

Alabama Rules of Criminal Procedure

Rule 12. Selection of venire; the grand jury and petit jury panels.

Rule 12.8. Indictment.

(a) NUMBER OF GRAND JURORS NECESSARY TO INDICT. An indictment shall not be returned without the concurrence of at least twelve (12) grand jurors.

(b) RETURN OF INDICTMENT. When an indictment is found, it must be endorsed "A True Bill," and the indictment must be signed by the foreman. The indictment shall be returned and filed in open court by the foreman in the presence of at least eleven (11) other members of the grand jury.

(c) NOTICE OF SUPERVENING INDICTMENT. If a defendant has previously been released on a consolidated bond for the offense for which he or she is later indicted and the conditions of release have not been altered following the indictment, the circuit clerk shall notify the defendant, the attorney for the defendant, and the sureties of the date and time of arraignment by mailing a court appearance notice by first class mail. An arrest warrant need not be issued upon an indictment if the defendant, at the time of the initial arrest, was released on a consolidated bond and the amount of that bond has not been increased following the return of an indictment.

(d) FAILURE TO RETURN AN INDICTMENT. If the defendant is in custody or has been conditionally released, and the charge has been presented to the grand jury and no indictment is returned, the foreman shall promptly so report to the court in writing, and, unless the court shall order otherwise, the defendant held shall be released forthwith from custody or if the defendant has previously been conditionally released, the defendant shall be relieved of any obligation made in connection with such conditional release.

(e) INDICTMENT DISCRETIONARY FOR A MISDEMEANOR OFFENSE. The grand jury is not bound to find an indictment for any misdemeanor unless at least twelve (12) members of the grand jury think it necessary for the public good.

(f) NATURE OF EVIDENCE PRESENTED TO GRAND JURY.

(1) In its investigation of a charge of any indictable offense, the grand jury may consider only legal evidence given by witnesses before it or legal documentary evidence presented to it. For purposes of this section, legal evidence may consist of hearsay evidence in whole or in part.

(2) An indictment based solely on illegal evidence is subject to dismissal; however, an indictment is not subject to being dismissed on the ground that it is

based upon insufficient evidence or is based in part upon illegal evidence. No inquiry into the sufficiency of the evidence before the grand jury will be indulged.

[Amended 8-1-97.]

Committee Comments

Rule 12.8(a) is in compliance with Ala.Code 1975, § 12-16-204, which mandates a concurrence of at least twelve (12) grand jurors to find an indictment.

Rule 12.8(b) is taken from Ala.Code 1975, § 12-16-204, which requires the indictment to be endorsed “A True Bill” and signed by the foreman. The directions of that section are mandatory, and an indictment not so endorsed is invalid and will not support a conviction. *Whitley v. State*, 166 Ala. 42, 52 So. 203 (1910); *Layton v. State*, 23 Ala.App. 297, 124 So. 406 (1929); *Honeycutt v. State*, 21 Ala.App. 464, 109 So. 371 (1926).

The signature of the district attorney is permissible but not necessary. *Mayo v. State*, 36 Ala.App. 557, 60 So.2d 860 (1952); *Hughes v. State*, 213 Ala. 555, 105 So. 664 (1925).

Rule 12.8(c) is intended to conserve the time of court and law enforcement personnel spent in issuing and serving a warrant or summons following return of an indictment in those cases in which the defendant already has been charged with the offense by complaint.

Rule 12.8(d) makes explicit the duty of the foreman to inform the court immediately of the inability of the grand jury to find an indictment.

Rule 12.8(e) tracks Ala.Code 1975, § 12-16-203.

Rule 12.8(f)(1) is based upon Ala.Code 1975, § 12-16-200, which states:

“In the investigation of a charge for any indictable offense, the grand jury can receive no other evidence than is given by witnesses before them or furnished by legal documentary evidence, and any witness may be examined and compelled to testify as to any offense within his knowledge without being specially interrogated as to any particular person, time or place.”

Subsection 12.8(f)(1) is based on firmly established case law that a grand jury is permitted to receive and indict on hearsay evidence alone, if furnished by a witness appearing before the grand jury. *Costello v. United States*, 350 U.S. 359 (1956); *Douglas v. State*, 42 Ala.App. 314, 163 So.2d 477 (1963); *Washington v. State*, 63 Ala. 189 (1879).

Subsection 12.8(f)(2) is based on Alabama case law. In *Fikes v. State*, 263 Ala. 89, 81 So.2d 303 (1955), the Alabama Supreme Court stated, “If legal evidence is given, ... an indictment is not subject to be quashed because there was illegal evidence also given.” There is no authority in Alabama on what constitutes “illegal evidence,” but the implication of the *Fikes* case is that a coerced confession and illegally obtained evidence may be “illegal” evidence. Thus, an indictment based solely upon a coerced confession or other illegal evidence would be subject to dismissal, but if based in part on legal evidence and only in part on illegal evidence, it would not be subject to dismissal.

See *Boulden v. State*, 278 Ala. 437, 179 So.2d 20 (1965).