPC 1.10 (Imputation of Conflicts of Interest: General Rule). The amended Rule 1.10, which became effective on January 1, 2011, adopted subsection (f), which requires that Rule 1.11, the specialized rule, be applied when the disqualified attorney is a former or current governmental attorney, including an assistant district attorney general. Tenn. Sup. Ct. R. 8, RPC 1.10; see Orrick, 592 S.W.3d at 887. While Rule 1.10 provides the general rule, Rule 1.11 provides the specialized rule governing conflicts of interests of former and current government attorneys, and, as we have previously noted, the principles of construction require that a special rule prevails over a general rule. See Orrick, 592 S.W.3d at 889. Accordingly, "Rule of Professional Conduct 1.11 is the applicable ethical authority when considering whether the conflict of interests of a disqualified assistant district attorney general should be vicariously imputed upon a district attorney general's office." Id.

The State strenuously argues that there is no individual conflict of interest in this case. It asserts that "the trial court did not find an actual conflict of interest on the part of

an individual prosecutor and then impute it to the office of the [d]istrict [a]ttorney [general]"; rather, the trial court "found an appearance of impropriety based on the status of the defendants that touched the office as a whole." Alternatively, the State, quoting Orrick, 592 S.W.3d at 889-91, contends that even if the trial court did find an actual conflict of interest on the part of an individual prosecutor, it is "inappropriate to apply a per se disqualification rule, based on the appearance of impropriety, to a district attorney general's office when an assistant district attorney general has a disqualifying conflict of interests." Accordingly, the State contends that the trial court abused its discretion in disqualifying the District Attorney General's Office for the Twenty-Fourth Judicial District, which had the effect not only of violating electorate's right to the services of their elected representative but also of intruding on the exclusive domain of the District Attorney General.

The State argues that while Grooms claims he did not get the benefit of the Victim's Bill of Rights, he has failed to prove that he is an actual victim. It also asserts that when a victim in one criminal case is charged as a defendant in another criminal case, the district attorney general's office is not disqualified because the prosecutor's actual client is the State of Tennessee and the victim is merely a witness. See State v. Robinson, 971 S.W.2d 30, 41 (Tenn. Crim. App. 1997). Referencing Rule 1.7(a)(1), which precludes an attorney from representing a client that will be "directly adverse" to another client, the State argues that neither Grooms' nor Hatley's status as a "victim" means that they are clients of the District Attorney General.

Alternatively, referencing Rule 1.7(a)(2), the State argues that Grooms and Swafford failed to establish that there is a "significant risk" that the prosecutor's representation would be "material limited" by the prosecutor's responsibilities to Grooms or Hatley as "victims." Tenn. Sup. Ct. R. 8, RPC 1.7(a)(2). It notes that Grooms never attempted to testify and never presented any proof as to how the district attorney general's office failed to fulfill their duties to him as a victim. It also contends that none of the duties in the Victim's Bill of Rights creates a substantial risk that the prosecutor's representation will be materially limited on the grounds that the victim is a defendant in another case. See State v. Johnson, 538 S.W.3d 32, 55 (Tenn. Crim. App. 2017) ("Neither the codification of the duties of the district attorney general nor the statutory and constitutional provisions conferring certain rights upon the victims of crime alters the prosecutor's role as the representative of the people of Tennessee."). The State contends that the immunity provision of the Victim's Bill of Rights precludes a criminal defendant from obtaining disqualification on the basis that he will be prejudiced by a prosecutor's prospective failure to comply with this statute. See Tenn. Code Ann. § 40-38-108. It also contends that Swafford's case is barely past the indictment stage and the record does not show that the District Attorney General intends to have Swafford's and Hatley's cases tried by the same prosecutor. Finally, the State argues that even if there were a conflict of interest for a

particular prosecutor, this conflict of interest cannot be imputed to the entire district attorney general's office. It asserts that if an individual prosecutor is precluded from prosecuting Grooms and Hatley while simultaneously prosecuting cases in which Grooms and Hatley are alleged victims, "the record discloses no reason why the prosecutor could not be disqualified from one case and another attorney from the same office appointed in her stead." The State claims that in such a scenario, the defendants' due process rights are not violated because "nothing suggests that the defendants are unlikely to have fair trials if different attorneys from the same office represent the State." It also argues that there is nothing to indicate that "public confidence in the court system would be meaningfully eroded if different attorneys from the same office prosecuted cases in which a defendant in one was a victim in another."

We fully agree with the State that the District Attorney General represents "the people of the State of Tennessee." Johnson, 538 S.W.3d at 51 (citing Berger v. United States, 295 U.S. 78, 88 (1935)). Consequently, "[t]he prosecutor is not an advocate for the victim of a crime or the witnesses for the State but is instead the representative of the sovereign state of Tennessee charged with 'safeguarding and advocating the rights of the people.'" Id. at 55 (quoting Quillen v. Crockett, 928 S.W.2d 47, 51 (Tenn. Crim. App. 1995)); see State v. Flood, 219 S.W.3d 307, 314 (Tenn. 2007) (stating that "a victim in a criminal case does not meet the definition of a 'party'"). As this court recognized, the State has no authority to represent victims or its witnesses:

> Neither the codification of the duties of the district attorney general nor the statutory and constitutional provisions conferring certain rights upon the victims of crime alters the prosecutor's role as the representative of the people of Tennessee. Nor do they endow the State with the power to represent the victim or the witnesses proffered by the State. The State cannot undertake to act as counsel to its witnesses, even the victim, because the State's interests and that of its witnesses are not identical.

Johnson, 538 S.W.3d at 55-56 (citation and internal quotation marks omitted).

After reviewing the record in this case, we conclude that neither a conflict of interest nor an appearance of impropriety exists in these cases. Although Grooms' attorney claimed that Grooms owned the personal property that had been stolen from the home at 60 Jayson Street, that particular home was actually owned by his deceased wife's parents, who were listed as the victims on the relevant indictments. We also cannot ignore the fact that absolutely no evidence was presented at any of the hearings showing that Grooms actually owned the property at issue in the cases against Defendants Hamm, Lesslie, and

Smith. In addition, while we recognize that Hatley was at least minimally listed as the owner of the truck Swafford stole on the indictment, no proof was presented at any hearing showing that Hatley was in fact the owner of this truck.

Even if we assume, for the purposes of our analysis, that Grooms and Hatley were in fact victims because their property was stolen, we nevertheless conclude that the assistant district attorney general assigned to these cases did not have an actual conflict of interest such that she could not have prosecuted Grooms and Hatley as defendants in their respective cases and then also prosecuted the cases in which Grooms and Hatley were alleged victims. As to this issue, the defense failed to offer any proof in the trial court and failed to provide any reasoning on appeal as to how an actual conflict of interest or an appearance of impropriety exists because of Grooms' and Hatley's status as victims. Based on the aforementioned law, it is clear that the District Attorney General's client is the State of Tennessee. There was no evidence presented that anyone at the district attorney general's office ever suggested to Grooms or Hatley that they represented them because of their status as victims. Cf. Robinson, 971 S.W.2d at 41.

Pursuant to Rule 1.7(a), "a concurrent conflict of interest exists if . . . the representation of one client will be directly adverse to another client." Tenn. Sup. Ct. R. 8, RPC 1.7(a). Because Grooms and Hatley, as "victims," were never clients of the district attorney general's office, Rule 1.7(a) does not apply, and the District Attorney General's representation of the State in the cases against Grooms and Hatley as criminal defendants was never directly adverse to the representation of the State in the cases where Grooms and Hatley were alleged victims. Therefore, there is no concurrent conflict of interest under Rule 1.7(a) under the facts of these cases.

However, pursuant to Rule 1.7(b), a concurrent conflict of interest can also arise if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibility to another client, a former client, or a third person or by a personal interest of the lawyer." Tenn. Sup. Ct. R. 8, RPC 1.7(b). We have already concluded that Grooms and Hatley, as "victims," were never clients of the District Attorney General; therefore, they would never constitute "another client" or a "former client" under Rule 1.7(b). While it is true that a district attorney general's office has some duties owed to victims, see Tenn. Const. art. I, § 35 and Tenn. Code Ann. §§ 40-38-101 to -118, no confidential relationship was formed with Grooms and Hatley because there was no client-lawyer relationship. Nor can we conclude that the assistant district attorney general assigned to these cases acquired confidential information in any of the cases involving Grooms or Hatley as alleged victims that would assist the prosecution to the detriment of Grooms or Hatley as criminal defendants. See Tate, 925 S.W.2d at 553. In addition, Grooms and Hatley, as "victims," would not constitute a "personal interest of the lawyer" under Rule 1.7(b). Lastly, pursuant to Rule 1.7(b), we must consider whether the District

Attorney General's representation of the State of Tennessee is "materially limited by" its "responsibility to . . . a third person," namely Grooms and Hatley as "victims." While we have already recognized that the district attorney general's office has some duties owed to victims, we fail to see how such duties would create a "significant risk" that the District Attorney General's representation of the State of Tennessee would be "materially limited by" its "responsibility to" Grooms and Hatley. The real issue is whether the responsibilities owed to Grooms and Hatley as victims "foreclose[] alternatives that would otherwise be available to the client[, the State of Tennessee]." Tenn. Sup. Ct. R. 8, RPC 1.7, cmt. [8]. Pursuant to Rule 1.7(b), the duty of loyalty is owed to the client, not to the third party. Accordingly, Rule 1.7(b) is unconcerned with whether the District Attorney General's duty to Grooms or Hatley as alleged victims was "materially limited" by its duty to the State of Tennessee; instead, Rule 1.7 concerns itself with whether the District Attorney General's duty to the State of Tennessee is "materially limited" by its responsibility to Grooms and Hatley as "victims." Because we fail to see how the duty to the State of Tennessee is materially limited by any of the responsibilities owed to Grooms and Hatley as "victims," we conclude that no concurrent conflict of interest exists. Accordingly, we conclude that no actual conflict of interest exists in this case under Rule 1.7(a) or (b). We likewise conclude that no appearance of impropriety exists in this case.

The record does not support the trial court's ruling disqualifying the entire district attorney general's office. Because no prosecutor in the district attorney general's office had a conflict of interest related to these cases and because there was no appearance of impropriety based on a prosecutor's actions, vicarious disqualification of the entire district attorney general's office was improper. Therefore, we conclude that the trial court abused its discretion in disqualifying the District Attorney General's Office for the Twenty-Fourth Judicial District.

CONCLUSION

Because the trial court abused its discretion in discretion in disqualifying the District Attorney General's Office for the Twenty-Fourth Judicial District, the orders of the trial court are reversed, and the case is remanded for further proceedings in accordance with this opinion.

CAMILLE R. MCMULLEN, JUDGE