

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: Vance Walker Dennis

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I am an Assistant District Attorney General in the 24<sup>th</sup> Judicial District, which is composed of Hardin, Decatur, Benton, Carroll and Henry Counties.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I was licensed to practice law in 2001, and my Tennessee Board of Professional Responsibility number is 021178.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee is the only state in which I am licensed to practice law.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

I have never been denied admission to, suspended or placed on inactive status by the Bar of any state.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

I was a partner at McGee and Dennis, Attorneys at Law, in Savannah, Tennessee, from July, 2001 until November 2014. I started my current employment as an Assistant District Attorney General in the 24<sup>th</sup> Judicial District on November 15, 2014.

I also served as a State Representative for the 71<sup>st</sup> House District in the Tennessee General

Assembly from November of 2008 until November of 2014.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

I have been employed continuously since I completed my legal education.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My current practice consists entirely of prosecuting criminal offenses in the General Sessions and Circuit Courts of the 24<sup>th</sup> Judicial District. As the DUI prosecutor for our district, I work primarily on DUI, Vehicular Assault, and Vehicular Homicide prosecutions.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

While in private practice, I represented individuals, business entities and government entities in a wide variety of legal matters, including criminal defense, divorce and custody matters, civil litigation, real estate, probate, and various other legal and business issues. I practiced in many of the General Sessions, Circuit, Chancery and Appellate Courts in West and Middle Tennessee.

During my service in the Tennessee General Assembly, I drafted and sponsored dozens of bills. The primary focus of the vast majority of legislation I presented dealt with our criminal and civil justice systems. I also served on the Judiciary and Civil Justice committees and subcommittees, which were tasked with the review of hundreds of legislative proposals pertaining to our civil and criminal court systems. In my capacity as a member of these committees, I spent a significant amount of time analyzing the various impacts that proposed legislation would have on

our civil and criminal justice systems and drafting amendments to those legislative proposals.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

I successfully carried dozens of bills during my service in the Tennessee legislature, including the Tennessee Civil Justice Act of 2011, which made numerous significant changes in many aspects of our civil justice system.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have not served as a mediator, arbitrator, or judicial officer in a formal capacity.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

I have served as trustee for a local cemetery association and a testamentary trust for the benefit of a disabled adult.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

I am an appointed board member for The Lawyers' Fund for Client Protection, established pursuant to Supreme Court Rule 25 to reimburse claimants for losses caused by any dishonest conduct committed by lawyers practicing in this state.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the

Governor as a nominee.

None

**EDUCATION**

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

The University of Tennessee at Knoxville, August 1994 to May 1998, B.S. in Agricultural Economics

The University of Tennessee College of Law, August 1998 to December 2000, J.D.

**PERSONAL INFORMATION**

15. State your age and date of birth.

I am 40 years old. My date of birth is December 9, 1975.

16. How long have you lived continuously in the State of Tennessee?

I have lived continuously in Tennessee for 40 years.

17. How long have you lived continuously in the county where you are now living?

I have lived in Hardin County for 40 years, but I spent a great deal of time in Knox County from 1994 to 2000.

18. State the county in which you are registered to vote.

I am registered to vote in Hardin County.

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

None

20. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

I have never pled guilty to, been convicted of, nor are now on diversion for violation of any law, regulation or ordinance other than a minor traffic offense.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

I am not, to my knowledge, under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule.

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

One complaint was filed against me with the Tennessee Board of Professional Responsibility by a criminal defendant I was appointed to represent many years ago. The complaint was dismissed by the board.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No tax lien or other collection procedure has been instituted against me by federal, state, or local authorities or creditors within the last five years.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

I have never filed bankruptcy in any capacity.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

I was a civil defendant in my capacity as trustee of a testamentary trust for the benefit of a mentally disabled adult. A civil lawsuit was filed by the mother of the disabled beneficiary seeking the appointment of a new trustee. (IN RE: EDDIE K. WHITLOW TRUST AGREEMENT. JERRY NELL WHITLOW, Petitioner, vs. VANCE DENNIS, SUBSTITUTE TRUSTEE, defendant, Hardin County Chancery Court Docket No. 7272) The petition was voluntarily dismissed by the Plaintiff by order entered October 4, 2011.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

I am a member of the Savannah Lions Club, and was club President for one year in the mid-2000s. I am a board member of Hardin County Skills, Inc. I am also an alumni of the Alpha Gamma Rho fraternity.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

- a. If so, list such organizations and describe the basis of the membership limitation.
- b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

I was a member of the Alpha Kappa chapter of the Alpha Gamma Rho Fraternity at the University of Tennessee at Knoxville, and I am currently an alumni member of the organization.

### ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member

within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

I was a member of the Tennessee Bar Association from 2001 until 2009 when I joined the legislature.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

2011 - Legislator of the Year Award - Southwest Tennessee Development District

2011 – Community Service Award – Tennessee Hospital Association

2011 – Representative of the Year – Tennessee Coalition to End Domestic And Sexual Violence

2012 – Healthcare Advocate Award – Hardin County Community and Healthcare Foundation

2012 – Guardian of Small Business Award – National Federation of Independent Business

30. List the citations of any legal articles or books you have published.

None

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

I presented legislative updates at various CLE seminars while I was a member of the General Assembly.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I was a candidate for the Hardin County Commission in 2002. I was a candidate for State Representative for the 71<sup>st</sup> House District of the Tennessee General Assembly in 2006. I was elected as the State Representative for the 71<sup>st</sup> House District in the Tennessee General Assembly in 2008, 2010, and 2012. I was a candidate for State Representative for the 71<sup>st</sup> House District of the Tennessee General Assembly in 2014.



33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

I have never been a registered lobbyist.

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Please see the attached documents. I composed each document in its entirety except the Rule 9 motion, which I drafted in collaboration with Rachel Willis, who is Senior Counsel in the Criminal Appeals Division of the Office of the Attorney General and Reporter.

### ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

I have been blessed in this life with wonderful parents who encouraged scholastic achievement, an outstanding educational experience funded in large part by the taxpayers of this great State, and the opportunity to practice a worthy and honorable profession for the last 15 years. I believe that serving on our Court of Criminal Appeals would be a professionally rewarding position that would allow me to provide for my family while utilizing my skills, talents, and education for the betterment of our legal profession, our judicial system, and our State.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

My commitment to equal justice and pro bono service has likely been no greater than the thousands of other law school graduates who have hung out their shingle and jumped head-first into private practice in the hundreds of small towns scattered across our great State. We have all represented dozens, if not hundreds, of individuals by appointment in our General Sessions, Circuit, Chancery and Juvenile Court systems as defense counsel and guardians ad litem. We have all taken the sad cases we knew we couldn't make a dime on because it was the right thing to do. We have all battled Big Government or Big Business for some "little guy" who couldn't pay because we wanted to be able to look him in the eye when we ran into him at the grocery store or the little league field. These are the things that small town lawyers do every day.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I seek the position on the Court of Criminal Appeals that is being vacated by Judge Roger Page

upon confirmation of his appointment to the Tennessee Supreme Court. I would bring a diverse background of knowledge and experience to our Court of Criminal Appeals. My experience in private practice has given me broad exposure to most areas of criminal and civil law. My legislative experience is a great asset in regards to legislative interpretation and intent. My service as an Assistant District Attorney, coupled with many years of criminal defense work in private practice, has given me a robust view from both sides of our criminal justice system.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I have been an active member of the Savannah Lions Club for 14 years, and I am a past president of the organization. I have also served for many years on the Board of Directors for Hardin County Skills, Inc., which is a nonprofit organization that offers employment and residential services to mentally disabled residents of Hardin County. My wife is a member of The Savannah Rotary Club, and I often assist in their community service activities as well.

I would anticipate continuing my involvement in these organizations to the extent that my involvement does not violate the Code of Judicial Conduct.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

I believe the most important life experiences that contribute to my suitability for this position are those lessons and experiences learned in childhood that shaped my core values and beliefs.

My father grew up poor. Dirt poor. My paternal grandfather died when my father was seven years old, and my father's first residence with indoor plumbing was an army barracks. Although he later became a successful small business owner, he always instilled in my siblings and I the fundamental principle that a person's worth is not measured by his bank account, but by how he uses his skills and resources for the betterment of himself, his family, and his community. Our criminal justice system is founded on this very premise; that every defendant is judged not by their wealth, poverty, or social or political position, but by his actions in relation to the law.

My parents started their own small business when I was a child. It developed into a successful enterprise by the time I reached adulthood. There were times during my childhood when money was abundant. There were times when it was scarce. However, the hard work my parents put forth every day in the constant struggle for their slice of the American Dream convinced me that hard work and perseverance are an absolute necessity. Being a Judge on our Court of Criminal Appeals requires this type of work ethic in order to timely and efficiently review the significant case load presented to the Court.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

I would certainly uphold the law regardless of my approval or disapproval of the substance of the statute or rule at issue.

In 2011, our legislature adopted the Exclusionary Rule Reform Act, codified at T.C.A. 40-6-108, which bars suppression of evidence acquired by search pursuant to a defective search warrant if the errors are the result of a good faith mistake, technical violation, absence of officer, or reasonable reliance on a statute that is later ruled unconstitutional. I was a vocal opponent of this proposed legislation. I still believe, for a variety of reasons, that it is a poor policy choice for our criminal justice system. Nevertheless, the proposed legislation swiftly became the law of the land.

Upon exiting the legislature and becoming an Assistant District Attorney in 2014, one of the first cases I was required to prosecute was a DUI charge with a typographical error in the body of the search warrant for the defendant's blood. Despite any personal reservations I had about the wisdom of the underlying policy, I firmly advocated for the application of T.C.A. 40-6-108 and the admissibility of the blood tests results in question. When the Trial Court granted the defendant's suppression motion, I sought and obtained permission to appeal the suppression of the evidence. The issue is currently pending in the Court of Criminal Appeals. See *State of Tennessee vs. Tina Szabo*, Henry County Circuit Court No. 15448, Tennessee Court of Criminal Appeals No. W2015-02264-CCA-R9-CD.

### REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

Representative Beth Harwell, Speaker of the Tennessee House of Representatives

Representative Jon Lundberg, Chairman of the House Civil Justice Committee

Representative William Lamberth, Chairman of the House Criminal Justice Committee

Representative Mike Carter, Vice-Chairman of the House Civil Justice Committee

General Matthew Stowe, District Attorney General for the 24<sup>th</sup> Judicial District

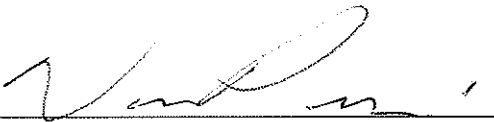
**AFFIRMATION CONCERNING APPLICATION**

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: February 24, 2016.

  
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Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS  
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

VANCE WALKER DENNIS  
Type or Print Name

*Vance Walker Dennis*  
Signature

2-24-16  
Date

021178  
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Tennessee Limited Insurance Producer License

(Title Insurance) - License number 0855164

Inactive status as of 01/04/2013

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

STATE OF TENNESSEE	)	
	)	
Appellee	)	Hardin County Circuit Court No. 8341
	)	
vs.	)	Case No. W2004-02464-CCA-R3-CD
	)	
GLORIA A. PORTER	)	
	)	
Appellant	)	

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE  
HARDIN COUNTY CRIMINAL COURT

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BRIEF OF THE APPELLANT

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Vance W. Dennis  
Attorney for Appellant  
McGee & Dennis  
Attorneys at Law  
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Savannah, TN 38372

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## ABBREVIATIONS

- T. T. Transcript of Trial
- T. R. Technical Record



## TABLE OF AUTHORITIES

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## STATEMENT OF THE ISSUES

1. The evidence was insufficient to support a finding by the triers of fact that Gloria A. Porter was guilty of the offenses beyond a reasonable doubt.

## STATEMENT OF THE CASE

The defendant, Gloria A. Porter, was indicted on March 22, 2004, along with co-defendants Bobby Shane Hurley and Jackie J. Porter, on the charges of Possession of a Controlled Substance (Schedule II) With Intent to Manufacture, Deliver or Sell, and Simple Possession of a Controlled Substance (Schedule VI). Gloria A. Porter and Bobby Shane Hurley were tried before a jury on August 17, 2004, while Jackie J. Porter pled guilty to the indictments on an earlier date. Gloria A. Porter was found guilty of both charges, and was sentenced to 14 years in the Tennessee Department of Corrections.

## STATEMENT OF THE FACTS

The 24<sup>th</sup> Judicial District Drug Task Force obtained and executed a search warrant for Gloria Porter and her residence at 165 Graham Street in Savannah, Tennessee. Officers rapidly entered the home and discovered five people, including the three defendants, in the kitchen of the residence. Officer Tim Cunningham was the first officer in the residence. Officer Cunningham made a quick sweep through the residence, then returned to the kitchen and took Gloria Porter to the living room. Officer Cunningham searched Gloria Porter in the living room and found no illegal substances on her person. While Ms. Porter and Officer Cunningham were in the living room, the remaining officers discovered that a co-defendant, Jackie Porter, had placed several small bags of what appeared to be controlled substances underneath him in his chair. Another co-defendant, Bobby Shane Hurley, was being restrained by an officer against a refrigerator. While he was being restrained, several officers saw Mr. Hurley throw a small bag of what appeared to be a controlled substance on the ground. The three defendants were then arrested, while the two other individuals who were in the kitchen were released.

## ARGUMENT

**FIRST ISSUE- The evidence was insufficient to support a finding by the trier of fact that Gloria A. Porter was guilty of the offenses beyond a reasonable doubt.**

### 1. Standard of Review

The Appellant contends that the following excerpt from this Court's opinion in *State v. Transou*, 928 S.W.2d 949, 954-55 (Tenn. Cr. App 1996), is an accurate statement of the standard of review in this matter.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." *Tenn.R.App.P.* 13(e). This rule is applicable to findings based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. *Liakas v. State*, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are

resolved by the trier of fact, not this Court. *Cabbage*, 571 S.W.2d at 835. In *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973), our Supreme Court said: "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State."

Since a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of illustrating why the evidence is insufficient to support the verdicts returned by the trier of fact. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. *Tuggle*, 639 S.W.2d at 914."

## 2. Sufficiency of the Evidence

In order for Gloria A. Porter to be convicted of possession of a controlled substance with the intent to sell, the State of Tennessee was required to prove beyond a reasonable doubt that Ms. Porter knowingly possessed the controlled substance with the intent to sell or deliver the controlled substance. The appellant does not contest the fact that the substances found in the co-defendants' possession were the type and quantity of controlled substances alleged in the indictment. However, the Appellant does contest that she ever knowingly possessed any illegal controlled substances.

The Tennessee Court of Criminal Appeals defined "possession" in *State v. Cooper*, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987), as follows:

The term "possession," as used in the statute, embraces both actual and constructive possession. See *State v. Williams*, 623 S.W.2d 121, 125 (Tenn. Crim. App. 1981); *State v. Copeland*,

677 S.W.2d 471, 476 (Tenn. Crim. App. 1984). Before a person can be found to constructively possess a drug, it must appear that the person has "the power and intention at a given time to exercise dominion and control over . . . [the drugs] either directly or through others." *State v. Williams*, supra, quoting from *United States v. Craig*, 522 F.2d 29 (6th Cir. 1975). See *United States v. Holland*, 445 F.2d 701, 703 (D.C. Cir. 1971). In other words, "constructive possession is the ability to reduce an object to actual possession." *State v. Williams*, supra, quoting from *United States v. Martinez*, 588 F.2d 495 (5th Cir. 1979). See *Harris v. Blackburn*, 646 S.W.2d 904, 906 (5th Cir. 1981). The mere presence of a person in an area where drugs are discovered is not, alone, sufficient to support a finding that the person possessed the drugs. *Harris v. Blackburn*, 646 F.2d 904, 906 (5th Cir. 1981). See *Dishman v. State*, 460 S.W.2d 855, 858 (Tenn. Crim. App. 1970); *Whited v. State*, 483 S.W.2d 594 (Tenn. Crim. App. 1972). Likewise, mere association with a person who does in fact control the drugs or property where the drugs are discovered is insufficient to support a finding that the person possessed the drugs. *Harris v. Blackburn*, supra. See *Dishman v. State*, supra; *Whited v. State*, supra.

As was the case in *State v. Cooper*, 736 S.W.2d 125, 129 (Tenn. Crim. App. 1987), and *State v. Transou*, 928 S.W.2d 949 (Tenn. Cr. App. 1996), no evidence was submitted at trial that supported a finding by a trier of fact that the defendant was ever in actual possession or constructive possession of the substances found under Mr. Porter and thrown from Mr. Hurley's hand. Neither the search warrant giving rise to the police action nor the facts alleged in the search warrant were ever submitted to the jury. No proof was ever submitted to the jury that Ms. Porter was ever in actual possession of the controlled substances.

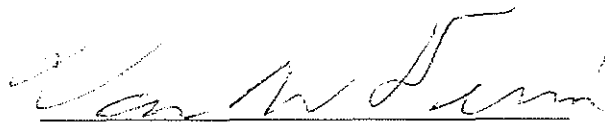
As to Ms. Porter's constructive possession of the controlled substances, there was no proof submitted to the jury that would give a reasonable trier of fact reason to find that Ms. Porter ever had

the power or intention to exercise direct or indirect dominion or control over the substances. While there was abundant proof at trial that Mr. Porter and Mr. Hurley were in actual possession of the controlled substances that were found at the home, there was no proof that Ms. Porter either knew the co-defendants had controlled substances on their persons or had the power or ability to exercise any kind of control over the co-defendants that would rise to the level of constructive possession of the substances found on their persons. By extending the doctrine of constructive possession to encompass Ms. Porter's actions in this matter, this Court would set the precedent that the owner or lawful occupant of a residence is in constructive possession of any illegal substance or object brought into their home by their, guests, children, or other third parties, regardless of their knowledge or intent.

#### CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that the judgment of the trial court be reversed.

Respectfully submitted,



VANCE W. DENNIS (BPR# 021178)

Attorney for Appellant

McGee & Dennis

Attorneys at Law

55 Court Street, Suite B

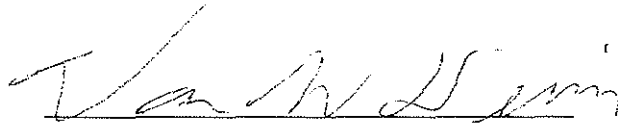
Savannah, TN 38372

(731) 925-1025

CERTIFICATE OF SERVICE

I, Vance W. Dennis, Attorney for the Appellant, Gloria A. Porter, hereby certify that I have forwarded a true and exact copy of the foregoing to Paul G. Summers, Attorney General, State of Tennessee, 425 5<sup>th</sup> Avenue North, Nashville, TN 37243, by U.S. Mail, postage prepaid.

This the 28<sup>th</sup> day of March, 2005.

A handwritten signature in cursive script, appearing to read "Vance W. Dennis", written over a horizontal line.

VANCE W. DENNIS  
Attorney for Appellant



IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

NO. 15448

TINA LYNN SZABO

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RESPONSE TO MOTION TO SUPPRESS SEARCH WARRANT

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Comes now the State of Tennessee, by counsel, and in opposition to the Motion to Suppress Search Warrant filed by the Defendant in this cause, would state and show unto the Court as follows:

1. The search warrant at issue in this cause does contain the typographical error referenced in Defendant's motion. However, said error does not invalidate the warrant in question.

A brief summary of case law regarding typographical errors can be found in the unreported case of State v. McElroy, 2004 WL 86178 (Tenn.Crim.App.) as follows:

*Unquestionably, clerical or typographical errors will not invalidate an otherwise valid search warrant absent a showing of prejudice to the defendant. Collins v. State, 184 Tenn. 356, 199 S.W.2d 96, 97 (1947) (holding conflict in dates of affidavit, warrant, and filing notation did not invalidate warrant); State v. Barbara Faye Powell, et al., No. W1999-01825-CCA-R3-CD, 2000 Tenn.Crim.App. LEXIS 385, at \* 8-9 (Tenn.Crim.App. May 11, 2000) (holding conflicting dates in affidavit and warrant did not invalidate warrant); see also United States v. Jones, 208 F.3d 603, 608 (7th Cir.2000) (holding minor conflicts in the addresses in affidavit and search warrant were not fatal to warrant under the circumstances); Wangrow v. United States, 399 F.2d 106, 115 (8th Cir.) (same), cert. denied, 393 U.S. 933 (1968); Champion v. State, 919 S.W.2d 816, 818 (Tex.App.1996) (same).*

The error at issue is clearly a typographical error that did not prejudice the defendant. The warrant in question was drafted shortly after the Defendant's arrest by the arresting officer and contains Defendant's last name or full name in at least six different locations. There is no reasonable interpretation of the search warrant taken as a whole that would indicate any possible location of the blood being sought other than within the Defendant's body.

In addition to extensive case law supporting the State's position in this matter, the Tennessee General Assembly passed the Exclusionary Rule Reform Act in 2011, codified in Section 40-6-108 of the Tennessee Code. Said act clearly reverses any case law supporting suppression of evidence based upon a good faith mistake or technical violation as defined in Section 40-6-108(c). The error at issue in this matter falls within said definition, and should not be a basis for exclusion of the evidence obtained pursuant to the search warrant in this matter.

FILED 5-7-15 AT 10:40 A.M.  
MIKE WILSON, CLERK  
BY *Bucky Nichols, D.C.*

2. The State has never conceded that the evidence obtained pursuant to the search warrant at issue is not admissible. The State elected not to use said evidence at the preliminary hearing in this cause, but never waived its right to use said evidence in future proceedings. The State is under no obligation to use all evidence in its possession at a preliminary hearing in General Sessions Court.

3. The search warrant was returned to the Court and filed with the Court Clerk on the date of the preliminary hearing in this cause. While court rules require the search warrant to be returned within five days of execution, failure to comply with said five day requirement does not justify suppression of evidence obtained in an otherwise legal manner. Our Tennessee Supreme Court has expressed this clearly as follows:

*The last clause of Section 40-507 T.C.A. provides that the warrant is void after five days unless executed. The warrant in the case at bar was certainly executed within the period of five days; that is, the search was made and conducted within that time. The failure of the officer to make the return within the five day \*\*258 period was merely a failure on his part to carry out a ministerial duty. His failure to perform this simple act could not and did not in any way affect the validity of the warrant and the execution thereof by the officer. The proof in fact showed that the officer did execute the warrant within the period of five days and that the preliminary hearing was had on the fifth day after the issuance of the warrant. Section 84 on Searches and Seizures in 79 C.J.S. is full authority for the position of the State, which general rule is: 'While it is the duty of the officers executing a search warrant to make a return thereof in the manner provided by law, as a general rule the failure of an officer to make a return of a search warrant properly issued and served will not invalidate the search warrant, or a search and seizure made thereunder, even where the statute requires the return within a certain time, the return being merely a ministerial act, which may be performed later, at least within a reasonable time.' \*44 In *Rettich v. U. S.*, 1 Cir., 84 F.2d 118. Defendants contended that the evidence obtained by State Officers was inadmissible because it was not returned to the Court issuing the warrant. The Court held that the return on a search warrant is a ministerial act and can be made within a reasonable time. *Evans v. U. S.*, 6 Cir., 242 F.2d 534, certiorari denied, 353 U.S. 976, 77 S.Ct. 1059, 1 L.Ed.2d 1137, a case involving prosecution for the possession of intoxicating liquors arising in Tennessee, held that the return of a search warrant is a ministerial act and any failure therein does not void the warrant. *Wince v. State*, 206 Miss. 189, 39 So.2d 882, holds: 'The search warrant in this case was based upon a lawful affidavit, and the search warrant itself was a lawful warrant duly authorizing the officer executing it to make search of the property named therein for the stolen articles described in the warrant. It follows from this that at the time the officer was making the search he was engaged in a lawful act and was doing that which the law justified him in doing. The stolen articles were legally recovered as a result of said search. It would be an anomaly for us to hold that the mere failure of the officer to make his return upon the search warrant would relate back and make unlawful that which the law says was lawful at the time the search was being made and the goods were being recovered. We are unwilling to hold that the failure to make a return on the search warrant invalidates the search and makes the testimony incompetent as to the articles recovered by the search. This is neither good law nor logical reasoning.' \*45 *Searches, Seizures and Immunities*, Varon (Bobbs-Merrill, 1961), under Section 11, Return of Search Warrant, states: 'The statutory requirements as to the return of a search warrant, necessity of receipt and inventory are only ministerial, and the failure to comply with these requirements will not tend to invalidate the warrant, nor affect the admissibility*

*of those articles of personal property seized under such writ. Based upon the above statements of the law, it appears that any irregularities in regard to the return do not render the evidence secured thereunder inadmissible.*

*Bowman v. State, 211 Tenn. 38, 43-45, 362 S.W.2d 255, 257-58 (Tenn. 1962)*

For the foregoing reasons, the State prays that Defendant's motion to suppress the blood test results in this cause be overruled.

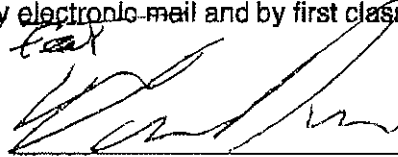
Respectfully submitted,



VANCE W. DENNIS (021178)  
Assistant District Attorney General  
100 Court Square  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon Anthony L. Clark, Attorney for Defendant, by electronic mail and by first class US mail, postage prepaid, on this the 6th day of May, 2015.



VANCE W. DENNIS

IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

NO. 15448

TINA LYNN SZABO

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RESPONSE TO MOTION TO SUPPRESS VIDEO

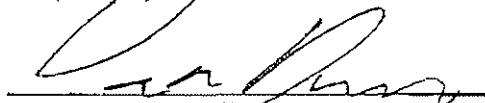
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Comes now the State, by counsel, and in opposition to the Motion to Suppress the video evidence in this cause, would state and show as follows:

1. Defendant asserts that the video in this matter should be suppressed because the officer failed to activate the audio recording capabilities of the AV recording device in his patrol car until several minutes after the beginning of the traffic stop, and because the recording of the interaction ended before the defendant was placed in the officer's car and transported to jail.
2. Defendant relies upon *State v. Merriman*, 410 S.W.3d 779, in support of this motion. However, the Merriman case dealt with evidence that was lost or destroyed by the government. In *State v. Merriman*, the court appropriately applied the test established in *State v. Ferguson*, 2 S.W.3d 912 (Tenn., 1999), in determining that a lost video justified the dismissal of a criminal charge.

In the matter before this Court, the recordings at issue were not lost or destroyed—they were never created. Neither the Merriman Court nor any other Tennessee court has imposed a duty on the government to create audio or video evidence. The officer in this matter was under no duty to create a video or audio recording of the traffic stop, field sobriety tests, or subsequent arrest of the defendant. The absence of an audio recording of a portion of the traffic stop or a complete video recording of the transportation of the Defendant to jail does not justify any remedial action to suppress the remaining recordings or dismiss the charges unless the state first created the evidence and then failed to preserve said evidence. Therefore, Defendant's motion should be overruled.

Respectfully submitted,

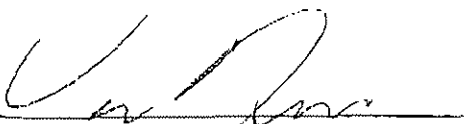


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FILED 5-7-15 AT 10:40 P.M. (A.M.)  
MIKE WILSON, CLERK  
BY *Becky M. [unclear]* D.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon Anthony L. Clark, Attorney for Defendant, by electronic mail and by first class US mail, postage prepaid, on this the 6th day of May, 2015.

  
VANCE W. DENNIS

IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

NO. 15448

TINA LYNN SZABO

STATE'S BRIEF IN SUPPORT OF  
MOTION FOR PERMISSION TO APPEAL AND  
APPLICATION FOR A STAY

Comes now the State of Tennessee, by counsel, and in support of its motion for permission to appeal and application for a stay pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure, would show as follows:

Propriety of Rule 9 Appeal

There are three procedures whereby a party to a criminal proceeding may appeal a decision of the Trial Court. Rule 3 of the Tennessee Rules of Appellate Procedure governs appeals as of right. In order for the State to appeal a Suppression Order pursuant to Rule 3, the Order must result in the dismissal of an indictment, information or complaint. Rule 9 of the Tennessee Rules of Appellate Procedure governs the appeal of interlocutory orders of a trial court that do not result in the dismissal of an entire indictment, information or complaint, and are discretionary on the part of the Trial Court based upon the factors delineated in said rule. Rule 10 of the Tennessee Rules of Appellate Procedure governs appeals whereby extraordinary relief from a Trial Court decision is sought, and are granted at the discretion of the Court of Criminal Appeals.

One of the issues before this Court is whether Rule 3 or Rule 9 should govern the State's appeal of the Court's decision to suppress the blood testing results in this cause, and thereby dismissing the per-se DUI count of a multiple count indictment. In support of the State's position that Rule 9 is the appropriate avenue for appeal in this matter, the State would direct the Court's attention to *State v. Meeks*, 262 S.W.3d 710 (Tenn. 2008). In *Meeks*, the Supreme Court said (at headnote 5, p. 720) that "to trigger Tenn. R. App. P. 3(c)(1), the order suppressing or excluding the evidence must produce the entry of an order **dismissing an indictment, information, or complaint.**" (Emphasis added.) The State is not entitled to a Rule 3 appeal as of right if the trial court's ruling on a suppression motion dismisses less than the entire indictment. According to *Meeks*, the proper procedure when there is a dismissal of some, but not all, counts of the indictment is interlocutory appeal pursuant to Rule 9 or Rule 10.

In *State v. Boyce Turner*, No. E2013-02304-CCA-R3-CD, 2014 WL 7427120 (Tenn. Crim. App. Dec. 30, 2014), the Court of Criminal Appeals faulted the State for pursuing a Rule 3 appeal rather than interlocutory appeal. Turner was indicted for two counts of DUI, two counts of DUI 4<sup>th</sup> offense, evading arrest, resisting arrest, and driving on a revoked license. He filed a motion to suppress the blood alcohol testing results, which the trial court granted. The State filed a notice of appeal under Tenn. R. App. P. 3. The Court of Criminal Appeals said that since "the defendant's case was not actually dismissed as a result of the trial court's order . . . the State should have pursued an interlocutory appeal under Rule 9 or an extraordinary appeal under Rule 10." While the trial court's ruling had the substantive effect of dismissing the DUI counts that were based on the blood test evidence, it had no impact on the other counts of the indictment. The Court of Criminal Appeals went

on to consider the State's improperly filed Rule 3 appeal as a Rule 10 extraordinary appeal and affirmed the trial court's suppression ruling.

There are currently several DUI cases pending in our appellate court system that raise issues about the mandatory blood draw statute on *Missouri v. McNeely* issues. These cases have all proceeded on appeal after trial court rulings on the defendants' motions to suppress. In all of these cases, the trial court orders affected only one count of a multi-count indictment and the appeals have been under Rule 9. See e.g., *State v. Kennedy*, No. M2013-02207-CCA-R9-CD, 2014 WL 4953586, (Tenn. Crim. App. Oct. 3, 2014); *State v. Reynolds*, No. E2013-02309-CCA-R9-CD, 2014 WL 5840567, (Tenn. Crim. App. Nov. 12, 2014); *State v. Wells*, No. M2013-01145-CCA-R9-CD, 2014 WL 4977356, (Tenn. Crim. App. Oct. 6, 2014). Rule 9 appeals were recently granted in at least three DUI cases where the suppression order dismissed one count of the indictment, but did not affect the other counts: *State v. A.D. Smith III*, No. W2015-00133-CCA-R9-CD; *State v. Dennis Sprawling*, No. W2014-02511-CCA-R9-CD; *State v. Christopher Wilson*, No. W2015-00699-CCA-R9-CD.

Based upon the foregoing, and after thorough consultation with the office of the Attorney General, the state would submit that this matter is appropriate for a Rule 9 appeal. The state relies upon the arguments presented in the preceding Motion to justify the grounds for the appeal of the Court's interlocutory Order and a Stay of the proceedings in this cause until this Appeal is resolved.

Respectfully presented,




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VANCE W. DENNIS (021178)  
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100 Court Square  
Huntingdon, TN 38344  
731-986-5031

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief was served upon Anthony Clark, Attorney for Defendant, 104 N. Brewer St., Paris, TN 38242, by first class U.S. Mail on this the 14 day of November, 2015.



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Vance W. Dennis